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

**CALIFORNIA-AMERICAN WATER COMPANY**  
*Petitioner,*

v.

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

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

Of the Public Utilities Commission of the State of California

**APPENDIX OF EXHIBITS**

**TO PETITION FOR WRIT OF REVIEW**

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

Of the Public Utilities Commission of the State of California

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**EXHIBIT X**

*California-American Water Company Application for Rehearing  
of D.20-08-047 and Request for Oral Argument, R.17-06-024,  
October 5, 2020*

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

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.

Rulemaking 17-06-024  
(Filed June 29, 2017)

**CALIFORNIA-AMERICAN WATER COMPANY  
APPLICATION FOR REHEARING OF D.20-08-047  
AND REQUEST FOR ORAL ARGUMENT**

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

Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.

Rulemaking 17-06-024  
(Filed June 29, 2017)

**CALIFORNIA-AMERICAN WATER COMPANY  
APPLICATION FOR REHEARING OF D.20-08-047  
AND REQUEST FOR ORAL ARGUMENT**

**I. INTRODUCTION**

In accordance with Rule 16.1 of the Commission's Rules of Practice and Procedure, California-American Water Company ("California American Water") respectfully files this application for rehearing of Decision ("D.") 20-08-047.<sup>1</sup> In D.20-08-047, the Commission eliminated the decoupling Water Revenue Adjustment Mechanisms/Modified Cost Balancing Account ("WRAM/MCBA") by prohibiting California American Water, California Water Service Company, Golden State Water Company, and Liberty Utilities from requesting to continue this well-established and vital mechanism in their next general rate cases.<sup>2</sup> As discussed in more detail below, D.20-08-047 is unlawful, erroneous, and includes significant legal errors. In particular, the Commission's decision violated its rules and the Public Utilities Code by issuing a decision on an issue that was not part of the scope of this proceeding. In addition, the Commission erred by failing to regularly pursue its authority<sup>3</sup> by not considering all the facts

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<sup>1</sup> D. 20-08-047, *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low – Income Customers of Investor-Owned Water Utilities, and Affordability*, Decision and Order.

<sup>2</sup> *Id.*, p. 106, Ordering Paragraph 3.

<sup>3</sup> See Pub. Util. Code §1751.1(b).

that might bear on its elimination of the decoupling WRAM, failing to provide factual support for its actions, and including insufficient findings and evidence to support D.20-08-047.

Additionally, pursuant to Rule 16.3, California American Water requests oral argument on this application for rehearing. This application raises issues of major significance for the Commission because D.20-08-047 departs from existing Commission precedent without adequate explanation and presents legal issues of exceptional controversy, complexity and public importance. Oral argument will materially assist the Commission in resolving this application.

## **II. REQUEST FOR RELIEF**

California American Water requests that the Commission vacate and/or set aside D.20-08-047, due the numerous and substantial legal errors outlined above. To the extent that the Commission still considers elimination of the decoupling WRAM, it should establish a separate phase or proceeding to do so, and provide opportunities for an evidentiary hearing to develop a record with respect to the impact on rate design, low-income customers, forecasting and conservation.

At the very minimum, California American Water requests that the Commission vacate D.20-08-0547 with respect to its Monterey District. As discussed in more detail below, California American Water's current steeply tiered Monterey District rate design would likely be financially untenable without the decoupling WRAM, but may be necessary to maintain conservation levels and avoid significant economic harm to the company and its customers. California American Water should have the opportunity to request to continue the decoupling WRAM in its next general rate case and provide evidence in support of this request.

## **III. THE COMMISSION VIOLATED ITS RULES AND THE PUBLIC UTILITIES CODE BY ISSUING A DECISION ON AN ISSUE OUTSIDE THE SCOPE OF THIS PROCEEDING**

The Commission is required to conduct all proceedings in compliance with the Public Utilities Code and the Commission's Rules of Practice and Procedure.<sup>4</sup> Under the Public Utilities

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<sup>4</sup> Pub. Util. Code §1701.

Code and the Commission’s Rules, the assigned Commissioner determines the issues the Commission will address in a proceeding and identifies those issues in a scoping memo.<sup>5</sup>

In the initial scoping memo for this proceeding, the assigned Commissioner indicated that the scope of issues included: (1) consolidation of at risk water systems, (2) forecasting water sales, (3) regulatory changes to lower rates and improve access to safe, quality drinking water for disadvantaged communities, and (4) regulatory changes that would ensure and/or improve the health and safety of regulated water systems.<sup>6</sup> The assigned Commissioner subsequently issued an amended scoping memo identifying the following issues: (1) providing a basic amount of water at low quantity rate, and (2) the possibility of regulated investor-owned energy utilities sharing low-income customer data with municipal water utilities as additional issues that the Commission would consider in this rulemaking.<sup>7</sup> Neither the initial scoping memo nor the amended scoping memo included consideration of elimination of the decoupling WRAM within the scope of issues to be addressed.

In D.20-08-047, the Commission claims that consideration of changes to the decoupling WRAM “has always been within the scope of this proceeding as part of our review of how to improve water sales forecasting.”<sup>8</sup> The language of the scoping memo with respect to sales forecasting, however, does not support that claim:

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

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<sup>5</sup> Pub. Util. Code §1701.1(c); CPUC Rule 7.3.

<sup>6</sup> *Scoping Memo and Ruling of the Assigned Commissioner*, January 9, 2018 (“Scoping Memo”), pp. 2-3.

<sup>7</sup> *Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*, July 9, 2018, p. 3.

<sup>8</sup> D.20-08-047, p. 60.

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?<sup>9</sup>

Merely identifying the avoidance of regressive rates, improving water sales forecasting, and questioning the guidelines or mechanisms that can improve or standardize water sales forecasting does not bring the elimination of the decoupling WRAM within the scope of this proceeding. Although an adopted forecast is one of the inputs to the WRAM calculation, the decoupling WRAM is not a forecasting mechanism. The Commission's interpretation of the scoping memo as including the issue of elimination of the decoupling WRAM because it addresses improvements to sales forecasting is overly broad.

In *Southern California Edison v. CPUC*, the California Court of Appeal indicated this type of broad interpretation of scoping memo language is incorrect, and that the scope of issues to be considered in a Commission proceeding consists of those issues addressed specifically.<sup>10</sup> In that decision, the Court found that the Commission violated its own rules by issuing a decision on an issue outside the scope of the proceeding and in doing so failed to proceed in the manner required by law, and that the failure was prejudicial.<sup>11</sup>

Indeed, there would be no reason for California American Water or other interested parties to interpret the language of the scoping memo as broadly as the Commission claims in D.20-08-047, since previously the Commission explicitly mentioned the WRAM in another scoping memo when it considered the issue as part of a prior rulemaking. Specifically, in the amended scoping memo for Rulemaking 11-11-008, the Commission identified, among others, the following WRAM-related issues:

7. Do WRAMs and MCBAs, by decoupling the utilities' revenue functions from changes in sales, succeed in neutralizing the utilities' incentive to increase sales? Is there a better way?

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<sup>9</sup> Scoping Memo, pp. 2-3.

<sup>10</sup> *Southern California Edison v. CPUC*, (2002) 140 Cal. App. 4th 1085, 1105.

<sup>11</sup> *Id.*, 140 Cal App. 4<sup>th</sup> at 1106.

8. Are WRAMs and MCBAs effective mechanism to collect authorized revenue in light of tiered inclining block conservation rates? Is there a better way to proceed in light of the drought and the Executive Order?

9. Do WRAMs and MCBAs appropriately incentivize consumer conservation? Are adjustments needed? Would another mechanism be better suited for the utility to collect authorized revenue for water system needs and encourage conservation in light of the drought and the Executive Order?

11. Do WRAMs and MCBAs achieve the statutory objective of safe, reliable water service at just and reasonable rates? Is their function properly communicated to consumers and do consumers understand their purpose?

13. Is there a policy or procedure that would accomplish the same results as the WRAM and MCBAs without the attendant issues discussed in the previous questions especially in light of the drought and the Executive Order?<sup>12</sup>

After consideration of these issues, the Commission concluded, “the WRAM should be maintained.”<sup>13</sup> Given the previous specific identification of WRAM issues in the scoping memo for the referenced rulemaking, there is no reason that any party would interpret the language regarding forecasting improvements in the scoping memo in this proceeding as encompassing the elimination of the decoupling WRAM.

In support of its claim that the elimination of the WRAM was always within the scope of the proceeding, the Commission refers to a discussion of the decoupling WRAM by parties at a sales forecasting workshop and to the September 4, 2019 *Administrative Law Judge’s Ruling Inviting Comments on Water Division Staff Report and Responses to Additional*

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<sup>12</sup> R.11-11-008, *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)*, Assigned Commissioner’s Third Amended Scoping Memo and Ruling Establishing Phase II, pp. 14-15.

<sup>13</sup> D.16-12-026, *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)*, Decision Providing Guidance on Water Structure and Tiered Rates, p. 41.

*Questions.*<sup>14</sup> The Commission claims that since this ruling specifically asked for input on elimination of the decoupling WRAM after it was raised by parties at the forecasting workshop, the issue had always been part of the Commission’s consideration of how to improve water sales forecasting.<sup>15</sup>

The scope of a proceeding, however, is not determined by comments made by parties at a workshop or by a ruling by the assigned Administrative Law Judge. As discussed above, it must be set forth by the assigned Commissioner in a scoping memo. The language of the scoping memo does not include elimination of the decoupling WRAM within the list of explicit issues to be resolved in this proceeding. By addressing an issue outside the scope of the proceeding in D.20-08-047, the Commission violated the Commission’s rules and the Public Utilities Code.

In *Southern California Edison v. CPUC*, the Court found that this type of violation was prejudicial. In that decision, the Court stated, “We cannot fault the parties for failing to respond to the merits of proposals that were not encompassed in the scoping memo absent an order amending the scope of issues to include the new proposals.”<sup>16</sup> When the issue of the elimination of the WRAM was raised late in this proceeding, California Water Association (“CWA”), recognizing that it had not been identified as an issue for consideration by the assigned Commissioner in a scoping memo, pointed out that it was outside the scope.<sup>17</sup> Absent an order amending the scope of the proceeding to include this new proposal, there was no reason for California American Water or other interested parties to know that the Commission would move forward with a decision eliminating of the decoupling WRAM.

As in the Southern California Edison case, the Commission’s failure to comply with its own rules and with the Public Utilities Code is prejudicial. If elimination of the decoupling

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<sup>14</sup> D.20-08-047, p. 59.

<sup>15</sup> *Id.*, pp. 59-60.

<sup>16</sup> *Southern California Edison v. CPUC*, 140 Cal App. 4<sup>th</sup> at 1106.

<sup>17</sup> *Comments of California Water Association Responding to Administrative Law Judge’s September 4, 2019 Ruling*, September 16, 2019, p. 13.

WRAM had been included in the scope of the proceeding, California American Water would have had the opportunity to build a record on the impacts of elimination of the WRAM, discuss it in pleadings, and request evidentiary hearings to address disputed factual issues. Given the vital need for the decoupling WRAM in the Monterey District in particular, and the potential for elimination of the WRAM to cause substantial harm in that district, California American Water would have taken steps to ensure that the Commission had a full and complete record upon which to base its decision.

Moreover, the Commission's violation of its rules and the Public Utilities Code prejudices entities who may have sought to participate in the proceeding if the elimination of the decoupling WRAM had been properly identified as an issue. Numerous entities have actively participated in multiple Commission proceedings involving the water supply constraints in California American Water's Monterey District, and the need to encourage efficient water usage to avoid fines or rationing. If the Commission had properly identified this issue as being part of the scope of this proceeding, these parties would have had a fair and full opportunity to participate. Since the Commission has prohibited California American Water from seeking to continue the decoupling WRAM in its next general rate case, however, these parties have been denied the opportunity to address this issue, even if they may be negatively impacted by elimination of the WRAM.

#### **IV. THE COMMISSION FAILED TO REGULARLY PURSUE ITS AUTHORITY**

The lack of effort made to develop a record on the issue of elimination of the WRAM belies the Commission's claim that this issue was always part of the proceeding. By failing to fully examine and develop a record on the elimination of the decoupling WRAM, the Commission has failed to regularly pursue its authority.

##### **A. The Commission Erred in Failing to Consider All of the Facts and Issues**

In *United States Steel Corp. v. Public Utilities Com.* the California Supreme Court held that the Commission has a duty to consider all facts that might bear on the exercise of its



discretion.<sup>18</sup> There, the Supreme Court annulled a Commission decision because the Commission failed to consider the economic impacts of its action.<sup>19</sup> In this proceeding, the Commission did not consider all the facts that might bear on its decision to eliminate the decoupling WRAM. In particular, the Commission did not consider adjustments that the WRAM companies might need to make to their rate designs and how those adjustments might affect low-income customers and conservation, particularly in California American Water's Monterey District.

### **1. The Commission Erred in Failing to Consider Rate Design**

As California American Water noted in the comments on the Proposed Decision, the rate designs of the companies without decoupling WRAMs and the rate designs of companies with decoupling WRAMs, such as California American Water and California Water Service, are markedly different.<sup>20</sup> California American Water's current rate designs in most of its districts include four rate tiers, with steep differentials between the tiers and a low percentage of fixed costs recovered through the meter charge. California American Water has a five-tier rate design in its Monterey District, with a spread between tier 1 and tier 5 of 800%. By contrast, the tiered rate designs of the companies without decoupling WRAMs tend to recover more revenue through the monthly service charge and include fewer tiers with less substantial differentials between them.<sup>21</sup>

The marked difference between California American Water's tiered rate designs and the tiered rates designs of the companies without decoupling WRAMs is not a coincidence. California American Water's steeply tiered rate designs result in a significant level of revenue volatility because the high rates in the upper tiers mean that small changes in water usage results

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<sup>18</sup> *United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603, 608 (1981).

<sup>19</sup> *Id.*, 29 Cal. 3d at 610.

<sup>20</sup> *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, pp. 2-3.

<sup>21</sup> *Id.*

in large changes in revenue collection. This volatility cannot be fully addressed by forecasting. Revenue volatility is a more critical issue for the water industry because of the high level of fixed costs.

Forecasts are estimates of future events and there has always, and will continually be deviations from even the most accurate forecasts. With a steeply tiered rate design like California American Water's, however, these inevitable deviations, even if relatively minor, have a disproportionate effect on revenue collection. Indeed, California could incorporate all of the forecasting factors adopted in D.20-08-047,<sup>22</sup> as it already does, but the deviations from the forecast in the upper tiers would still cause significant revenue volatility.

Because the volatility cannot be fully ameliorated by improved forecasting, California American Water's steeply tiered rate designs would prevent it from recovering its authorized revenue requirement if not for the decoupling WRAM. This is why California American Water did not develop steeply tiered rate designs in most of its districts until after the decoupling WRAM was implemented,<sup>23</sup> and is likely why the companies without decoupling WRAMs have less steeply tiered rate designs. The Monterey-style WRAMs ("M-WRAM") that these companies have do not address these fluctuations in customer usage.

Indeed, California American Water knows from firsthand experience that steeply tiered rates designs are not workable without the decoupling WRAM, because, as the "Monterey-style" name suggests, the non-decoupling M-WRAM was developed for California American

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<sup>22</sup> D.20-08-047, pp. 50-51.

<sup>23</sup> The current four-tier rate design for most California American Water districts was initially adopted through a settlement between California American Water, Natural Resources Defense Council, Division of Ratepayer Advocates and The Utility Reform Network. D.12-11-006, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$4,134,600 or 2.55% in the year 2011, by \$33,105,800 or 19.68% in the year 2012, by \$9,897,200 or 4.92% in the year 2013, and by \$10,874,600 or 5.16% in the year 2014*, Decision Adopting the Rate Design Settlement Agreement for California-American Water Company's Larkfield, Los Angeles County, San Diego County and Ventura County District and the Toro Service Area of the Monterey County District, p. 4.

Water's Monterey District, where California American Water has experienced decades-long water supply constraints.

In 1995, the State Water Resources Control Board ("SWRCB") issued Order WR 95-10,<sup>24</sup> in which it concluded that although California American Water had been diverting approximately 14,106 acre-feet per year (afy) from the Carmel River, it had only had a legal right to 3,376 afy.<sup>25</sup> The SWRCB ordered California American Water to reduce diversions from the Carmel River to the greatest practicable extent and replace about 10,730 afy by obtaining other sources of water and through other actions, such as conservation.<sup>26</sup>

In 1996, the Commission approved a settlement allowing California American Water to implement a then-experimental three-tier conservation rate design.<sup>27</sup> The new rate design also reduced the revenues collected through the monthly fixed service charge and waived the service charge for low-income customers.<sup>28</sup> The M-WRAM would track the "variation in projected revenue" between the experimental conservation rate design and the standard Commission rate design.<sup>29</sup> The conservation rates were actually set to over-collect the authorized revenue requirement because the first tier and third tier rates were simply a percentage of the standard rate, including recovery of 75% of fixed costs in the variable quantity rates.<sup>30</sup> In its decision, the

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<sup>24</sup> Order WR 95-10, Order on Four Complaints Filed Against the California-American Water Company, July 6, 1995 ("Order 95-10").

<sup>25</sup> *Id.*, p. 25.

<sup>26</sup> *Id.*, pp. 38-39. *See also* D.18-09-017, *Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates*, Decision Approved a Modified Monterey Peninsula Water Supply Project, Adopting Settlement Agreements, Issuing Certificate of Public Convenience and Necessity and Certifying Combined Environmental Report, pp. 3-9, which provides a detailed discussion of California American Water's Monterey District water supply issues.

<sup>27</sup> D.96-12-005, *Application of California-American Water Company for an order authorizing it to increase its rates for water service in its Monterey Division*, Opinion.

<sup>28</sup> *Id.*, p. 13.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*, Appendix B, pp 21-23, Tables N-Q, pp. 65-68.

Commission noted, “The experimental rate design would increase the variability of Cal-Am's revenues.”<sup>31</sup>

Over time, California American Water faced increasing challenges with respect to water supply, including the threat of multi-million dollar fines and severe rationing.<sup>32</sup> To avoid these outcomes, California American Water had to implement increasingly aggressive tiered rate designs with higher upper block quantity rates aimed at the customers using the most water.<sup>33</sup> As these rate designs evolved, revenue volatility increased,<sup>34</sup> and the M-WRAM, which did not address changes in consumption due to conservation pricing signals, did not provide the necessary revenue stability, making it impossible for California American Water to recover its revenue requirement.

California American Water was in an untenable position, made worse by the SWRCB’s issuance of a draft Cease and Desist Order in 2008. California American Water needed to send even stronger pricing signals to avoid severe rationing and/or fines for the Monterey District. Yet the volatility created by an even more steeply tiered rate design would prevent California American Water from recovering its revenue requirement. It was only with the adoption of the decoupling WRAM for the Monterey District, however, that California

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<sup>31</sup> *Id.*, Finding of Fact 9.

<sup>32</sup> See D.18-09-017, pp. 3-9, which provides a detailed discussion of California American Water’s Monterey District water supply issues.

<sup>33</sup> D.00-03-053, *Application of the California-American Water Company (U210W) for an Order Authorizing it to Increase its Rates for Water Service in its Monterey Division*, Opinion, pp. 22-25; D.04-07-035, *Application of California-American Water Company (U210W) for an Order for Emergency Authority to Temporarily Increase Upper Block Rates for Water Service in its Monterey District to Avoid SWRCB Violations and Request for Immediate Ex Parte Relief*, Opinion Authorizing Conservation Rates, pp. 5, 12; D.05-03-012, *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*, Opinion Authorizing Conservation Rates, pp. 5-7.

<sup>34</sup> The Commission has recognized that California American Water faces particularly challenging revenue volatility in its Monterey District. D.16-12-003, *Application of California-American Water Company (U210W) for Authorization to Modify Conservation and Rationing Rules, Rate Design, and Other Related Issues for the Monterey District*, Decision Addressing WRAM Balances, Rate Design, Conservation and Rationing Rules, and Other Issues for the Monterey District, p. 48.

American Water was able to implement its current five-tier rate design, which specifically targets high levels of use in upper tiers.<sup>35</sup>

California American Water's experience with the M-WRAM and its Monterey District provides insight as to the differences between the rate designs companies with and without the decoupling WRAM. It also indicates that California American Water will have to modify its rate designs to take into account the elimination of the decoupling WRAM.

This key issue, however, was absent from the Commission's decision in this proceeding. The Proposed Decision did not examine the differences between the rate designs of the companies with and without decoupling WRAMs, and initially did not even consider that California American Water and the other companies would have to modify their rate designs in order to maintain their ability to recover their authorized revenue requirement. The Proposed Decision erroneously implies that the vital and necessary decoupling WRAM could be eliminated and the only that thing that water companies would have to change would be their forecasts.<sup>36</sup>

In a last minute revision the evening before the Commission vote, language was added to the Proposed Decision stating, "rate design and rate impacts are independent of whether a utility has a WRAM or Monterey-Style WRAM."<sup>37</sup> Of course, there is nothing in the decision or the record to support the claim that rate design is independent of whether a utility has a

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<sup>35</sup> D.09-07-021, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Monterey District by \$24,718,200 or 80.30% in the year 2009; \$6,503,900 or 11.72% in the year 2010; and \$7,598,300 or 12.25% in the year 2011 Under the Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by \$354,324 or 114.97% in the year 2009; \$25,000 or 3.77% in the year 2010; and \$46,500 or 6.76% in the year 2011 Under the Current Rate Design*, Final Decision Authorizing Rate Increase in Monterey Water District and Toro Service Area, pp. 123-127, Appendix A.

<sup>36</sup> Proposed Decision, p. 57. The issue is only faced head-on in the dissent of Commissioner Randolph, which correctly recognizes, that the decoupling WRAM water companies "are very likely to propose higher service charges as well as having flatter tiers or else face a very real risk of not meeting their revenue requirement." D.20-08-047, Dissent of Commission Randolph, p. 1.

<sup>37</sup> D.20-08-047, p. 53.

decoupling WRAM or Monterey-style WRAM. Indeed, the Commission has previously recognize the link between rate design, volatility, and the decoupling WRAM:

Because Cal-Am’s current rate design, designed to encourage water conservation, causes volatility in Cal-Am’s revenue collection, the Commission finds it reasonable to allow the WRAM/MCBA to remain open.<sup>38</sup>

As California American Water discussed above, certain rate designs are only financially viable with a decoupling WRAM. This last minute modification to the decision does not disguise the fact that the Commission failed to consider how elimination of the decoupling WRAM would affect rate design.

If the Commission had identified the decoupling WRAM as part of the scope of the proceeding from the beginning, and if it had made an attempt to develop a record with respect to its elimination, the water companies would have had the opportunity to bring the issue of rate design to the Commission’s attention prior to the comments on the Proposed Decision. By failing to consider the potential rate design impacts of its action to eliminate the decoupling WRAM, the Commission also failed to consider how the elimination of the decoupling WRAM will affect conservation, particularly in California American Water’s Monterey District, and low-income customers in all districts.

**a. The Commission Erred in Failing to Consider the Impact on Conservation**

It is also extremely likely that rate tier changes necessary to reflect the elimination of the decoupling WRAM – implementing fewer and flatter tiers – will impact conservation. In D.20-08-047, the Commission states, “Conservation is not done by the utility but instead is accomplished by the customers.”<sup>39</sup> The Commission noted that a water utility, through its rate design, “provides a signal to customers that increased usage will result in increased costs per unit

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<sup>38</sup> D.18-12-021, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$34,559,200 or 16.29% in the year 2018, by \$8,478,500 or 3.43% in the year 2019, and by \$7,742,600 or 3.03% in the year 2020*, Decision Adopting the 2018, 2019 and 2020 Revenue Requirement for California American Water Company, p. 208.

<sup>39</sup> D.20-08-047, p. 62.

consumed,” and that customers make choices to use less water based, at least in part, on the water utility’s rate design.<sup>40</sup> The Commission failed, however, to consider how customers will react to a rate design that lessens the financial consequences for high water-use.

As California American Water knows based on its experience in its Monterey District, without the decoupling WRAM it will have to reduce the number of tiers and flatten the differential between the tiers in order to maintain the ability to recover its revenue requirement.<sup>41</sup> This change in rate design, however, will result in reduced bills for high-water use customers, since the highest rates in the highest tiers will have to be eliminated.<sup>42</sup>

Because the Commission failed to consider the rate design implications of the elimination of the decoupling WRAM, however, it also failed to consider whether conservation levels will be maintainable, when post-decoupling rate designs end up giving the highest water use customers a price break. The Commission’s observation in D.20-08-047 about customer responsiveness to price signals indicates that at least some customers are likely to react to weakening high use price signals by increasing usage. The Commission’s failure to consider this issue is legal error.

**b. Conservation Impacts Could be Severe for the Monterey District**

For most companies, and even most California American Water districts, increased usage would be contrary to State and Commission policy, but ultimately manageable. For California America Water’s Monterey District, however, increased usage could be catastrophic.

As noted above, California American Water’s Monterey District is subject to various SWRCB orders requiring it to reduce diversions from the Carmel River and to meet certain conservation goals. Order 95-10, which was the catalyst for California American Water’s

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<sup>40</sup> *Id.*

<sup>41</sup> In Monterey, the flattening of the tiers will be very substantial and likely increase the consumption of customers in the current higher tiers.

<sup>42</sup> *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, p. 4.

experimental tiered rate design and the M-WRAM, directed California American Water to “achieve 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year.”<sup>43</sup> In 2009, the SWRCB found that California American Water, which was continuing to divert about 7,150 afy from the Carmel River, was in violation of Water Code §1052. The SWRCB issued a cease and desist order (“CDO”) directing California American Water to make certain efforts to find a replacement water supply, to immediately reduce its diversion from the Carmel River by five percent, and beginning October 2011 to reduce diversions 121 afy per year on a cumulative basis through conservation and other measures.<sup>44</sup> The SWRCB subsequently updated this directive in 2016 to impose a 1,000 afy reduction in the effective diversion limit for each failure to meet a certain milestone.<sup>45</sup>

In Order 2016-0016, the SWRCB also discussed the penalties that could be assessed against California American Water if increased usage causes it to exceed the diversion limits established in the SWRCB orders:

To the extent that additional demand reduction and immediate supply acquisition efforts fail, Cal-Am would face significant fines. Each day of violation of a CDO accrues a potential administrative penalty of \$10,000 in certain drought years, or of \$1,000 in wetter years. (See Wat. Code, § 1845, subd. (b)(1).) This administrative penalty is in addition to the potential administrative civil liability penalties for unlawful diversion of water under Water Code section 1052, which may be imposed for all unlawful diversions, not just those which are in excess of the levels set in the CDO. Such penalties are up to \$1,000 per day and \$2,500 per acre-foot of unlawfully diverted water in certain drought years, and up to \$500 per day in wetter years. (See Wat. Code, § 1052, subd. (c).) Thus, in wetter years, Cal-Am would face approximately \$550,000 for each year of violation of the CDO. In certain drought years, such as those the state is currently experiencing, Cal-Am could face over \$4 million per year of violation in per-diem

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<sup>43</sup> Order 95-10, p. 41.

<sup>44</sup> Order WR 2009-0060, In the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company, (“Order 2009-0060”), pp. 56-57.

<sup>45</sup> Order WR 2016-0016, In the Matter Of Application of California American Water Company To Amend State Water Board Order 2009-0060 (“Order 2016-0016”), pp. 21-23. Indeed, due to circumstances beyond its control California American Water recently missed a milestone under Order WR 2016-0016 on September 30, 2020.



penalties, in addition to up to \$2.5 million in penalties for every 1,000 acre-feet that the company diverts unlawfully.<sup>46</sup>

The SWRCB noted that implementation of rationing was also an option if necessary.<sup>47</sup> The Commission has recognized that imposition of rationing would “have significant effects on the local economies within the Monterey Peninsula”<sup>48</sup> with “little to no opportunity for the Monterey Peninsula to return to normal economic conditions, nor could local agencies achieve their plan goals for moderate growth.”<sup>49</sup>

In addition to the SWRCB orders, California American Water’s diversions from the Carmel River to provide water service to its customers has made it subject to prosecution by the U.S. Fish and Wildlife Service for the “take” of the California red-legged frog, and by the National Marine Fisheries Service for the “take” of the California Coast steelhead. Both creatures are listed as threatened under the Endangered Species Act. California American Water has entered into conservation agreements with these agencies, but enforcement actions could include further reduction of the water supply and heavy fines.<sup>50</sup> These agreements place even more pressure on California American Water to maintain substantial conservation in its Monterey District.

Due to continued delays in developing a replacement water supply and until new adequate water supplies are made available, it is possible that any increase in water consumption could cause California American Water to exceed the SWRCB limits. In its comments on the Proposed Decision, California American Water demonstrated pricing signals conveyed by the rate design changes necessary to adjust to the elimination of the decoupling WRAM could increase demand eight percent higher in the Monterey District, which would push water

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<sup>46</sup> Order 2016-0016, p. 11.

<sup>47</sup> Order 2016-0016, p. 10.

<sup>48</sup> D.18-09-017, p. 180.

<sup>49</sup> *Id.*, p. 124, fn. 333

<sup>50</sup> *Id.*, pp. 6-7.

consumption in excess of the limits established by the SWRCB.<sup>51</sup> This would put California American Water at risk of incurring hundreds of thousands of dollars in SWRCB penalties every year, with the potential for multimillion-dollar penalties in drought years, as well as rationing, which would harm the Monterey economy.

There is nothing in D.20-08-047 or the record of the proceeding to indicate that the Commission considered the effect of elimination of the decoupling WRAM on the unique circumstances of California American Water's Monterey District. California American Water's ability to maintain consumption within legal limits in the Monterey District will be substantially impaired without its aggressive rate design, which, as discussed above, is only workable in conjunction with the decoupling WRAM. The Commission's elimination of the decoupling WRAM, therefore, could potentially put California American Water in the position of having to choose between compliance with the SWRCB and other conservation orders, or the ability to recover its revenue requirement. Placing California American Water in this position would be unlawful, and the Commission's failure to consider this issue is legal error.

**c. The Commission Erred in Failing to Consider the Impact on Low-Income Customers**

It is also extremely likely that rate tier changes necessary to reflect the elimination of the decoupling WRAM will negatively affect low-income customers. With the decoupling WRAM, California American Water has been able to develop rate designs that recover a lower percentage of costs through a fixed monthly fee, and to provide a lower basic quantity rate for low-income customers. Many low-income customers are also efficient water users, and the steeply tiered rate designs made possible by the decoupling WRAM benefits these customers because of the lower rate in the lower tiers.

Without the decoupling WRAM, California American Water will have to take steps to address revenue volatility in order to meet its revenue requirement. As California American

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<sup>51</sup> *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, p. 5.

Water discussed above, this volatility cannot be fully addressed through forecasting. The only ways to reduce volatility are to increase the percentage of costs recovered through the fixed charge and reduce the number of and flatten the rate tiers. Making those changes would unavoidably increase rates for low-income customers and customers with efficient water usage (who are also often low-income customers).<sup>52</sup>

The Proposed Decision was revised to state that the Commission “will ensure low-income and low-use customers are not adversely impacted” by rate design changes proposed in the next general rate cases for the companies with decoupling WRAMs.<sup>53</sup> It is unclear how the Commission will do that however, since the rates and rate designs adopted by the Commission must also maintain California American Water’s right to the opportunity to earn a reasonable rate of return.<sup>54</sup> Continuing the steeply tiered rate designs without the protection of the decoupling WRAM will prevent California American Water from doing so.

As noted above, the Commission has a duty to consider all facts that might bear on the exercise of its discretion. In *United States Steel Corp. v. Public Utilities Com.*, the California Supreme Court annulled a Commission decision on minimum rates for intrastate transportation of commodities by highway carriers for failure to consider the economic impact of its actions.<sup>55</sup> In this instance, the Commission had a duty to consider all facts that might bear on its decision to eliminate the decoupling WRAM. In its zeal to eliminate the decoupling WRAM, however, the Commission failed to consider all issues as required to regularly pursue its authority. The Commission’s refusal to consider the impact of its action on rate design, which in turn meant that it did not consider the impact of the elimination of the decoupling WRAM on low-income

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<sup>52</sup> *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, p. 4.

<sup>53</sup> D.20-08-047, p. 68.

<sup>54</sup> *FPC v. Hope Natural Gas Co. Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia* 262 U.S. 679 (1923).

<sup>55</sup> *United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603, 610 (1981).

customers and conservation, particularly in the Monterey District, renders D.20-08-047 similarly invalid.

**B. D.20-08-047 Lacks the Necessary Support**

In *Cal. Mfrs. Ass'n v. PUC*, the California Supreme Court annulled a Commission decision because the findings and evidence were not sufficient to justify the Commission's order.<sup>56</sup> "While the commission's asserted justification for changing its method of spreading rate increase is conservation of natural gas resources, neither finding nor evidence exists showing the method adopted will result in conserving more natural gas than would other proposed methods."<sup>57</sup> Similarly, the California Supreme Court also determined, "A decision that affects the rights of a party, but has no factual support, would not be one made in the regular pursuit of commission authority and could deny due process."<sup>58</sup>

In this instance, the Commission's elimination of the decoupling WRAM impedes California American Water from having a fair opportunity to earn a reasonable rate of return.<sup>59</sup> As discussed above, without the decoupling WRAM, California American Water will need to modify its rate design to lessen revenue volatility in order to have the ability to recover its authorized revenue requirement. The Commission's last minute addition to D.20-08-047, however, in which it pledges to ensure that "low-income and low-use customers are not adversely impacted" by rate design changes, could hinder California American Water's ability to develop a post-decoupling rate design that still affords it the opportunity to earn a reasonable rate of return. As such, the Commission's bar against continuing the decoupling WRAM in future general rate cases affects California American Water's rights.

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<sup>56</sup> *Cal. Mfrs. Ass'n v. PUC*, 24 Cal. 3d 251 (1979)

<sup>57</sup> 24 Cal. 3d at 259.

<sup>58</sup> *Camp Meeker Water System, Inc. v. Public Utilities Com.*, 51 Cal. 3d 845, 864 (1990). Although the judicial review statute cited in this decision has been modified, the standard applied in the decision, whether the Commission has regularly pursued its authority, still applies to decisions involving Commission-regulated water companies. See Pub. Util. Code §1757.1(b).

<sup>59</sup> *FPC v. Hope Natural Gas Co. Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

In D.20-08-047, the Commission justifies its elimination of the decoupling WRAM on two claims: (1) that it will improve forecasting and (2) that it is no longer needed to achieve conservation. The findings and evidence set forth in D.20-08-047 on these issues, however, are not sufficient to justify the Commission’s elimination of the decoupling WRAM.

**1. The Findings and Evidence Do Not Support the Commission’s Claims Regarding Sales Forecasting**

D.20-08-047 includes the following Finding of Fact and Conclusion of Law with respect to forecasting.

Finding of Fact 19.

Implementation of a Monterey-Style WRAM means that forecasts of sales become more significant in establishing test year revenues.<sup>60</sup>

Conclusion of Law 4.

Elimination of the WRAM/MCBA will provide better incentives to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.<sup>61</sup>

As discussed in more detail below, there is no support in the decision or the record for this finding and conclusion. As such, they are not sufficient to justify the Commission’s elimination of the decoupling WRAM, and the lack of factual support indicates that the Commission has failed to regularly pursue its authority.

Elsewhere in D.20-08-047, the Commission claimed that the decoupling WRAM “eliminates the incentive to accurately forecast sales in a GRC.”<sup>62</sup> The Commission furthermore stated, “We conclude that in order “to improve water sales forecasting,” the “WRAM/MCBA mechanism cannot continue.”<sup>63</sup> However, there is no reference legal authority, evidence or record to support this claim and conclusion.

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<sup>60</sup> D.20-08-047, p. 103.

<sup>61</sup> *Id.*, p. 104.

<sup>62</sup> *Id.*, p. 53.

<sup>63</sup> *Id.*, p. 75.

As California American Water and others have noted, the “record” in this proceeding with respect to the decoupling WRAM is nearly nonexistent.<sup>64</sup> California American Water has concerns with characterizing the workshop reports and comments in this proceeding as a “record” upon which the Commission can rely.<sup>65</sup> Nonetheless, examination of these materials reveals that the minimal information regarding the decoupling WRAM and forecasting contained therein appears to contradict the Commission’s conclusion on this issue.

The Commission held a workshop addressing water sales forecasting on January 14, 2019. The overview included with the notice of the workshop does not explicitly identify forecasting incentives related to the decoupling WRAM as an issue to be addressed.<sup>66</sup> The workshop report indicates that WRAMs were discussed, and that representatives of California American Water, California Water Service Company and Golden State Water Company claimed that WRAMs “allow them to institute more accurate and equitable rates.”<sup>67</sup>

The Commission held a second workshop addressing water sales forecasting on August 2, 2019. The workshop report indicates that CWA and the Public Advocates Office agree that forecasts have been improving.<sup>68</sup> CWA clarified in its comments on the workshop report that the differences between forecasts from the water utilities and the Public Advocates Office

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<sup>64</sup> *Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, pp. 7-8; *Comments of California Water Association on the Proposed Decision of Commissioner Guzman Aceves*, pp. 4-7; *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves*, July 27, 2020, pp. 8-10; *Comments of Golden State Water Company on Proposed Decision and Order*, July 27, 2020, pp. 7-13; *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, pp. 4-6.

<sup>65</sup> By issuing the D.20-08-047, the Commission denied the parties their statutory right to an evidentiary hearing. (Pub. Util. Code §1708; see *California Trucking Assn. v. Pub. Util. Com.*, 19 Cal.3d 240, 244 (1977).)

<sup>66</sup> *Administrative Law Judge’s Amended Ruling Correcting Day for Workshop and Noticing Joint Workshop on Water Sales Forecasting and Rising Drought Risk*, December 19, 2018, p. 2.

<sup>67</sup> *Administrative Law Judge’s Ruling Inviting Comments on Water Division Staff Report on Joint Agency Workshop; and Noticing Additional Proceeding Workshops*, March 20, 2019, Attachment A.

<sup>68</sup> *Administrative Law Judge’s Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, Attachment A, p. 5.

have gotten smaller since implementation of the decoupling WRAM.<sup>69</sup> In its comments on the workshop report, Southern California Edison noted that inaccurate forecasts were not the result of implementation of the decoupling WRAM, but instead due to the application of a general forecast methodology (known as the New Committee Method) to all water companies.<sup>70</sup>

Therefore, to the extent that workshops and comments are considered the “record” in this proceeding, it shows that implementation of the decoupling WRAM has actually led to more accurate sales forecasts, contrary to the Commission’s claim that the decoupling WRAM eliminates the incentive to accurately forecast sales. As such, there is no support for the Commission’s conclusion that elimination of the decoupling WRAM will provide better incentives to more accurately forecast sales.

Furthermore, nothing in the “record” of this proceeding addresses whether sales forecasts are “more significant” with the M-WRAM (although in its comments on the Proposed Decision, Public Advocates Office claimed that elimination of the decoupling WRAM will create an incentive to underestimate sales).<sup>71</sup> Accurate sales forecasts are significant for companies with decoupling WRAMs because they provide for timely recovery of authorized fixed costs and avoid the negative financial consequences of large WRAM/MCBA balances. With the decoupling WRAM, inaccurate forecasts force companies to shift recovery of authorized costs from rates to the WRAM/MCBA. The delay in recovery of these authorized costs, which can be twenty years or longer, has a direct impact on cash flow. As California American Water previously explained, it funds the WRAM/MCBA undercollections with long-term debt and equity, the 90-day commercial paper rate applied to WRAM/MCBA balances does

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<sup>69</sup> *Comments of California Water Association Responding to Administrative Law Judge’s September 4, 2019 Ruling*, September 16, 2019, p. 6.

<sup>70</sup> *Comments of Southern California Edison Company (U-338-E) on Administrative Law Judge’s Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, July 27, 2020, p. 3, citing D.07-05-062, *Order Instituting Rulemaking to Consider Revisions to the Rate Case Plan for Class A Water Companies*, Opinion Adopting Revised Rate Case Plan for Class A Water Utilities, Appendix A, A-23 – A-25.

<sup>71</sup> *Comments of the Public Advocates Office on the Proposed Decision of Assigned Commissioner*, July 27, 2020, p. 8, fn. 31.

not allow it to recover the costs it incurs to fund the undercollections.<sup>72</sup> Therefore, the Commission's finding that sales forecasts are "more significant" with an M-WRAM is unsupported and inaccurate.

Because the Commission's finding and conclusion regarding sales forecast are unsupported, they do not provide sufficient justification to eliminate the decoupling WRAM. As in *Cal. Mfrs. Ass'n v. PUC*, cited above, the lack of sufficient justification constitutes legal error and indicates that the Commission failed to regularly pursue its authority.

## **2. The Findings and Evidence Do Not Support the Commission's Claim Regarding Conservation**

In D.20-08-047, the Commission made the following findings of fact regarding conservation and the decoupling WRAM:

13. Average consumption per metered connection for WRAM utilities is less than the consumption per metered connection for non-WRAM utilities as evidenced in water utility annual reports filed from 2008 through 2016.

14. Conservation for WRAM utilities measured as a percentage change during the last 5 years is less than conservation achieved by non-WRAM utilities, including Class B utilities as evidenced in water utility annual reports filed from 2008 through 2016.<sup>73</sup>

Although the Commission justified elimination of the decoupling WRAM based on its belief that it was no longer needed for conservation purposes, it did not make any conclusion of law with respect to the impact of the decoupling WRAM on conservation. The Commission opens D.20-08-047 by claiming that the decoupling WRAM has "proven to be ineffective in achieving its primary goal of conservation"<sup>74</sup> but provides no support for this claim. Later, the Commission states, "Based on the discussion at the workshop and the comments of the parties on the workshop report and issues listed, we are not persuaded that continuing the WRAM/MCBA

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<sup>72</sup> *Reply Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, August 3, 2020, p. 3.

<sup>73</sup> D.20-08-047, pp. 102-103.

<sup>74</sup> *Id.*, p. 2.



for strictly conservation purposes is beneficial to ratepayers.”<sup>75</sup> These findings and unsupported claims are not sufficient to justify the Commission’s elimination of the decoupling WRAM and once again, the lack of factual support indicates that the Commission has failed to regularly pursue its authority.

There is no mention of the impact of the decoupling WRAM on conservation in the “record” of this proceeding until the very last document filed by Public Advocates Office before the Proposed Decision was issued.<sup>76</sup> The information in Findings of Fact 13 and 14 regarding the average consumption per metered connection and conservation measured as a percentage change over the last five years were introduced for the first time the Proposed Decision. The non-specific cites to water utility annual reports from 2008 through 2016 were added in a revision to the Proposed Decision made the evening before the Commission voted on this matter. By relying on these findings to support the elimination of the decoupling WRAM, the Commission hinders due process and fails to regularly pursue its authority.<sup>77</sup> The introduction of and reliance upon this “evidence” so late in the proceeding is prejudicial to California American Water and the other parties because there was no opportunity to analyze the annual report data or address whether it is appropriate to assess the effect of the decoupling WRAM using data from this period.

Moreover, these findings do not support the Commission’s claim that the decoupling WRAM has been “ineffective” in achieving its primary goal of conservation and indeed appear to cancel each other out. While Finding of Fact 14 indicates that conservation measured as a percentage of change by non-WRAM utilities is greater than that of the decoupling WRAM utilities, Finding of Fact 13 indicates that the utilities with decoupling WRAMs have been more

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<sup>75</sup> *Id.*, p. 67.

<sup>76</sup> *Reply Comments of the Public Advocates Office on the Water Division’s Staff Report and Response to Additional Questions*, September 23, 2019, pp. 6-7.

<sup>77</sup> *See* Pub. Util. Code §1708.

successful in reducing consumption overall.<sup>78</sup> Moreover, although these findings describe differences in conservation metrics between utilities with and without the decoupling WRAM, they provide no indication of the magnitude of these differences and whether the differences indeed show that the decoupling WRAM has been ineffective in achieving conservation. As such, these findings are not sufficient to justify the Commission's elimination of the decoupling WRAM.

In addition to these findings, as noted above the Commission also stated that it based its conclusion - that continuing the decoupling WRAM for conservation purposes would not benefit customers - on the workshop discussion and comments on the workshop report.<sup>79</sup> This reference appears to be to the August 2, 2019 workshop and the comments filed on the report of that workshop, discussed previously.

As summarized in the report, the discussion of conservation at the April 2, 2019 workshop was limited. California American Water explained how its tiered conservation rate design worked with its LIRA program.<sup>80</sup> CWA discussed conservation efforts in response to climate change.<sup>81</sup> A&N Technical Services discussed how conservation efforts could lead to reduced customer bills through avoided costs.<sup>82</sup> With respect to the decoupling WRAM, according to the workshop report, the parties primarily discussed WRAM balances.<sup>83</sup>

The workshop report provides no indication that there was any discussion as to how the decoupling WRAM affects conservation. In its comments on the workshop report, CWA indicated that the report omitted its statement at the workshop of how "the WRAM helps the

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<sup>78</sup> The goal of conservation is to increase savings in total usage, so a percentage metric is not the best measurement of conservation success.

<sup>79</sup> D.20-08-047, p. 67.

<sup>80</sup> *Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019, Attachment A, pp. 2-3.

<sup>81</sup> *Id.*, p. 5.

<sup>82</sup> *Id.*, p. 6.

<sup>83</sup> *Id.*, pp. 4-5.

Commission further certain policy goals, such as conservation, low-income support and affordability.”<sup>84</sup> No revisions were made to the report, however. Therefore, there is nothing in the record with respect to the discussion at the April 2, 2019 workshop that would support any conclusion regarding the impact of the decoupling WRAM on conservation.

The discussion of this issue in the workshop comments – the second source cited as support by the Commission – is similarly skimpy. As just mentioned, CWA requested in its opening comments that the workshop report be modified to include its general statement that the decoupling WRAM helps the Commission further conservation policy goals.<sup>85</sup> No other party discussed the WRAM in connection with conservation in opening comments on the workshop report. Public Advocates Office was the only party to (very briefly) address conservation and the decoupling WRAM in reply comments. In its reply comments, Public Advocates Office includes a single graph purporting to show that water companies with and without decoupling WRAMs have “almost identical trends in annual sales fluctuations” for the period from 2008 to 2016.<sup>86</sup> The source was generically identified as “Class A Annual Reports to the CPUC.”<sup>87</sup>

Therefore, when the Commission stated that it concluded that continuing decoupling WRAM for conservation purposes is not beneficial to customers based on the discussion at the workshop and comments on the workshop report, it actually meant that it based that conclusion on a single graph in the reply comments of the Public Advocates Office. As with the findings of fact, using this graph as support for the elimination of the decoupling WRAM is prejudicial. No information was provided with respect to the data or methodology underlying the graph, other than a cite to the “Class A Annual Reports to the CPUC.” Because this information was

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<sup>84</sup> *Comments of California Water Association Responding to Administrative Law Judge’s September 4, 2019 Ruling*, September 16, 2019, p. 7.

<sup>85</sup> *Id.*

<sup>86</sup> *Reply Comments of the Public Advocates Office on the Water Division’s Staff Report and Response to Additional Questions*, September 23, 2019, pp. 6-7.

<sup>87</sup> *Id.*

presented for the first time in the final set of reply comments, there was no opportunity to determine or dispute the veracity of the information presented.

Similar to the issue of forecasting, the findings and claims in D.20-08-047 do not provide sufficient justification for elimination of the decoupling WRAM. Again, the lack of sufficient justification constitutes legal error and indicates that the Commission failed to regularly pursue its authority.

## **V. REQUEST FOR ORAL ARGUMENT**

California American Water requests oral argument on this application for rehearing pursuant to Commission Rule 16.3. As discussed below, oral argument is justified because this application raises issues of major significance for the Commission. D.20-08-047 departs from existing Commission precedent without adequate explanation and this application for rehearing presents legal issues of exceptional controversy, complexity, and public importance.

Oral argument will materially assist the Commission in resolving this application. Oral argument will provide the opportunity for a transparent and public discussion of the important, complex and controversial issues raised in this proceeding, and will allow for a dialogue between decisionmakers and affected parties.

### **A. D.20-08-047 Departs from Commission Precedent Without Adequate Explanation**

California American Water's decoupling WRAM has been affirmed in multiple Commission decisions over the last decade.<sup>88</sup> Just a few years ago, in D.16-12-026, the Commission recognized the continued need for the decoupling WRAM:

We conclude that, at this time, the WRAM mechanism should be maintained. There is a continuing need to provide an opportunity to collect the revenue requirement impacted by forecast uncertainty, the continued requirement for conservation, and potential for rationing or moratoria on new connections in some districts. These effects will render uncertainty in revenue collection

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<sup>88</sup> D.09-07-021, pp. 123-127; D.12-11-006, p. 4; D.15-04-007, *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$18,473,900 or 9.55% in the year 2015, by \$8,264,700 or 3.90% in the year 2016, and by \$6,654,700 or 3.02% in the year 2017*, Decision Adopting the 2015, 2016 and 2017 Revenue Requirement for California-American Water Company, p. 14; D.18-12-021, p. 208.

and support the need for the WRAM mechanism to support sustainability and attract investment to California water IOUs during this drought period and beyond.<sup>89</sup>

As discussed above, with respect to the elimination of the decoupling WRAM, which the Commission had repeatedly considered and approved, the Commission failed to consider all of the relevant facts and issues, failed to provide the necessary factual support, and failed to provide findings and evidence sufficient to justify its order. As such, D.20-08-047 departs from Commission precedent without adequate explanation

**B. The application for rehearing presents legal issues of exceptional controversy.**

As discussed above, California American Water believes that the Commission did not regularly pursue its authority and violated the Public Utilities Code when it eliminated the decoupling WRAM in D.20-08-047. While the WRAM is a vital tool that has allowed California American Water to implement steeply tiered rate designs that target high water users and benefit low-income customers, California American Water recognizes that its implementation, with restrictions that limited the ability of water companies to adjust forecasts and prevented timely recovery of WRAM balances, has become highly controversial. This controversy is reflected by the Commission's public comment page for this proceeding, which indicates that more than 772 comments were submitted. The controversy is also reflected by the dozens of speakers who addressed this issue at the Commission's voting meetings on August 6 and August 27, including two former Commissioners. The exceptional controversy surrounding the elimination of the decoupling WRAM justifies California American Water's request for oral argument.

Moreover, as discussed above, numerous entities have participated in multiple Commission proceedings regarding California American Water's Monterey District. In these proceedings, issues related to the decoupling WRAM and efficient water use have been highly contested. The controversial nature of water use in Monterey provides additional justification for oral argument.

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<sup>89</sup> D.16-12-026, p. 41.

**C. The application for rehearing presents legal issues of exceptional complexity.**

At issue in this application for rehearing is whether the Commission may prevent water companies from providing evidence in future general rate case proceedings regarding the need for and benefits of the decoupling WRAM without developing a record in this proceeding regarding those issues. This application for rehearing also addresses the issue of whether the Commission may make certain findings in this proceeding without any record support. These legal determinations are complex, as are the associated issues raised in this application for rehearing, including the need for and benefits of decoupling, development and implementation of tiered rate designs, and evaluation of conservation incentives. The exceptional complexity of the issues raised in this application for rehearing justifies California American Water's request for oral argument.

**D. The application for rehearing raises legal issues of exceptional public importance.**

As discussed above, Commission's elimination of the decoupling WRAM in D.20-08-047 will likely result in increased rates for low-income customers, either through the rate design changes necessary to allow California American Water to recover its revenue requirement or, if the Commission prevents such changes, through an increase in the rate of return on equity to reflect California American Water's higher business risk.<sup>90</sup> At a time when Californians are facing significant challenges due to the economic effects of the COVID-19 emergency, as well as experiencing impacts from climate change such as wildfires and extreme weather conditions, resolution of legal issues that may avoid placing greater financial stress on millions of Californians is of exceptional public importance.

The Commission's elimination of the decoupling WRAM will also hinder California American Water's ability to target its highest use customers through steeply tiered conservation rates. Without the decoupling WRAM, the volatility associated with these rate designs would not provide California American Water the opportunity to recover its revenue requirement. While

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<sup>90</sup> D.20-08-047, Dissent of Commission Randolph, p. 1.

the Commission in D.20-08-047 suggests that these aggressive rate designs are not necessary to achieve substantial conservation, California American Water is concerned that the inevitable rate decrease for high-use customers that will occur as it transitions away from these rate designs will encourage inefficient usage. Given the State's commitment to conservation as a way of life, as well as the need for conservation in the face of more frequent and extended droughts, resolution of legal issues that may significantly impact conservation is of exceptional public importance. This is particularly true in Monterey, where, as discussed above, increased consumption could lead to multi-million dollar fines and/or economically devastating restrictions on water usage.

Finally, issuing a decision on an issue outside the scope of the proceeding violates the Commission's own rules and the Public Utilities Code. The Commission has expended significant effort in increasing the transparency and accessibility of its proceedings. Issuing a decision on an issue outside the scope of the proceeding does not provide for a transparent process, and deprives parties of a full and fair opportunity to participate. Determining whether the Commission has done so here is of exceptional public importance because it goes to the heart of participation in the Commission process.

## **VI. CONCLUSION**

For the reasons discussed above, California American Water respectfully requests that the Commission set aside and/or vacate D.20-08-047, so that it may address the errors set forth in this application. At the very minimum, California American Water requests that the Commission vacate D.20-08-0547 with respect to its Monterey District, and allow California American Water in its next GRC to request and provide support for continuation of the decoupling WRAM in the Monterey District. California American Water also requests oral argument on the application for rehearing to assist the Commission in resolving this application.

Respectfully submitted,

October 5, 2020

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*Attorneys for California-American Water  
Company*



IN THE SUPREME COURT OF THE STATE OF  
CALIFORNIA

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CALIFORNIA-AMERICAN WATER COMPANY  
*Petitioner,*

v.

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

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

Of the Public Utilities Commission of the State of California

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**EXHIBIT Y**

Executive Department, State of California, *Proclamation of a  
State of Emergency*, October 19, 2021

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EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** climate change continues to intensify the impacts of droughts on our communities, environment, and economy, and California is in a second consecutive year of dry conditions, resulting in drought in all parts of the State and extreme or exceptional drought in most of the State; and

**WHEREAS** the meteorological summer in California and the rest of the western United States was the hottest on record; and

**WHEREAS** on April 12, 2021, May 10, 2021, and July 8, 2021, I proclaimed states of emergency to exist in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Marin, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba, due to severe drought conditions; and

**WHEREAS** since my July 8, 2021 Proclamation, sustained and extreme high temperatures have increased water loss from reservoirs and streams, increased demands by communities and agriculture, and further depleted California's water supplies; and

**WHEREAS** the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Francisco, and Ventura are now experiencing severe drought conditions; and

**WHEREAS** long-term weather forecasts for the winter rainy season, dire storage conditions of California's largest reservoirs, low moisture content in native vegetation, and parched soils, magnify the likelihood that drought impacts will continue in 2022 and beyond; and

**WHEREAS** the increasing frequency of multiyear droughts presents a significant risk to California's ability to ensure adequate water supplies for communities, agriculture, and fish and wildlife; and

**WHEREAS** the most impactful action Californians can take to extend available supplies is to re-double their efforts to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1 of my July 8, 2021 Executive Order N-10-21; and

**WHEREAS** it is necessary to expeditiously mitigate the effects of the drought conditions to ensure the protection of health, safety, and the environment; and

**WHEREAS** under Government Code Section 8558(b), I find that the conditions caused by the drought, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under Government Code Section 8625(c), I find that local authority is inadequate to cope with the drought conditions; and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code Section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

**NOW THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in the State due to drought in the remaining counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Francisco, and Ventura, such that the drought state of emergency is now in effect statewide.

**IT IS HEREBY ORDERED THAT:**

1. All agencies of the state government are to utilize and employ state personnel, equipment, and facilities for the performance of any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, to protect their safety, all residents are to obey the direction of emergency officials with regard to this emergency in order to protect their safety.
2. The orders and provisions contained in my April 21, 2021, May 10, 2021, and July 8, 2021 Proclamations remain in full force and effect, except as modified herein. State agencies shall continue to implement all directions from those Proclamations and accelerate implementation where feasible.
3. Operative paragraphs 3, 5, 6, and 10 of my July 8, 2021 Proclamation are withdrawn and replaced with paragraphs 4 through 8 below.
4. Consistent with the policies stated in Water Code Section 1011.5(a), local agencies are encouraged to take actions to coordinate use of their available supplies and to substitute an alternate supply of groundwater from existing groundwater wells for the unused portion of surface water that the local agency is otherwise entitled to use. For actions taken pursuant to this paragraph, the provisions of Chapter 3 (commencing with Section 85225) of Part 3 of Division 35 of the Water Code and regulations adopted pursuant thereto are suspended for any (a) actions taken by state agencies pursuant to this paragraph, (b) actions taken by a local agency where the state agency with primary responsibility for implementing the directive concurs that local action is required, and (c) permits or approvals necessary to carry out actions under (a) or (b). The entities implementing this paragraph shall maintain on their websites a list of all activities or approvals that rely on the suspension of the foregoing Water Code provisions.



5. To support voluntary approaches where hydrology and other conditions allow, the State Water Resources Control Board (Water Board) shall expeditiously consider water transfer requests. For purposes of carrying out this paragraph, the following requirements of the Water Code are suspended:
  - a. Section 1726(d) requirements for written notice and newspaper publication, provided that the Water Board shall post notice on its website and provide notice through electronic subscription services where interested persons can request information about temporary changes; and
  - b. Section 1726(f) requirement of a 30-day comment period, provided that the Water Board shall afford a 15-day comment period.
6. As necessary to assist local governments and for the protection of public health and the environment, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services necessary to quickly assist with the response to and recovery from the impacts of the drought. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of the drought. Approval of the Department of Finance is required prior to the execution of any contract entered into pursuant to this provision.
7. To proactively prevent situations where a community runs out of drinking water, the Water Board, the Department of Water Resources, the Office of Emergency Services, and the Office of Planning and Research shall assist local agencies with identifying acute drinking water shortages in domestic water supplies, and shall work with local agencies in implementing solutions to those water shortages.
8. To preserve the State's surface and groundwater supplies and better prepare for the potential for continued dry conditions next year, local water suppliers are directed to execute their urban Water Shortage Contingency Plans and agricultural Drought Plans at a level appropriate to local conditions that takes into account the possibility of a third consecutive dry year. Suppliers shall ensure that Urban and Agricultural Water Management Plans are up to date and in place.
9. The Water Board may adopt emergency regulations, as it deems necessary, to supplement voluntary conservation by prohibiting certain wasteful water practices. Wasteful water uses include:
  - a. The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard-surfaced areas, except in cases where health and safety are at risk.
  - b. The use of potable water that results in flooding or runoff in gutters or streets.

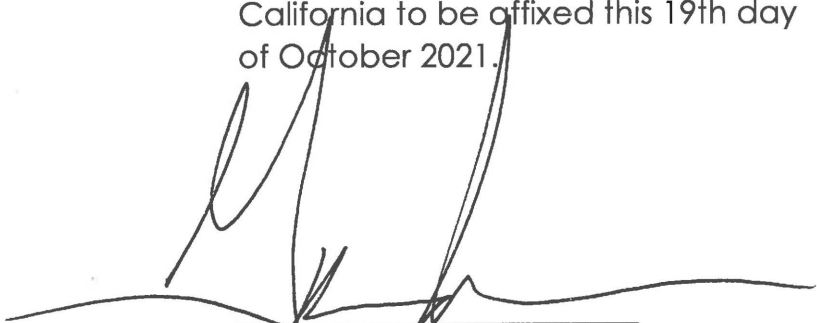
- c. The use of potable water, except with the use of a positive shut-off nozzle, for the individual private washing of motor vehicles.
  - d. The use of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
  - e. The use of potable water for irrigation of ornamental turf on public street medians.
  - f. The use of potable water for street cleaning or construction purposes, unless no other source of water or other method can be used or if necessary, to protect the health and safety of the public.
  - g. The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds which utilize recycled water.
10. The California Department of Food and Agriculture, in collaboration with other relevant state agencies, shall evaluate water efficiency measures implemented in California agriculture over the past several years and develop a report with recommendations on how to further increase efficiencies.
11. The Office of Emergency Services shall provide assistance under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, title 19, section 2900 et seq., as appropriate to provide for, or in support of, the temporary emergency supply, delivery, or both of drinking water or water for sanitation purposes.
12. For purposes of carrying out or approving any actions contemplated by the directives in operative paragraphs 5, 6, and 9, the environmental review by state agencies required by the California Environmental Quality Act in Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought.

For purposes of carrying out the directive in operative paragraph 4 and 7, for any (a) actions taken by the listed state agencies pursuant to that directive, (b) actions taken by a local agency where the Office of Planning and Research concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b), Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought. The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

This Proclamation is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**I FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of October 2021.

A handwritten signature in black ink, appearing to read 'Gavin Newsom', is written over a horizontal line. The signature is stylized and somewhat cursive.

GAVIN NEWSOM  
Governor of California

**ATTEST:**

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SHIRLEY N. WEBER, PH.D.  
Secretary of State