

S269099 (CONSOLIDATED WITH S271493)

**In the Supreme Court
of the State of California**

GOLDEN STATE WATER COMPANY,
CALIFORNIA-AMERICAN WATER COMPANY,
CALIFORNIA WATER SERVICE COMPANY,
LIBERTY UTILITIES CORP.
AND CALIFORNIA WATER ASSOCIATION
Petitioners,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent.

PETITIONERS' SECOND MOTION TO TAKE JUDICIAL NOTICE

After Decisions Nos. 20-08-047 and 21-09-047
Of the Public Utilities Commission of the State of California

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Pursuant to Evidence Code section 459 and Rule of Court 8.252, Petitioners Golden State Water Company, California-American Water Company, California Water Service Company, Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp., and the California Water Association respectfully request that the Court take judicial notice of the following five documents.

1. Report and Recommendations on Cal Am’s Special Request #1

The Public Advocates Office at the California Public Utilities Commission (Public Advocates) served this document on parties to Application 22-07-001 (Application to the California Public Utilities Commission of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026) on April 13, 2023, and it was subsequently admitted into the record of the proceeding.

A true and correct copy of the Public Advocates’ Report and Recommendations on Cal Am’s Special Request #1 in Application 22-07-001 is attached to this Motion as **Exhibit A**.

2. Opening Brief of the Public Advocates Office on Decoupling Issues

The Public Advocates filed this document with the Commission in Application 22-07-001 (Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026) on December 6, 2023.

A true and correct copy of the Public Advocates’ Opening Brief in Application 22-07-001 is attached to this Motion as **Exhibit B**.

3. Opening Brief of the Monterey Peninsula Water Management District on the Subject of WRAM/Decoupling

The Monterey Peninsula Water Management District (MPWMD) filed this document with the Commission in Application 22-07-001 (Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026) on December 6, 2023.

A true and correct copy of the MPWMD's Opening Brief in Application 22-07-001 is attached to this Motion as **Exhibit C**.

4. Reply Brief of the Public Advocates Office on Decoupling Issues

The Public Advocates filed this document with the Commission in Application 22-07-001, (Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026) on January 9, 2024.

A true and correct copy of the Public Advocates' Reply Brief in Application 22-07-001 is attached to this Motion as **Exhibit D**.

5. Reply Brief of the Monterey Peninsula Water Management District on WRAM/Decoupling Issues

The MPWMD filed this document with the Commission in Application 22-07-001 (Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026) on January 9, 2024.

A true and correct copy of the MPWMD's Reply Brief in Application 22-07-001 is attached to this Motion as **Exhibit E**.

The above documents are subject to judicial notice under Evidence Code section 452, subdivision (c), because they are records and files of a state administrative board. (See, e.g., *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 ["Evidence Code section 452, subdivision (c) permits the [] court to take judicial notice of the records and files of a state administrative board."].) The above documents are also subject to judicial notice under Evidence Code section 452, subdivision (h), because their contents and existence "are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

The above documents are relevant because they demonstrate that, contrary to the arguments of the Commission, these review proceedings are not moot. The Public Advocates and the MPWMD rely extensively on the order under review in this case to oppose a proposal before the Commission made by Petitioner California-American Water Company to implement a revenue decoupling mechanism akin to the WRAM/MCBA. Petitioners explained at page 13 of their Reply Brief that "[i]f this Court does not vacate the Revocation Order, the Commission and other parties may hereafter rely on the Commission's flawed finding that the WRAM/MCBA is not an effective mechanism for promoting water conservation to deny or oppose requests to implement the WRAM/MCBA, notwithstanding the new legislation authorizing applications for water revenue decoupling mechanisms." This is precisely what the referenced documents show to have occurred.

The Court should therefore take judicial notice of the documents described above and attached to the Request for Judicial Notice.

January 31, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Motion to Take Judicial Notice contains 796 words, according to the word processing program with which it was prepared.

January 31, 2024

SHEPPARD, MULLIN, RICHTER &
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EXHIBIT A

Docket	:	<u>A.22-07-001</u>
Exhibit Number	:	<u>Cal Adv - #</u>
Commissioner	:	<u>G. Shiroma</u>
Administrative Law Judge	:	<u>J. Rambo</u>
Public Advocates Office	:	
Witness(es)	:	<u>R. Rauschmeier</u>



PUBLIC ADVOCATES OFFICE
CALIFORNIA PUBLIC UTILITIES COMMISSION

Report and Recommendations on
Cal Am's Special Request #1

CALIFORNIA AMERICAN WATER COMPANY
General Rate Case Application 22-07-001
Test Year 2024

San Francisco, California
April 13, 2023

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	SUMMARY OF RECOMMENDATIONS.....	4
III.	ANALYSIS	5
	A. WRAM Has No Significant Impact on Consumption.....	6
	B. WRAM Has Very Significant Impacts on Customer Bills	8
	C. WRAM Harms All Ratepayers	10
	D. WRAM Is Not Necessary to Promote Conservation.....	14
	E. WRAM Does Not Protect Low-Income Customers.....	15
IV.	CONCLUSION	16
	ATTACHMENT 1: ANSWER OF RESPONDENT TO PETITIONS FOR WRIT OF REVIEW.....	18
	ATTACHMENT 2: CALCULATION OF RATE INCREASE DUE TO WRAM (WRS PROPOSAL).....	80
	ATTACHMENT 3: WITNESS QUALIFICATIONS	82

1 **I. INTRODUCTION**

2 In 2020, the Commission effectively ended its ten-year natural experiment¹ with
3 decoupling² for Class A water utilities.³ Approximately a decade earlier, as part of a
4 series of water conservation pilot projects, five Class A water utilities⁴ had implemented
5 decoupling with a Water Revenue Adjustment Mechanism⁵ (“WRAM”) while the other
6 four Class A water utilities⁶ had implemented decoupling with a Conservation Pricing
7 Adjustment.⁷ Decoupling with the use of a Conservation Pricing Adjustment had been
8 authorized years earlier for a single water utility operating in Monterey, California, and
9 therefore commonly referred to as a Monterey-Style or M-WRAM.

10 Having compared the conservation results of water utilities with WRAM to those
11 using the Conservation Pricing Adjustment, the Commission determined in 2020 that “the
12 flaws and negative customer experience with [WRAM] outweigh any benefits it does
13 achieve.”⁸ Despite having an insignificant impact on conservation, the WRAM had
14 produced very significant impacts on ratepayers’ bills. As the primary purpose of the
15 WRAM was to facilitate greater water conservation—which it failed to do, the

¹ See *A Step-by-Step Guide to Smart Business Experiments* (Anderson / Simester, Harvard Business Review, 2011) for a description and example of “natural experiment.”

² A ratemaking mechanism that severs the link between a utility’s actual sales and the revenue it collects.

³ The largest water utilities (more than 10,000 connections) that are regulated by the Commission.

⁴ California Water Service, Golden State Water Company, California-American Water (Cal Am), The Park Water Company, and Apple Valley Ranchos Water.

⁵ The WRAM is accompanied by an expense tracking mechanism called a Modified Cost Balancing Account (“MCBA”). Because the two mechanisms are authorized and operate together, the term WRAM is often used as a simple abbreviation to refer to both.

⁶ San Jose Water Company, San Gabriel Water Company, Suburban Water Company, and Great Oak Water Company.

⁷ See Decisions in Commission Investigation 07-01-022

⁸ Decision 20-08-047 at 69

1 Commission barred the future use of WRAM, but allowed water utilities with WRAM to
2 transition to a Conservation Pricing Adjustment in their next general rate case.

3 With the WRAM having produced hundreds of millions of dollars in additional
4 revenue and profit for utilities during the decade in which it operated,² the five utilities
5 with WRAM, including California American Water (Cal Am), filed applications for
6 rehearing of the Commission’s decision to eliminate WRAM. After having “carefully
7 considered the arguments raised in the applications for rehearing,” the Commission found
8 no grounds for rehearing and denied all the requests.¹⁰ In denying all of the rehearing
9 requests, the Commission further clarified its earlier determination that the WRAM “had
10 proven to be ineffective in achieving its primary goal of conservation,” and “to keep rates
11 just and reasonable,” the Commission “precluded the continued use of the [WRAM] in
12 future general rate cases.”¹¹

13 After its rehearing request was denied by the Commission, Cal Am petitioned the
14 California Supreme Court for a writ of review challenging the Commission’s first
15 decision to eliminate the WRAM and its second decision denying rehearing.¹² On
16 January 28, 2022, the Commission filed its response to Cal Am’s petition for a writ of
17 review.¹³ While its challenge of the Commission’s decisions was still pending before the
18 California Supreme Court, Cal Am embarked upon a legislative process to thwart the
19 Commission’s multiple decisions eliminating the WRAM by sponsoring legislation that
20 would have effectively required the Commission to reinstitute WRAM for water

² Refer to Schedule E of the Annual Reports of Class A Water Utilities (2009 to 2021)

¹⁰ Decision 21-09-047 at 4

¹¹ Decision 21-09-047 at 1

¹² Case No. S271493, subsequently consolidated with Case No. S269099, *Golden State Water Company v. Public Utilities Commission*

¹³ Attachment 1, *Answer of Respondent to Petitions for Writ of Review*

1 utilities.¹⁴ An amended version of the legislation, requiring the Commission to
2 “consider” reinstating WRAM in a water utility’s general rate case, was enacted several
3 months after Cal Am filed its current general rate case.¹⁵

4 With this new legislation in effect, Cal Am motioned for, and was granted, an
5 opportunity to update its application. Cal Am filed an updated application with
6 supplemental testimony introducing what it called a Water Resources Sustainability Plan
7 (“WRS Plan”).¹⁶ The primary feature of Cal Am’s WRS Plan is a decoupling mechanism
8 called the Essential Service Balancing Account (“ESBA”).

9 Although Cal Am has presented a new name for its proposed decoupling
10 mechanism, the proposed ESBA would function identically to the WRAM, which was
11 eliminated in the two Commission decisions that the Commission is currently defending
12 before the California Supreme Court.

13 **II. SUMMARY OF RECOMMENDATIONS**

14 The Commission should consider new and compelling evidence that further
15 demonstrates the harm caused by WRAM and its relative ineffectiveness in producing
16 water conservation. The Commission should once again affirm its decision to eliminate
17 the WRAM, thereby denying Cal Am’s request to implement the identically functioning
18 ESBA mechanism and its proposed WRS Plan.

19 The Commission should allow Cal Am’s alternative request to transition to a
20 Monterey-Style or M-WRAM (i.e., Conservation Pricing Adjustment), but require a
21 renaming of this mechanism to remove its misleading association with Monterey,
22 California,¹⁷ and to avoid needless confusion with the eliminated WRAM mechanism.

¹⁴ Senate Bill (SB) 1469, as introduced February 18, 2022.

¹⁵ SB 1469, as amended, codified Section 727.5 of the Public Utilities Code on September 30, 2022.

¹⁶ *Supplemental Direct Testimony of Jeffrey Linam*, January 27, 2023

¹⁷ Although the M-WRAM has not operated in Monterey, California, for more than a dozen years, it is

1 **III. ANALYSIS**

2 Unlike the academic and theoretical analyses offered by Cal Am on how WRAM
3 could or should result in additional water conservation, the Commission’s pilot projects
4 produced a plethora of useful empirical data demonstrating what WRAM actually does
5 (or does not) accomplish. In fact, the Commission’s robust natural experiment allowed
6 data collection for more than a million customers over an entire decade, with far fewer
7 uncontrolled variables¹⁸ than might ever be possible again.

8 For example, where other “analyses” might attempt to reach conclusions by
9 comparing decoupling across different state jurisdictions for differently situated utilities
10 subject to different regulations with different populations exposed to different
11 conservation messaging over different periods of time, the Commission’s natural
12 experiment allowed comparison of actual consumption results of all nine large investor-
13 owned water utilities evenly distributed between those having and not having WRAM,
14 operating within a single regulatory jurisdiction with similar state-wide conservation
15 messaging over the same period of time.

16 Indeed, the fortuitous parameters of the Commission’s natural experiment with
17 WRAM deserve special recognition. Too many “analyses” attempt to draw conclusions
18 of causality from a single case examined over sequential periods of time, where an action
19 is taken, and something later occurs leaving an observer to always wonder if the same
20 thing would have occurred even if the initial action had not been taken.¹⁹ In contrast, the
21 Commission’s natural experiment with WRAM offers far more reliable conclusions. One

currently the decoupling mechanism utilized by Class A water utilities operating in San Jose, Fontana, Rancho Cucamonga, Rialto, El Monte, Covina, West Covina, La Puente, Glendora, Whittier, Saticum, City of Industry, Pico Rivera, Arcadia, Irwindale, and other portions of Los Angeles, Orange, and San Bernadino Counties.

¹⁸ An uncontrolled variable is the variable in an experiment that has the potential to negatively impact the relationship between the independent and dependent variables. This can cause false correlations, improper analysis of results and incorrect rejections of a null hypothesis.

¹⁹ See *The “Too Few Cases/Too Many Variables” Problem in Implementation Research* (Goggin, 1986).

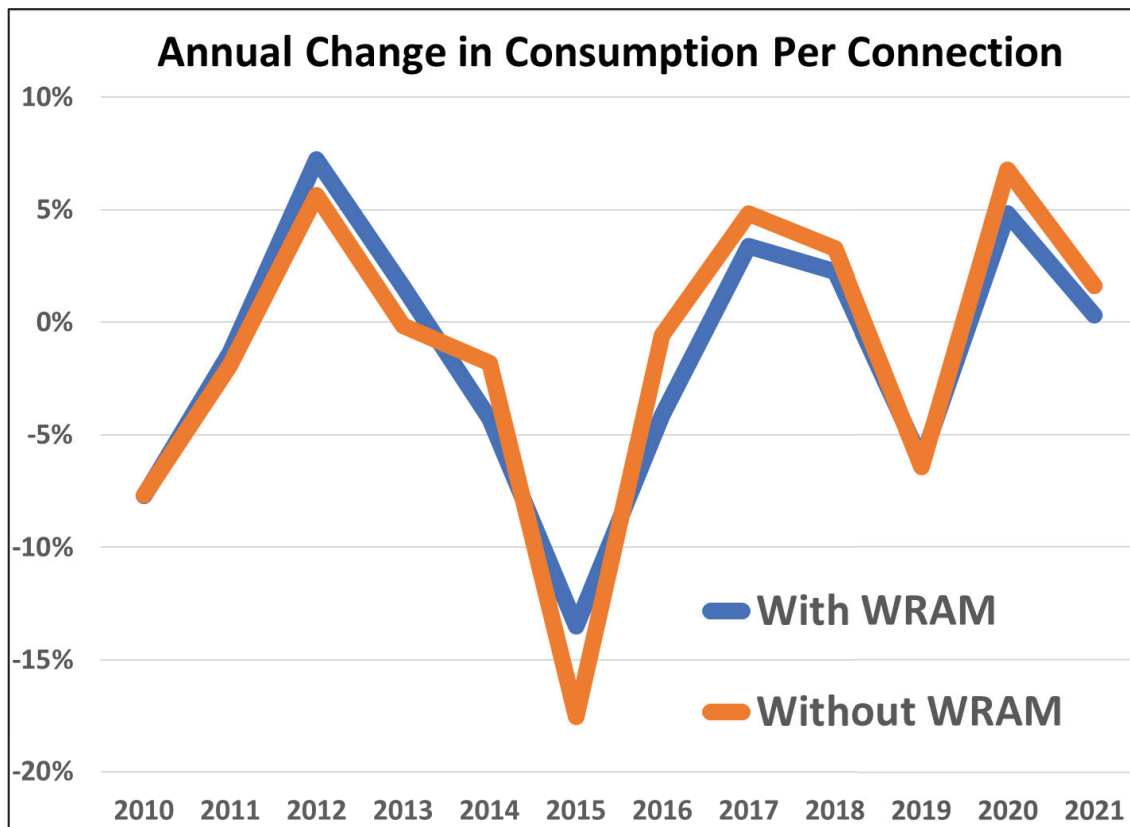
1 need not speculate on what might or might not have happened—but rather simply
2 observe what did happen.

3 **A. WRAM Has No Significant Impact on Consumption**

4 In the Commission’s rulemaking proceeding that eliminated WRAM, the
5 Public Advocates Office produced a graphic that compared the annual change in
6 water usage per connection of Class A water utilities operating with WRAM and
7 without WRAM.²⁰

8 Figure 1, below, updates that presentation with data provided by all Class A
9 water utilities in their most recent Annual Reports to the Commission.

Figure 1

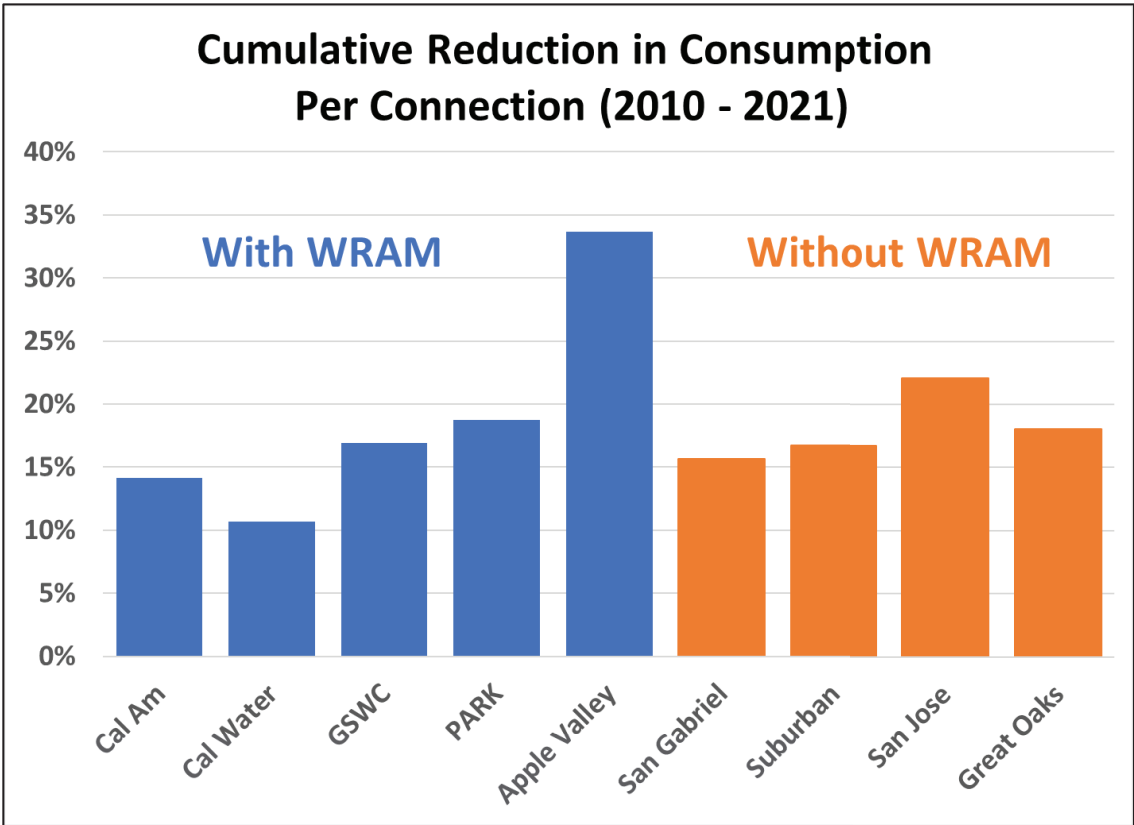


²⁰ Rulemaking 17-06-024, *Reply Comments of the Public Advocates Office on the Water Division’s Staff Report and Response to Additional Questions*, September 23, 2019.

1 As indicated in Figure 1, annual changes in consumption varied
2 considerably from 2010 to 2021. However, the overall pattern of change was not
3 significantly different between those water utilities with and without WRAM. In
4 fact, there are an equal number of years in which utilities with WRAM had a
5 greater reduction in consumption as there are years in which WRAM utilities had
6 a smaller reduction in consumption.

7 In addition to the aggregate data presented above, the individual
8 consumption data of utilities with WRAM and without WRAM further validates
9 the relative insignificance of WRAM’s effect on consumption. Figure 2, below,
10 compares the cumulative change in consumption for the individual utilities with
11 and without WRAM over the same period (2010 to 2021) using the same data.

Figure 2



1 Although a water utility operating with WRAM had the largest reduction in
2 consumption per connection (34%), it was another water utility also operating with
3 WRAM that had the smallest reduction in consumption per connection (11%). In
4 fact, the second highest reduction in consumption amongst all nine Class A water
5 utilities occurred for a utility operating without WRAM. Specific to Cal Am, the
6 cumulative reduction in consumption per connection (14%) was less than each of
7 the four utilities operating without a WRAM (16% to 22%).

8 Considering both aggregate and individual utility data, the presence of
9 WRAM does not appear to have any significant impact on reducing water usage.
10 Consistent with the Commission’s previous decisions and its response to the
11 California Supreme Court, this updated information supports prior conclusions
12 that WRAM has “proven to be ineffective in achieving its primary goal of
13 conservation.”²¹

14 **B. WRAM Has Very Significant Impacts on Customer Bills**

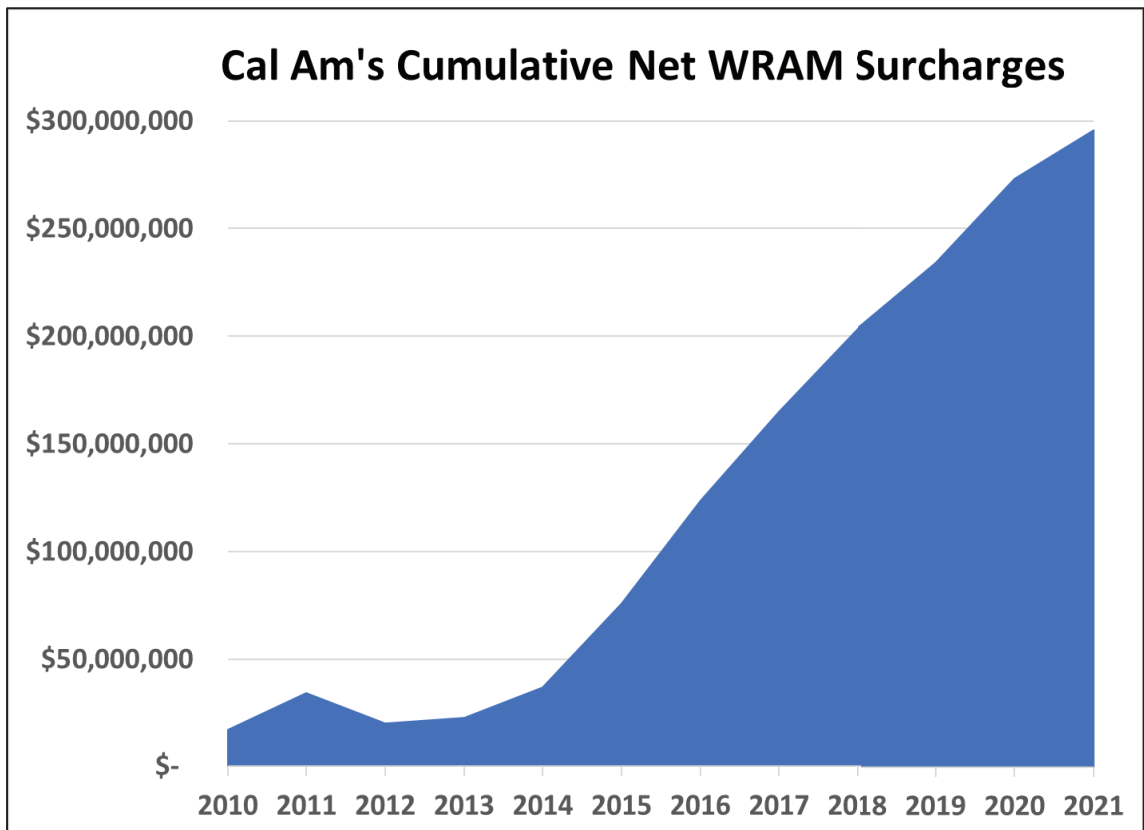
15 Although WRAM has had few, if any, impacts on ratepayers’ water
16 consumption, WRAM has had profound impacts on ratepayers’ monthly bills. As
17 early as 2010, the collection of WRAM surcharges on ratepayers’ bills threatened
18 Cal Am’s ability to remain in compliance with both financial accounting standards
19 and the Commission’s authorized schedule for recovering surcharges. This led
20 Cal Am to file an application requesting the Commission modify its standard
21 practice of recovering large surcharge amounts (i.e., those greater than 10% of its
22 authorized annual operating budget) in order to accommodate the shorter time
23 frame for recognizing revenue required by financial accounting standards.²²

²¹ Attachment 1, *Answer of Respondent to Petitions for Writ of Review*, p. 15.

²² Cal Am jointly filed Application 10-09-017 but withdrew from the proceeding in order to have its proposal for recovering WRAM surcharges addressed in its pending general rate case. See Decision 12-04-048, p. 2.

1 By 2014, surcharges, primarily due to WRAM, comprised 28% of the average
2 ratepayer’s bill across all ratemaking divisions and as much as 53% of a
3 ratepayer’s bill in Cal Am’s central division.²³ By 2015, WRAM surcharges to be
4 collected from ratepayers in the central division were more than 95% of the entire
5 division’s authorized annual operating budget.²⁴ By 2019, Cal Am had requested
6 another increase in the Commission’s already modified limits on WRAM recovery
7 in order to collect larger WRAM amounts at a faster pace in order to keep up with
8 ballooning WRAM balances.²⁵

Figure 3



²³ Application 19-07-004, *Report and Recommendations on Rates and Surcharges*, Jayne Parker

²⁴ Decision 16-12-003, identifying \$50.6M WRAM balance, p.11 and \$53.2M revenue requirement, p.24

²⁵ Application 19-07-004, Special Request No. 5, p. 11

1 Figure 3, above, depicts the cumulative net²⁶ WRAM charges collected by
2 Cal Am from ratepayers statewide.²⁷ From 2010 to 2021, Cal Am had amassed a
3 cumulative WRAM balance of nearly \$300 million in ratepayer surcharges. These
4 surcharges are in addition to the regular rates that customers pay for water service
5 and equate to approximately \$1,500 per connection—or approximately fourteen
6 times the average monthly bill of Cal Am’s current ratepayers statewide.

7 Furthermore, according to Cal Am’s calculations, its proposed WRS Plan
8 including the re-named WRAM (i.e. ESBA), would require an increase in average
9 system rates greater than \$1 million more than its alternative proposal. This
10 increase in base water rates is in addition to any WRAM surcharges that may be
11 authorized in this proceeding or allowed in the future.²⁸

12 **C. WRAM Harms All Ratepayers**

13 The harm caused by being charged \$300 million for something that does
14 not work should be obvious. However, this harm is amplified when considering
15 how WRAM is used by utilities to generate extraordinary profits and the
16 inequitable means by which WRAM is calculated and collected.

17 **1. WRAM is Used to Generate Extraordinary Profits**

18 The operation of WRAM allows utilities to collect the unearned
19 revenue that was once assumed to be needed rather than the revenue
20 actually needed to provide water service. This allows utilities to not only
21 exceed authorized profits without any Commission consideration of
22 reasonableness, but also to receive additional profit at times when the utility
23 is already exceeding its authorized profit.

²⁶ The net of all surcharges and sur-credits provided to ratepayers.

²⁷ Data from Annual Reports, Schedule E-1 (2010 – 2021)

²⁸ Attachment 2, *Calculation of Rate Increase due to WRAM (WRS Proposal)*

1 For example, consider the hypothetical utility with an annual budget
2 (i.e., revenue requirement) authorized at \$100, which includes the cost of
3 financing.²⁹ During the year, a decline in sales results in total revenue of
4 \$95 and not the estimated revenue of \$100 used to set rates and meet the
5 assumed cost of operations. During the same period, the actual cost of
6 operations turns out to be only \$90, once again including the cost of
7 financing. Shareholders have already received their authorized profit
8 contained within the \$90 cost of operations plus they receive an additional
9 \$5 in profit as the difference between the revenue collected (\$95) and actual
10 costs of operations (\$90). This is traditional utility ratemaking, and the
11 excess profit is typically allowed³⁰ under the assumption that the reduced
12 cost of operations is the result of the utility achieving productivity
13 improvements.³¹

14 At significant and unnecessary ratepayer expense, the WRAM can
15 add another layer of utility profit on top of the excess profits already
16 generated. In keeping with the above example, WRAM does not calculate
17 the difference between the revenue collected (\$95) and the actual costs of
18 operating the system (\$90), as doing so would cause the utility to return the
19 \$5 in excess profits. Rather insidiously, WRAM calculates the difference
20 between the revenue collected (\$95) and the revenue that was assumed to
21 be necessary (\$100), which generates an additional \$5 in excess profit on
22 top of the \$5 in excess profit the utility has already received.

²⁹ The cost of financing is typically the interest a utility pays on debt and the profits paid to shareholders.

³⁰ Unlike California, some regulatory jurisdictions in Europe will attempt to “claw-back” excess profits.

³¹ In actuality, the reduced cost of operations can be for any reason, including the utility not completing all the programs or capital spending that it forecasted and included in customer rates.

1 By understanding this simple example of how the WRAM can
2 generate extraordinary monopoly profit at the expense of captive
3 ratepayers, one can begin to understand why Cal Am and the various
4 associations that it funds are vehemently opposed to ending the WRAM.

5 **2. WRAM Shifts Risks from Utility to Ratepayers**

6 Utilities must develop forecasts. There is always a risk that a
7 forecast will deviate from reality. Through the Commission-authorized rate
8 of return, which contains its authorized profit, utilities and their
9 shareholders are compensated for that risk.³² However, as seen in the
10 previous example, WRAM immunizes utilities from the risk of forecasting
11 sales and places this risk on ratepayers.

12 Cal Am attempts to re-frame this risk transfer by claiming WRAM
13 removes this risk for both ratepayers and utilities.³³ Apart from the fact
14 that utilities are compensated for this risk while ratepayers are not, Cal
15 Am’s claim of an equitable elimination of risk could only be true if the
16 likelihood and consequences of this risk are evenly distributed—but they
17 are not.

18 As can both be seen empirically and understood anecdotally, the
19 consequences of actual sales being lower than forecasted (a negative
20 demand shock) are usually more sudden and severe than actual sales being
21 higher than forecasted (a positive demand shock). This is important when
22 considering the equity of WRAM, as ratepayers bear the full cost of
23 negative demand shocks and can only benefit from positive demand shocks.

³² It can be easily argued that “forecasting risk” is the only risk that utilities encounter.

³³ Supplemental Direct Testimony of David Mitchell, p. 8.

1 In Figure 1, above, the decrease in demand observed in 2015 is
2 steeper and deeper than any other variation in consumption. In fact, the
3 17% average decline in annual water consumption in 2015 is nearly three
4 times greater than any of the positive changes in annual consumption.
5 Anecdotally, this empirical observation should not come as a surprise
6 because unanticipated decreases in water consumption brought about by
7 drought, financial crisis, or other disasters are sudden and severe. By
8 contrast, most permanent increases in water consumption are gradual and
9 can be forecasted.³⁴ The economic downturn that began in 2008 is a
10 perfect illustration of the inequitable operation of WRAM.

11 In 2009, more than half a million California homes were in
12 foreclosure.³⁵ For those homes that sat empty, there was no water
13 consumption. Despite what may have been consistent and reliably
14 forecasted residential water consumption beforehand, the water usage in
15 foreclosed and abandoned homes plummeted to zero where it could remain
16 for an extended period of time. Whereas utilities without WRAM adjusted
17 their budgets and requested rate increases to compensate for this reduction
18 in demand and revenue going forward, those utilities with WRAM were
19 able to surcharge and retroactively collect the “lost” revenue for the
20 excellent work they had done promoting water conservation.

21 For the scenario described above, an intellectually honest debate
22 should occur as to whether extraordinary events exceed the normal business
23 risk for which utilities are compensated and whether extraordinary

³⁴ For example, a new residential development or business park will take years of planning.

³⁵ A total of 632,573 California properties received a foreclosure filing in 2009, the nation's largest state foreclosure activity total, an increase of nearly 21% from 2008. (Steve Kerch, MarketWatch).

1 ratemaking should be allowed.³⁶ However, WRAM removes even the
2 opportunity for that debate. For a water utility with WRAM, any loss in
3 revenue brought about by foreclosure, earthquake, fire, flood, mudslide,
4 riot, or any other natural or man-made disaster is automatically attributed to
5 the utility’s intentional promotion of conservation and recovered from
6 ratepayers often as excess profit for utilities that are already exceeding their
7 authorized profits.

8 **D. WRAM Is Not Necessary to Promote Conservation**

9 The Public Advocates Office is an ardent promoter of cost-effective
10 conservation and water-use efficiency. In every general rate case, the Public
11 Advocates Office reviews and supports millions of dollars for water conservation
12 programs. In the current general rate case, for example, the Public Advocates
13 Office supports a conservation budget exceeding \$4 million (including
14 conservation staff) for programs such as the free installation of high-efficiency
15 water fixtures, turf removal rebates, landscape upgrade grants, customer surveys,
16 commercial audits, and various public and educational outreach programs.³⁷
17 These conservation programs are in addition to the hundreds of millions of dollars
18 in infrastructure spending to reduce water usage that have and continue to be
19 supported by the Public Advocates Office.³⁸

20 In no way should opposition to Cal Am’s WRS Plan and re-named WRAM
21 be misconstrued as opposition to cost-effective water conservation. To the
22 contrary, the utility efforts on maintaining (or reinstating) WRAM, which has

³⁶ This is the basis for the Commission’s Catastrophic Event Memorandum Account.

³⁷ Application 22-07-001, *Direct Testimony of Patrick Pilz, Attachment 1*

³⁸ Including advanced metering infrastructure, customized leak monitoring and reporting hardware and software, pipeline replacement and maintenance, recycled water systems, etc., See also *California American Water Non-Revenue Water Update, 2021 Annual Report to the Commission*

1 proven itself to be not only not cost-effective but not effective at all, should be
2 redirected towards conservation programs that are capable of achieving their
3 intended goals. Simply put, there are other ways to promote water-use efficiency
4 and conservation that have proven to be more effective.

5 WRAM's theoretical basis requires the assumption that any reduction in
6 water usage is the result of unplanned (yet intentional) actions taken by the utility
7 between general rate cases. In contrast, the actual thoughtful and deliberate
8 conservation programs implemented by utilities are planned, evaluated, and
9 implemented within general rate cases. Furthermore, because the cost of these
10 conservation programs and the anticipated reduction in water usage and revenue is
11 incorporated within customer rates as part of the general rate case, *the utility*
12 *suffers no loss to its authorized profit for achieving the anticipated conservation*
13 *goals.* Continued monitoring of the conservation programs' effectiveness allows
14 for adjustment in the subsequent general rate case to ensure that both ratepayer
15 funds are spent prudently and that the water utility's authorized profit remains
16 completely unaffected by achieving the conservation programs' goals.

17 The need and ability to achieve water conservation did not originate with
18 WRAM and will not end with the elimination of this costly and ineffective
19 program.

20 **E. WRAM Does Not Protect Low-Income Customers**

21 WRAM was never intended to be a low-income assistance program. In
22 fact, the earliest decision adopting WRAM for Cal Am never mentions low-
23 income customers or rate assistance programs at all.³⁹ By contrast, the earliest
24 decision adopting Cal Am's alternative Conservation Pricing Adjustment

³⁹ Decision 08-11-023

1 specifically references its intended benefits for low-income customers.⁴⁰
2 Interestingly, the Commission’s investigation⁴¹ into the first multiple requests for
3 WRAM was not concerned that the absence of a WRAM would harm low-income
4 customers but rather that implementing WRAM conservation programs would
5 disproportionately harm “low income households that may have high water usage
6 due to a larger than average household size.”⁴²

7 Those that now allege eliminating Cal Am’s WRAM would harm low-
8 income customers fail to mention that these same customers are contained within
9 the larger group of all ratepayers that have been burdened with \$300 million in
10 unnecessary surcharges for a program that does not work. Even if WRAM had
11 proven effective (which it has not), the Commission has demonstrated its ability to
12 implement low-income rate relief to separately overcome any countervailing
13 impacts from conservation programs. The Commission should not succumb to
14 emotional appeals that not having a WRAM will somehow now harm low-income
15 customers. To do so devalues the low-income rate relief programs of the four
16 investor-owned water utilities that have operated for more than a decade without
17 WRAM.

18 The need and ability to achieve low-income ratepayer relief did not
19 originate with WRAM and will not end with the elimination of this costly and
20 ineffective program.

21 **IV. CONCLUSION**

22 Whether its performance is reviewed in aggregate or individually, WRAM has
23 demonstrably failed to achieve its primary purpose. Although the Commission’s natural

⁴⁰ Decision 96-03-008 at 1.

⁴¹ Order Instituting Investigation 07-01-022

⁴² Decision 11-05-004 at 17.

1 experiment with WRAM demonstrated no significant reductions in water usage by Cal
2 Am's ratepayers, the WRAM most certainly produced significant impacts on these
3 ratepayers' monthly bills. By the end of 2021, Cal Am had amassed a cumulative
4 balance of \$300 million in WRAM surcharges that are collected from all ratepayers
5 (including low-income customers).

6 With the new information contained in this report, the Commission should
7 reaffirm the two prior decisions that it is currently defending before the California
8 Supreme Court to eliminate WRAM. In keeping with these decisions, the Commission
9 should allow Cal Am to transition to a renamed Conservation Pricing Adjustment
10 mechanism.

Attachment 1: Answer of Respondent to Petitions for Writ of Review

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Golden State Water Company
Petitioner,

v.

Public Utilities Commission of the
State of California,
Respondent,

California-American Water
Company, California Water Service
Company, California Water
Association, and Liberty Utilities
Corp,
Petitioners,

v.

Public Utilities Commission of the
State of California,
Respondent.

Case No. S269099

Commission Decisions
20-08-047 and 21-09-047

Case No. S271493

Commission Decisions
20-08-047 and 21-09-047

**ANSWER OF RESPONDENT
TO PETITIONS FOR WRIT OF REVIEW**

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January 28, 2022

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF THE CASE.....	8
II. INTRODUCTION AND BACKGROUND	9
III. ISSUES PRESENTED	17
IV. STANDARD OF REVIEW	18
V. ARGUMENT	23
A. The discontinuation of the WRAM was within the scope of the proceeding.	23
B. Petitioners were afforded due process.	37
C. The Decision is supported by record evidence.....	43
D. The Commission considered the impact of its decision on conservation and low-income customers.	54
E. The Commission properly characterized the proceeding as quasi-legislative.	57
VI. CONCLUSION	59
CERTIFICATE OF WORD COUNT	
EXHIBITS 1-6	

TABLE OF AUTHORITIES

	<u>Page</u>
<u>California Rules of Court</u>	
Rule 8.724	7
<u>California Public Utilities Code</u>	
Section 321.1(a)	54
Section 701	20
Section 728	58
Section 729	58
Section 1701.1(a)	58
Section 1701.1(b)	24
Section 1701.1(c)	15, 23
Section 1701.1(d)(1)	10, 57
Section 1701.1(d)(3)	10, 57
Section 1708	37, 38, 41
Section 1708.5(f)	39
Section 1756	18
Section 1756(a)	18
Section 1756(f)	18
Section 1757.1	19
Section 1757.1(a)(1)	45
Section 1757.1(b)	19
Section 1757.1(c)	19, 48, 59
Section 1760	21

Cases

BullsEye Telecom, Inc. v. Public Utilities Com.
(2021) 66 Cal.App.5th 301 30, 31, 32, 40

California Assn. of Nursing Homes, etc. v. Williams
(1970) 4 Cal.App.3d 800 41

California Manufacturers Assn. v. Public Utilities Com.
(1979) 24 Cal.3d 251 49

California Portland Cement Co. v. Public Utilities Com.
(1957) 49 Cal.2d 171 22

California Trucking Assn. v. Public Utilities Com.
(1977) 19 Cal.3d 240 38, 39

Camp Meeker Water System, Inc. v. Public Utilities Com.
(1990) 51 Cal.3d 845 19, 49

City of Huntington Beach v. Public Utilities Com.
(2013) 214 Cal.App.4th 566 29, 30

Goldin v. Public Utilities Com.
(1979) 23 Cal.3d 638 20

Greyhound Lines, Inc. v. Public Utilities Com.
(1968) 68 Cal.2d 406 20

New Cingular Wireless PCS, LLC v. Public Utilities Com.
(2016) 246 Cal.App.4th 784 21

Pacific Bell v. Public Utilities Com.
(2000) 79 Cal.App.4th 269 18

Pacific Bell Wireless, LLC v. Public Utilities Com.
(2006) 140 Cal.App.4th 718 18

Pacific Gas & Elec. Co. v. Public Utilities Com.
(2015) 237 Cal.App.4th 812 22

<i>Pacific Tel. & Tel. Co. v. Public Utilities Com.</i> (1965) 62 Cal.2d 634	22
<i>People v. Western Air Lines, Inc.</i> (1954) 42 Cal.2d 621	42
<i>San Diego Gas & Electric Co. v. Superior Court</i> (1996) 13 Cal.4th 893.....	18
<i>Southern Cal. Edison Co. v. Peevey</i> (2003) 31 Cal.4th 781.....	20
<i>Southern Cal. Edison Co. v. Public Utilities Com.</i> (2000) 85 Cal.App.4th 1086.....	19, 20
<i>Southern Cal. Edison Co. v. Public Utilities Com.</i> (2004) 117 Cal.App.4th 1039.....	20
<i>Southern Cal. Edison Co. v. Public Utilities Com.</i> (2005) 128 Cal.App.4th 1.....	18
<i>Southern Cal. Edison Co. v. Public Utilities Com.</i> (2006) 140 Cal.App.4th 1085.....	28, 29
<i>The Utility Reform Network v. Public Utilities Com.</i> (2014) 223 Cal.App.4th 945.....	46, 47
<i>Toward Utility Rate Normalization v. Public Utilities Com.</i> (1978) 22 Cal.3d 529	22
<i>Toward Utility Rate Normalization v. Public Utilities Com.</i> (1988) 44 Cal.3d 870	20
<i>United States Steel Corp. v. Public Utilities Com.</i> (1981) 29 Cal.3d 603	55
<i>Western Oil & Gas Assn. v. State Lands Com.</i> (1980) 105 Cal.App.3d 554	44
<i>Wise v. Pacific Gas & Electric Co.</i> (1999) 77 Cal.App.4th 287	19

Wood v. Public Utilities Com.
(1971) 4 Cal.3d 288 43

Yamaha Corp. of America v. State Bd. of Equalization
(1998) 19 Cal.4th 1..... 20, 21

20th Century Insurance Co. v. Garamendi
(1994) 8 Cal.4th 216..... 43, 44

Commission Decisions and Rulemakings

D.99-07-047 (1999)..... 44

D.06-12-042 (2006)..... 54

D.08-02-036 (2008)..... 12

D.12-04-048 (2012)..... 14, 33, 34

D.16-12-026 (2016)..... 11, 14, 25, 34

D.20-08-047 (2020).....*passim*

D.21-09-047 (2021)..... 46, 48, 49

R.11-11-008 (2011)..... 14

R.17-06-024 (2017)..... 9, 15, 57

Commission Rules of Practice and Procedure

Cal. Code of Regs., tit. 20, § 7.3..... 23, 24

Cal. Code of Regs., tit. 20, § 7.5..... 15

Cal. Code of Regs., tit. 20, § 14.3(c)..... 45, 48

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Golden State Water Company
Petitioner,

v.

Public Utilities Commission of the
State of California,
Respondent,

Case No. S269099

Commission Decisions
20-08-047 and 21-09-047

California-American Water
Company, California Water Service
Company, California Water
Association, and Liberty Utilities
Corp,
Petitioners,

v.

Public Utilities Commission of the
State of California,
Respondent.

Case No. S271493

Commission Decisions
20-08-047 and 21-09-047

**ANSWER OF RESPONDENT
TO PETITIONS FOR WRIT OF REVIEW**

**TO THE HONORABLE PRESIDING JUSTICE TANI
GORRE CANTIL-SAKAUYE & ASSOCIATE JUSTICES OF
THE SUPREME COURT OF THE STATE OF CALIFORNIA:**

Pursuant to Rule 8.724 of the California Rules of Court,
Respondent, the California Public Utilities Commission

(Commission), respectfully submits its answer to the amended petition for writ of review (petition) filed by Golden State Water Company, in Case No. S269099, and the petitions filed by California-American Water Company, California Water Service Company, California Water Association, and Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp. (together, Liberty), in Case No. S271493, (both cases jointly, Petitioners) challenging Commission Decisions (D.) 20-08-047 (Decision) and 21-09-047 (Rehearing Decision).¹ The Commission denies that any writ should be issued.

I. STATEMENT OF THE CASE

In this case, Petitioners, certain Class A water utilities,² challenge a Commission policy determination reached after a quasi-legislative proceeding. The Commission determined that a pilot program balancing account mechanism, applied to certain Class A water utilities, is not serving its purpose and should be discontinued.³ Without basis, Petitioners contend that they were denied due process and that the underlying proceeding had procedural deficiencies.

¹ Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

A copy of D.20-08-047 and D.21-09-047 can be found in Golden State's Exhibit K at pp.275-387 and Exhibit EE at pp. 494-528, respectively.

² Class A water utilities are those water utilities with more than 10,000 service connections.

³ The Commission regulates more than 100 investor-owned water utilities. Five of the nine Class A water utilities were authorized to implement this accounting mechanism.

Petitioners' arguments misconstrue the nature of the Commission proceeding, which is a rulemaking as opposed to a ratesetting proceeding. They also mischaracterize their own failure to offer evidence, or otherwise participate in review of the accounting mechanism issue, as a due process failing on the part of the Commission. In fact, it was Petitioners' own decision not to provide substantive input after the September 2019 ALJ Ruling invited parties to do so, that brings us to this Court.

Petitioners fail to demonstrate any error in the Commission's conduct or holding, or any other basis, for this Court to grant review of the Decisions at issue.

II. INTRODUCTION AND BACKGROUND

This case stems from a rulemaking proceeding categorized as quasi-legislative in nature. In its legislative capacity, the Commission made a policy decision to conclude its pilot program of promoting conservation by decoupling water sales from water revenues. In doing so, it established rules that would impact future ratemaking proceedings before the Commission, primarily the general rate cases (GRCs) of large water utilities under its jurisdiction. (*Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency Between the Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, Affordability, and Sales Forecasting*, July 10, 2017 (Rulemaking or R.17-06-024) [Cal Water Appx. 50-74].)

Public Utilities Code section 1701.1 subdivision (d)(1)⁴ defines quasi-legislative cases as proceedings that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry. In contrast, section 1701.1 subdivision (d)(3) defines ratesetting cases as proceedings in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The Decision is from an order instituting rulemaking proceeding that established rules for the water industry. Accordingly, it is not a ratesetting case because the Decision did not establish rates for any utility. However, the rules established in the Rulemaking will be implemented in future GRC proceedings of individual water utilities and may, at that time, require adjustments to the water utilities' rates and rate design. Evidentiary hearings are often held in GRC proceedings.

As a result of the Rulemaking proceeding at issue, the Commission decided to conclude the pilot program because the Commission determined it was no longer necessary to incent the water utilities to promote conservation because many other factors were influencing customers to conserve water. (Decision at pp. 68-69 [Golden State Appx. 345-346].) As the Commission has previously explained, circumstances have changed since this pilot program was implemented:

⁴ All section references are to the Public Utilities Code, unless otherwise noted.

We have entered a new paradigm for water consumption as the drought continues and the weather brings us less rain and snow. Californians have heeded our calls and conserved in record numbers, and water [investor-owned utility] customers have done a particularly good job at conservation. As Governor Brown stated in his 2016 Executive Order B-37-16, water conservation must be a California way of life. Governor Brown's orders and the Commission's resolutions, the work of sister state and local agencies and the efforts of Californians have literally changed the landscape of California by incentivizing the removal of lawns, less outdoor watering, and taking steps to eliminate water waste and minimize leaks.

(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 (Water Action Plan Rulemaking Decision) [D.16-12-026] at p. 24.)

The Mechanics of the WRAM/MCBA

The Commission implemented this pilot program by authorizing the water utilities to track the difference between forecast revenues and actual revenues, generated from quantity sales, in a decoupling Water Revenue Adjustment Mechanism (WRAM). The accompanying modified-cost balancing account (MCBA) tracks the difference between forecast and actual variable costs (i.e. purchased power, water, and pump taxes).

The goals of the WRAM/MBCA were to sever the relationship between sales and revenue to remove any disincentive for the utility to implement conservation rates and programs; ensure cost savings are passed on to ratepayers; and

reduce overall water consumption. The authorization of the WRAM/MBCA was intended to ensure that the water utilities and their customers were proportionally affected when conservation rates were implemented, so that neither party would suffer or benefit from the implementation. (*Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities* (WRAM Authorization Decision) [D.08-02-036] at p. 26.)

Theoretically, this is accomplished by authorizing the water utilities to true-up the balance in the WRAM/MBCA through rate surcharges (if under-collected) or surcredits (if over-collected) on ratepayers' utility bills. This true-up is designed to make the water utilities indifferent to their customers' increased water conservation, which could otherwise reduce the profits earned by the water utilities if the WRAM/MBCA did not exist. However, if a water utility's WRAM/MBCA is perpetually under-collected, customers may experience continually increasing surcharges on their water bills. (Decision at pp. 51-52, 55-56 [Golden State Appx. 328-329, 332-333].)

 Surcharges can also result in undesirable consequences, such as reducing utility incentives to control costs, and shifting utility business risks away from investors and onto customers. This happens because the WRAM/MCBA protects the water utilities' revenue from *any* difference between forecast and actual sales, not just differences caused by conservation. (Decision at pp. 55-56 [Golden State Appx. 332-333].) For example, actual sales may be less than forecast sales during a rainy year in which

customers require less water for landscaping or during an economic recession when customers are limiting water use as a means to reduce expenditures and companies are going out of business. (Decision at p. 55 [Golden State. Appx. 332].)

Ratepayers are required to make WRAM/MCBA utilities whole for revenue losses during these economic downturns. In contrast under traditional regulation, utilities bear the risk of these economic contractions, as do many other types of businesses and industries. Utilities are compensated for this risk of economic contractions in their adopted rates of return. In fact, the Decision notes that the earlier settlements reached in GRCs that established the WRAMs for the WRAM utilities alluded to the transfer of risk, but there is no evidence that this change in risk was ever quantified in determining the cost of equity for any water utility. (Decision at pp.73-74 [Golden State Appx. 350-351].)

History of the WRAM/MCBA

On December 15, 2005, the Commission issued a Water Action Plan to be used as a roadmap for water policies and priorities in response to increasing statewide concerns about water quality and supply. The Commission's primary goals were to place water conservation at the top of the loading order as the best, lowest-cost supply and to strengthen water conservation programs to a level comparable to those of energy utilities. (Decision at p. 3 [Golden State Appx. 280].)

The Commission concluded it would have to decouple sales from revenues in order to remove the water utilities' financial

disincentive to conserve water. The Commission subsequently adopted the WRAM/MCBA as a pilot program for some class A water utilities to address conservation. (Decision at p. 56 [Golden State Appx. 333].)

After the WRAM utilities implemented the decoupling mechanism, there was significant growth in WRAM surcharges, so the Commission modified various aspects of the decisions adopting the decoupling mechanisms. In particular, a cap was placed on the amount of WRAM surcharges that could be placed on a customer's bill. (D.12-04-048 (*WRAM Amortization Decision*) at pp. 41-44.) However, this measure only extended the time necessary to collect WRAM balances and ultimately increased WRAM balances as interest on the balances continued to accumulate.

In 2015, the Commission expanded the scope of its *Order Instituting Rulemaking Addressing the Commission's Water Action Plan Objectives*, R.11-11-008, to consider other means to address the continuing growth in WRAM balances. (D.16-12-026 (*Water Action Plan Rulemaking Decision*) at pp. 5-7.) Although the final decision retained the mechanisms, it also provided guidance on the creation of new mechanisms that could potentially decrease WRAM balances. (*Id.* at pp. 27-28 and 84-85, Ordering Paragraphs 3-4.)

The Commission opened this proceeding, R.17-06-024, to address the 2010 Water Action Plan objective of achieving consistency among the Class A water utilities' low-income rate assistance programs, providing rate assistance to all low-income

customers of investor-owned water utilities, affordability, and sales forecasting. To ensure proper notice to interested parties, the Commission served the Class A, B, C, and D water utilities, in addition to other organizations. (Rulemaking at pp. 20-21, Ordering Paragraphs 17-19 [Cal Water Appx. 71-72].)

In the Rulemaking, the Assigned Commissioner issued the scoping memo that identifies the issues to be considered and a timetable for resolution. (Pub. Util. Code § 1701.1 subd. (c).) Workshops were held to provide an opportunity for the parties to discuss the issues in the scoping memo. An ALJ ruling and industry division staff workshop report were issued and the parties were invited to file comments responding to questions raised in the ruling and/or workshop report. (Cal. Code of Regs., tit. 20 § 7.5 [Quasi-Legislative Proceedings].) This process was repeated for each workshop held, with sales forecasting being addressed in the third workshop and in the fifth and final workshop.

At the end of Phase I of the Rulemaking, the Commission issued D.20-08-047. In that Decision, the Commission evaluated the sales forecasting processes used by water utilities and concluded that the WRAM/MCBA had proven to be ineffective in achieving its primary goal of conservation. To keep rates just and reasonable, the Commission precluded the continued use of the WRAM/MCBA in future general rate cases, but continued to allow future use of the Monterey-style WRAM with an Incremental Cost Balancing Account (jointly, M-WRAM/ICBA).⁵

⁵ The M-WRAM differs from the WRAM, in that the M-WRAM was adopted to protect the utility from reduced revenues collected

The Decision also adopted other requirements relating to Class A water utilities' low-income rate assistance programs.

Timely applications for rehearing of D.20-08-047 were filed jointly by Liberty Utilities (Park Water) Corp. and Liberty Utilities (Apple Valley Ranchos Water) Corp. (together, Liberty); and separately by California-American Water Company (Cal-Am); California Water Association (CWA); California Water Service Company (Cal Water); and Golden State Water Company (Golden State) on October 5, 2020. Before the Commission issued a decision resolving the pending applications for rehearing, Golden State filed a petition for writ of review with this Court on June 2, 2021.

After this Court granted the Commission's request to hold the court case in abeyance until the Commission could issue its rehearing order, the Commission issued D.21-09-047 on September 27, 2021. The Rehearing Decision modified D.20-08-047 for clarity and denied rehearing.

On October 27, 2021, in response to the Commission's Rehearing Decision, Golden State filed an amended petition for writ of review with this Court in Case No. S269069. California-American Water Company, California Water Service Company, California Water Association, and Liberty Utilities Corp. each filed timely petitions for writ of review, which were filed in Case No. S271493.

under tiered rates as compared to a uniform rate design, while the WRAM was created to protect utilities from revenue shortfalls from lower than adopted sales due to conservation. (Decision at p.52 [Golden State Appx. 329].)

On November 8, 2021, in response to the Commission's filed request to consolidate the two cases, the Court ruled that the Commission may file a single answer to both cases and Petitioners may also file a single reply to both cases.

On November 11, 2021, the Court granted the Commission's request for an extension of time to file its answer. The answer is now due by January 31, 2022.

The National Association of Water Companies (NAWC) filed a Letter of Amicus Curiae (Amicus Curiae Letter) on December 9, 2021.

III. ISSUES PRESENTED

The Petitions raise the following issues:

- 1) Is the Commission's discontinuation of the WRAM/MCBA within the scope of the proceeding?
- 2) Did the Commission afford the parties due process?
- 3) Is the Decision supported by record evidence?
- 4) Did the Commission consider the impact of its decision on conservation and low-income customers?
- 5) Did the Commission properly characterize the proceeding as quasi-legislative?

The answers to all these questions are in the affirmative. The Commission acted lawfully and respectfully requests that the Court deny the Petitions as meritless.

IV. STANDARD OF REVIEW

This Court has jurisdiction to review the Commission decisions at issue pursuant to section 1756. Section 1756, subdivision (a) provides: “any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court....” Section 1756, subdivision (f) provides: “... review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court,” except in cases of complaints or enforcement matters. The scope of judicial review of a Commission decision is to be “narrow in both ‘manner and scope.’” (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 915.)

The grant of a writ of review of Commission decisions under section 1756 is discretionary rather than mandatory. (*Pacific Bell Wireless, LLC v. Public Utilities Com.* (2006) 140 Cal.App.4th 718, 729; *Pacific Bell v. Public Utilities Com.* (2000) 79 Cal.App.4th 269, 272.) The plain language of the statute provides: “If the writ issues, it shall be made returnable at a time and place specified by court order” (Pub. Util. Code, § 1756, subd. (a) (emphasis added).) Thus, the Court is “not compelled to issue the writ if the [Commission] did not err” (*Pacific Bell v. Public Utilities Com.*, *supra*, 79 Cal.App.4th at p. 279; see also, *Southern California Edison Co. v. Public Utilities Com.* (2005) 128 Cal.App.4th 1, 9, reh'g. den., 2005 Cal.App. LEXIS 745 [“the court need not grant a writ if the petitioning party fails to present a convincing argument that the decision should be annulled”].)

The standard of review of the Commission decisions challenged by Petitioners is set forth in section 1757.1. Section 1757.1, subdivision (b) provides:

In reviewing decisions pertaining solely to water corporations, the review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or this state.

Pursuant to section 1757.1, subdivision (c):

No new or additional evidence shall be introduced upon review by the court. The findings and conclusions of the commission on findings of fact shall be final and shall not be subject to review except as provided in this article. The questions of fact shall include ultimate facts and findings and conclusions of the commission on reasonableness and discrimination.

The Court's function is not to hold a trial de novo, but to review the entire record to determine whether the Decision's conclusions are reasonable and are supported by the evidence. (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 863-864.)

Courts have opined that the Commission "is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers." (See e.g., *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300; *Southern California Edison Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 1086, 1096.)

In *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, the Court noted that there is a “strong presumption of validity of the commission’s decisions.” (*Id.* at pp. 410-411 [citations omitted]; see also, *Southern California Edison Co. v. Public Utilities Com.*, *supra*, 85 Cal.App.4th at pp. 1086, 1096.) The Court has cautioned that the scope of review of Commission decisions shall not extend further than to determine whether the Commission has regularly pursued its authority. (See, e.g., *Goldin v. Public Utilities Com.* (1979) 23 Cal.3d 638, 652-653; *Toward Utility Rate Normalization v. Public Utilities Com.* (1988) 44 Cal.3d 870, 880.)

In the Court’s review, the Commission’s interpretation of the Public Utilities Code, as the agency constitutionally authorized to administer its provisions, should be given great weight. (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796; *Greyhound Lines, supra*, 68 Cal.2d at p. 410 [“the commission’s interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purpose and language...”]; *Southern California Edison Co. v. Public Utilities Com.* (2004) 117 Cal.App.4th 1039, 1044.)

Even under the more general agency deference guidelines of *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (*Yamaha*), the Commission is entitled to the greatest level of agency deference, as the Commission has been delegated the Legislature’s lawmaking power in its regulation of public utilities. (Pub. Util. Code, § 701; *Yamaha, supra*, 19 Cal.4th at

p. 11.) Because these rulemaking decisions are created “pursuant to a delegation of legislative power’,” they “do not present a matter for the independent judgment of an appellate tribunal; rather [questions of their validity] come to this court freighted with [a] strong presumption of regularity....’ [Citation].” (*Yamaha, supra*, 19 Cal.4th at p. 11.) “The rationale for deference is strongest when the challenged action by the agency results from a rulemaking decision within the authority delegated to the agency [citation], where the agency interprets one of its own regulations [citations], or where the agency engages in factfinding based on conflicting evidence [citation].” *New Cingular Wireless PCS, LLC v. Public Utilities Com.* (2016) 246 Cal.App.4th 784, 807.)

Finally, with respect to Petitioners’ constitutional challenges, section 1760 provides:

Notwithstanding Sections 1757 and 1757.1, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the United States Constitution or the California Constitution, the Supreme Court shall exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.

It has long been recognized that section 1760 does not authorize the Court to substitute its own judgment as to the weight to be accorded evidence before the Commission or the purely factual findings made by it. “In other words, judicial reweighing of evidence and testimony is ordinarily not

permitted.” (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 838-839, *citing, inter alia, Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 538 [“When conflicting evidence is presented from which conflicting inferences can be drawn, the commission's findings are final”]; *Pacific Tel. & Tel. Co. v. Public Utilities Com.* (1965) 62 Cal.2d 634, 647 [findings which are final include those involving “conflicting evidence [or] undisputed evidence from which conflicting inferences may reasonably be drawn”]; *Cal. Portland Cement Co. v. Public Utilities Com.* (1957) 49 Cal.2d 171, 175 [“The weighing of whatever factors may have tended [to support an implied finding by the Commission] was a matter within the exclusive jurisdiction of the [C]ommission”].) “The only exception is those findings or conclusions ‘drawn from undisputed evidence from which conflicting inferences may not reasonably be drawn [and therefore] present questions of law.’” (*Pacific Gas & Electric Co. v. Public Utilities Com., supra*, 237 Cal.App.4th at p. 839, quoting *Pacific Tel. & Tel. Co. v. Public Utilities Com., supra*, 62 Cal.2d at p. 647.)

In the present case, the Commission proceeded in the manner required by law. Petitioners have failed to present any valid argument for the Court to annul the Commission decisions. Therefore, the Commission respectfully submits that the Petitions should be denied.

V. ARGUMENT

A. The discontinuation of the WRAM was within the scope of the proceeding.

Petitioners allege that the Decision is unlawful because it eliminated the WRAM in violation of section 1701.1, subdivision (c) and Commission Rules of Practice and Procedure 7.3⁶ (Cal. Code of Regs., tit. 20, § 7.3.) by addressing an issue that was not within the scope of the proceeding. Specifically, Petitioners allege that the discontinuation of the WRAM/MCBA decoupling mechanism was not included in the scoping memos issued in the proceeding. (Golden State at p. 28, CWA at p. 30, Cal-Am at p. 26, Cal Water at p. 25, Liberty at p. 25.) Additionally, Cal-Am claims there may be entities who would have participated in the proceeding, but were not noticed of the potential discontinuation of the WRAM/MCBA. (Cal-Am at pp. 29-30.) As explained below, Petitioners are not correct. The WRAM/MCBA was included in the original Scoping Memo as part of the water sales forecasting issue, so any interested party would have known the Commission planned to address these issues in the proceeding. (*Scoping Memo and Ruling of Assigned Commissioner*, January 9, 2018, at pp. 2-3 (Scoping Memo) [CWA Appx. 45-46].) The Commission did not violate its own rules or fail to regularly pursue its authority.

Section 1701.1, subdivision (c) provides, in relevant part, that “[t]he assigned commissioner shall prepare and issue by

⁶ Unless otherwise noted, all rule references are to the Commission’s Rules of Practice and Procedure.

order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution” Rule 7.3, in relevant part, provides:

The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date), issues to be addressed, and need for hearing. . . . In a proceeding initiated by application or order instituting rulemaking, the scoping memo shall also determine the category. . . .

(Cal. Code of Regs., tit. 20, § 7.3.) Section 1701.1, subdivision (b) and rule 7.3 require the Scoping Memo to include the issues to be addressed in the proceeding but does not require it to list all possible outcomes to a proceeding. In this proceeding, the discontinuation of the WRAM/MCBA was the action the Commission took as a result of its review of the forecasting issue, as identified in the Scoping Memo.

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?” (Scoping Memo at pp. 2-3 [CWA Appx. 45-46].) 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 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. Therefore, the risk of the utilities’ inaccurate forecasting is borne

by the ratepayers. For water utilities without a WRAM, there is no mechanism to true-up the lost revenue when their water sales forecast is higher than actual sales and therefore the risk is borne by the utility.

The Commission's concern about water sales forecasting and its effect on rates is, therefore, heightened because of the WRAM. The Commission has recognized in prior rulemaking proceedings that "[i]mproving forecasting methodologies is key to reducing WRAM and surcharge balances. Inaccurate forecasts provide the air that balloons the WRAM and surcharges."

(D.16-12-026 (Water Action Plan Rulemaking Decision) at p. 6.)

Additionally, it found that "[t]he record of substantial WRAM balances or surcharges imposed over months or years on Class A and B water [investor-owned utility] customers due to mismatches between authorized revenue and sales demands action now to better align forecasted rates to recorded sales." (*Id.* at p. 37.)

Here, the Decision explains that the WRAM issue, as it relates to water sales forecasting, was part of the Rulemaking from the beginning. As the Decision emphasizes, comments made by parties throughout the proceeding show the parties understood that the WRAM and sales forecasting were to be addressed by the Rulemaking:

California-American Water Company also identified sales forecasting as an important issue for this rulemaking to explore as the "long-standing problem of forecasting future sales ... has been heightened by periods of drought and issues related to very

substantial balances in the Water Revenue Mechanism Accounts.”

(Decision at pp. 18-19, quoting Cal-Am’s August 21, 2017 comments to R.17-06-024, p. 3 [Golden State Appx. 295-296].)

In comments to this Scoping Memo the California Water Association, among other suggestions, called for folding the WRAM/MCBA recovery into base rates instead of surcharges^[7] while the Public Advocates Office of the Public Utilities Commission argued that the large variances in forecasted sales are exacerbated by the WRAM/MCBA process.^[8] Accordingly, the August 2, 2019, workshop included a panel on drought sales forecasting that identified a number of problems with the WRAM/MCBA mechanism. The September 4, 2019, Ruling specifically sought comment on whether the Commission should convert utilities with a full WRAM/MCBA mechanism to a Monterey-Style WRAM with an incremental cost balancing account.

(Decision at p. 54, fns. in original [Golden State Appx. 331].)⁹

The Public Advocates Office of the Public Utilities Commission recognizes that forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling mechanism in California. While the Public Advocates Office of the Public Utilities Commission recognized that large WRAM balances are not solely caused by a large

⁷ CWA Comments dated February 23, 2018 at p. 9.

⁸ Public Advocates Office Comments dated February 23, 2018 at p. 8.

⁹ The Public Advocates Office is the independent consumer advocate at the California Public Utilities Commission. The office’s mission is to advocate for the lowest possible monthly bills for customers of California’s regulated utilities consistent with safety, reliability, and the state’s environmental goals.

variance in forecasted sales, it argued that by mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms exacerbate the actual size of the variance.

(Decision at p. 30 [Golden State Appx. 307].)

Further, in its February 23, 2018 comments cited above, CWA specifically tied WRAM recovery with the Commissioners' intent and the Scoping Memo:

Last, the Commission should also consider folding the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA") recovery into base rates instead of surcharges. This would be in keeping with the opinions expressed by the Commissioners at the meeting when this rulemaking was initiated. . . .¶ These changes will help address the issue articulated in the Scoping Memo, because more of the revenue differences between the earlier sales forecast and the actual sales will flow into base rates. This will send more accurate pricing conservation signals to customers, ameliorate intergenerational risk, help utilities avoid large WRAM/MCBA surcharges

(Comments of CWA on Phase I Issues, dated February 23, 2018 at pp. 8-9 [Resp. Appx. 009-010].)

Finally, the Water Division staff report on the workshop held on January 14, 2019, reports that the issue of WRAMs was discussed:

Also discussed were the effects of mid-year corrections, water revenue adjustment mechanisms (WRAMS) and sales reconciliation methods (SRMs), which [Public Advocates Office] claimed reduce scrutiny of company expenses and are burdensome to ratepayers.

(March 2019 ALJ Ruling, Att. A, p. 2 [CWA Appx. 79].) These comments, many of which were filed early in the proceeding, illustrate that WRAM issues were an integral part of the discussions on sales forecasting throughout the proceeding.

The above notwithstanding, Petitioners cite *Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085 (*Edison*) to support their scoping memo arguments. (Golden State at pp. 31-33, CWA at pp. 35-38, Cal-Am at pp. 27-29, Cal Water at pp. 30-31, Liberty at pp. 29-32.) However, Petitioners' reliance on *Edison* is misplaced. In *Edison*, a party, joining the proceeding late, filed opening comments ten months after opening comments were due. The comments included four-hundred pages of supporting materials and offered new proposals, for the first time in the proceeding, which were entirely unrelated to the issues listed in the scoping memo. The ALJ ruling gave parties three business days (excluding the weekend and a legal holiday) to file supplemental reply comments. (*Edison, supra*, 140 Cal.App.4th at 1104-1106 [prevailing wage issue added to proceeding scope to consider bid shopping and reverse auction in utility contracting].) In contrast, here, as explained above, WRAM issues were included in the list of issues in the Scoping Memo as water sales forecasts and the WRAM are inextricably linked. CWA and Cal-Am argue that neither a party nor the ALJ may expand the proceeding, but that argument is not relevant here. (CWA at p. 37, Cal-Am at p. 28.) As discussed above, sales forecasting was identified in the Commissioner's scoping memo.

Moreover, *Edison* found that the Commission's violation of its rules was prejudicial because three business days was not enough time for parties to respond to the new proposals. (*Edison, supra*, 140 Cal.App.4th at 1106.) Here, in addition to the issue being part of the scoping memo and discussed throughout the proceeding, on September 4, 2019, the ALJ issued a ruling inviting further comments on the issue and thus provided the parties an additional opportunity for input. The ALJ ruling specifically asked parties to comment on whether the Commission should consider converting WRAM/MCBA to M-WRAM/ICBA. (*Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Responses to Additional Questions*, September 4, 2019 (September 2019 ALJ Ruling Inviting Comments) at p. 3 [CWA Appx. 127].) The parties had twelve days to file opening comments and another seven days to file reply comments. (*Id.* at p. 5 [CWA Appx. 129].) Once the ALJ's ruling issued, the parties had ample time to submit comments, and parties did file both opening and reply comments. No party has alleged it did not have time to respond to the questions. Further, unlike *Edison*, there were no lengthy proposals with attachments and the issue was one with which Petitioners were completely familiar. Even assuming, arguendo, that the Commission had violated its rules, *Edison* is not relevant here, because the parties were not prejudiced. They had ample opportunity to file substantive comments, but chose not to do so.

Additionally, Cal Water and CWA cite *City of Huntington Beach v. Public Utilities Commission* (2013) 214 Cal.App.4th 566

(*Huntington Beach*) to support their argument. (CWA at pp. 34-34, Cal Water at pp. 31-32.) Like *Edison*, this decision is not relevant to this case. In *Huntington Beach*, in its rehearing decision, the Commission concluded that a construction project preempted local ordinances where “[t]hroughout the [Commission] proceedings, the parties and the [C]ommission emphasized that a court, not the [C]ommission, would adjudicate the validity of the City's municipal ordinances.” (*Huntington Beach, supra*, 214 Cal.App.4th at 570.) The Court held that the Commission lacked authority to expand the scope of the underlying proceeding, during the reconsideration process, to the detriment of a party. (*Id.* at 592-593.) In the present case, there was no stipulation or express language in the Scoping Memo that eliminated an issue from the proceeding, nor was there prejudice to a party, equivalent to that in *Huntington Beach*.

The Court of Appeal addressed the holdings in both of these cases in *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301 (*BullsEye Telecom*). In *BullsEye Telecom*, the Court of Appeal discussed that the petitioners asserted that their “evidentiary showing would have been quite different if the Scoping Memo in 2012 reflected the Commission’s current view that only differences in cost-of-service could provide a ‘rational basis for different rates.’” (*BullsEye Telecom, supra*, 66 Cal.App.5th at 327.) The Court of Appeal held that, because rational basis for different rates was an issue in the Scoping Memo, petitioners failed to show that cost was excluded as an issue by the Scoping Memo, especially in light of the legal

position taken by the Real Party in Interest that there is no difference in cost. (*Ibid.*)

Bullseye Telecom explains that *Edison* and *Huntington Beach* “do not hold the Commission may not “depart” from a scoping memo and they do not support a finding of prejudice in the present case.” (*BullsEye Telecom, supra*, 66 Cal.App.5th at 326.) Both of the earlier cases were reversed because the scoping memo violations were prejudicial to a party. As in *BullsEye Telecom*, those earlier cases do not support a finding of prejudice in the instant case. Here, as in *BullsEye Telecom*, the Decision did not resolve issues not encompassed by the Scoping Memo and Petitioners were not prejudiced, as they had adequate opportunity to provide evidence on the issues addressed in the Decision. (*Id.* at p. 327.)

Nonetheless, in an effort to show prejudice, Golden State and Cal Water argue if they would have had any notice that the Commission would consider eliminating the use of the WRAM and MCBA mechanisms in future general rate cases, they would have advocated for hearings. (Golden State at p. 31, Cal Water at pp. 34-35.) Further, Cal Water alleges it “was denied a meaningful opportunity to present *any* evidence regarding the potential elimination of the WRAM/MCBA because the Commission provided inadequate notice. (Cal Water at pp. 34-35, emphasis in original.) These baseless claims are belied by the September 2019 ALJ Ruling Inviting Comments that specifically invited the parties to comment on that exact question:

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?

(September 2019 ALJ Ruling Inviting Comments at p. 3 [CWA Appx. 127].)

Next, Cal Water argues that evidentiary hearings were held in prior proceedings that addressed WRAM issues. (Cal Water at pp. 34-35.) Most of those proceedings were individual water utility GRC proceedings in which customer water rates were set for that specific utility. As discussed more fully in section V. C., below, this is a rulemaking proceeding in which the Commission is setting policy for the entire water industry on a prospective basis. Here, the Commission did not set any rates for any water utility.

Cal Water argues that it would have provided “pertinent evidence” if the Commission had held evidentiary hearings.¹⁰ (Cal Water at pp. 34-35.) However, hearings were not necessary for Cal Water to present such evidence. Cal Water and any other party had every opportunity to present such evidence in its comments to the September 2019 ALJ Ruling Inviting Comments, but declined to do so. As the Court found in *BullsEye Telecom*, “[i]f petitioners had relevant evidence to present on that issue but failed to do so, that was their own strategic decision and they cannot now be heard to complain.” (*BullsEye Telecom*, *supra*, 66 Cal.App.5th at 327.)

¹⁰ The evidence Cal Water alleges it would have provided is irrelevant to the Rulemaking proceeding. That evidence is more appropriately presented in its next GRC proceeding in which the Commission will set rates for Cal Water’s customers.

Moreover, nothing in the Scoping Memo precluded the WRAM utilities from requesting hearings. In fact, the Scoping Memo stated that hearings are not required at this time. It further stated that if hearings are required at a later date, an amended scoping memo would be issued. (Scoping Memo at p. 4 [CWA Appx. 47].) The parties at any time could have filed a motion to request hearings. No party did. Even after the September 2019 ALJ Ruling Inviting Comments specifically asked for comments on whether the Commission should consider replacing the WRAM with the Monterey-Style WRAM, no party requested hearings. More than ten months elapsed, after the parties filed their reply comments to the September 2019 ALJ Ruling Inviting Comments, before the Proposed Decision was issued. The parties had adequate time to file a motion requesting hearings after the ALJ ruling requested comments on that issue.

Further, the parties had notice that, as a pilot program, the continuation of the WRAM and MCBA was regularly under consideration. From the time the WRAMs were initially authorized, the Commission regularly evaluated whether the WRAM and MCBA should be continued and highlighted the need for further consideration. In D.12-04-048 (*WRAM Amortization Decision*) the Commission ordered “a more vigorous review of the [WRAM/MCBA] mechanisms and options to the mechanisms, as well as sales forecasting, be conducted [in] each applicant’s pending or next [GRC] proceeding.” It further ordered the utilities to address five options in those proceedings, including whether the Commission should adopt a Monterey-Style WRAM

rather than the existing full WRAM and whether the Commission should eliminate the WRAM mechanism. (*Id.* at pp. 42-43.) In D.16-12-026 the Commission stated: “We conclude that, at this time, the WRAM mechanism should be maintained.” (D.16-12-026 (*Water Action Plan Rulemaking Decision*) at p. 41.) Finally, the Petitioners’ filings themselves show the Commission’s ongoing evaluations of the viability of the WRAM in their individual GRC, and other, proceedings. (See, e.g., *Golden State* at pp. 17-19, *Cal Water* at pp. 18-19, *Liberty* at pp. 17-18.) There was no scoping memo violation, and even if there had been, Petitioners were not prejudiced because they had ample opportunity to address the issue.

In the Amicus Curiae Letter of National Association of Water Companies (NAWC), NAWC argues that it was precluded from participating in R.17-06-024 because the Scoping Memo did not indicate the Commission would consider eliminating the WRAM during the proceeding. It alleges it was therefore deprived of the opportunity to participate in the proceeding to provide the Commission a “full and robust record on which to base its decision.” (Amicus Curiae Letter at p. 6.).

Even assuming, *arguendo*, that NAWC was under the mistaken belief that the issue of forecasting did not include the WRAM, its allegations are disingenuous at best. As discussed more fully below, NAWC’s members were participants in the proceeding, so it should have been well aware that the September 2019 ALJ Ruling Inviting Comments had requested comments on the Commission’s discontinuation of the WRAM. NAWC could

have requested party status at that time. Instead, it filed its request for party status almost a year later. By the time NAWC requested party status on July 22, 2020, Phase I of the proceeding had been submitted and the Proposed Decision had been issued.

Moreover, NAWC's motion for party status never mentioned Phase I, filing comments on the Proposed Decision, or the issue of the WRAM. In fact, its references to Covid-19 indicated it was interested in participating in Phase II of the proceeding because the scoping memo for Phase II identified Covid-19 as an issue to be addressed:

NAWC's member companies share a deep understanding of the importance of uninterrupted delivery of quality water and wastewater services. Water plays an essential role in any thriving community and our nation's economy. Our water infrastructure systems are the backbone upon which communities survive and prosper. NAWC shares the Commission's interest in issues concerning affordability of clean, safe drinking water for low-income customers and disadvantaged communities.

Now more than ever, access to quality water and wastewater services is critical for the containment of COVID-19 and the preservation of public health and sanitation. Our member companies are working to combat the spread of COVID-19 by ensuring the communities they serve have unimpeded access to clean water in order to promote personal hygiene and overall public health. As the COVID-19 pandemic continues to evolve, NAWC is committed to the health of our nation's water systems by offering the information and resources we have at our disposal to communities in need. NAWC can draw upon the

experience of member companies nationwide and provide insight as to industry best practices.

NAWC expects to file comments when given the opportunity and participate in workshops to the extent possible. NAWC's participation will not raise new issues in this proceeding, will not prolong or delay this proceeding, and will not adversely affect the interests of existing parties.

(National Association of Water Companies Motion for Party Status, filed July 22, 2020 [Resp. Appx. 021-023].) NAWC's reference to participating in workshops further supports its intent to participate in Phase II of the proceeding, rather than Phase I.

Accordingly, the ALJ Ruling granted NAWC party status for Phase II. (August 27, 2020 E-Mail Ruling Granting Party Status to National Association of Water Companies at pp. 3-4 [Resp. Appx. 026-027].) A review of the docket card in the Rulemaking reveals that NAWC has made no filings in Phase II of the proceeding.

Nonetheless, NAWC's interests were well represented in that proceeding. All four of the petitioning water companies in Case Numbers S269099 and S271493 are active members of NAWC. The remaining petitioner, CWA, serves as a chapter of NAWC:¹¹

¹¹ NAWC website at <https://nawc.org/about-2/our-members/active-members/> and <https://nawc.org/chapters/california/>. The Commission respectfully requests that the Court take judicial notice of NAWC's website pages identified above, as permitted under Evidence Code section 452 subdivision (h) as the Petitioners in this case are capable of confirming or denying, with accuracy, their membership in NAWC. (Resp. Appx. 028-031].)

The California Water Association (CWA) is an independent organization that also serves as a chapter of the NAWC. CWA represents the interests of approximately 125 investor-owned water utilities that are regulated by the California Public Utilities Commission

Regardless of the reason NAWC was not a party to Phase I of the proceeding, it has failed to show that it was prejudiced by that decision. Many members of NAWC were active participants in that phase of the proceeding.

B. Petitioners were afforded due process.

Petitioners contend they were denied due process because they were not given a meaningful opportunity to be heard and to respond to the discontinuation of the WRAM in violation of statutory requirements and constitutional due process. Golden State and Liberty contend the Decision violated section 1708 by failing to have an evidentiary hearing before discontinuing the WRAM. More specifically, they argue that the Decision's order to refrain from seeking WRAM/MCBAs in their next general rate case proceedings rescinds previous Commission decisions without affording parties a meaningful opportunity to address the relevant issues as required by section 1708. (Golden State at pp. 34-37, Liberty at pp. 32-34.)

Section 1708 provides the Commission discretion to rescind, alter, or amend any order or decision made by it:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or

decision shall, when served upon the parties, have the same effect as an original order or decision.

The Petitioners are incorrect in their argument that Section 1708 provides the right to evidentiary hearings in the Rulemaking proceeding. The Decision does not rescind, alter, or amend any prior decision. Rather, based upon the record in the Rulemaking proceeding, the Commission determined that it was no longer necessary to incent the water utilities to promote water conservation. The Decision specifically stated that the policy decision to discontinue the use of the WRAM would be implemented in the utilities' next GRCs. (Decision at p. 76 [Golden State Appx. 353].) Because no changes or modifications were made to any prior decisions, section 1708 is not implicated, and no hearing is required.

Even assuming, *arguendo*, that Petitioners did have a statutory right to hearings, Petitioners waived that right by not requesting that the Commission schedule hearings. In *California Trucking Association v. Public Utilities Commission* (1977) 19 Cal.3d 240 (*California Trucking*), a ratesetting proceeding, the Commission cancelled minimum rates on the transportation of flattened automobile bodies. The petitioner had requested a hearing on two separate occasions, but the Commission refused those requests. (*California Trucking Assn. v. Pub. Util. Com.*, *supra*, 19 Cal.3d at 242-243.) Although the Court, based on the circumstances in that case, found that the petitioner was entitled to a hearing, it also noted that “[i]f no party seeks to challenge a proposed order except by merely submitting written comments on its merits, the commission is not required to hold a hearing.” (*Id.*

at p. 245.) Further, the Court found that “there is nothing remarkable in the concept that one who is entitled to a hearing may waive his right thereto by failing to assert it.” (*Id.* at p. 245, fn. 7.) As discussed above, section 1708 does not provide the right to evidentiary hearings in this proceeding. But even if Petitioners had such a right, the Commission did not violate Petitioners’ due process rights as no party requested evidentiary hearings.

Golden State alleges that because its authorization to use the WRAM/MCBA was granted following an evidentiary hearing, section 1708.5 subdivision (f) is applicable in the Rulemaking. (Golden State at p. 37.) The Commission does not dispute that section 1708.5 subdivision (f) grants the right to an evidentiary hearing under certain circumstances. However, as discussed above, even if Golden State were entitled to an evidentiary hearing in the Rulemaking, it waived that right by failing to assert it.

Golden State and Liberty next argue that because “no evidence on the efficacy of the WRAM/MCBA or the effects of its elimination had been collected in the Rulemaking ..., the WRAM utilities had no reason to imagine that the Commission would eliminate the WRAM/MCBA in the Rulemaking.” (Golden State at p. 36, Liberty at pp. 33-34.) As Commission-regulated water utilities, Petitioners are well aware that a rulemaking proceeding develops record evidence through the parties’ submission of comments on questions posed by the Commissioner or ALJ. (See discussion, *infra*, § V. C. at p. 43.) The September 2019 ALJ

Ruling Inviting Comments notified the parties that “the proposed decision in this proceeding may include amendments to the Commission’s program rules” and “[i]n order to ensure a complete record for consideration in this proceeding the parties, in addition to commenting on the attached Staff Report, are to respond to the questions set out below.” (September 2019 ALJ Ruling Inviting Comments at p. 2 [CWA Appx. 126].) One of those questions alerted the parties that the Commission was considering whether it should convert WRAMs to Monterey-style WRAMs. This was the time for the parties to provide evidence, and establish a record, on whether the Commission should do so. It is not clear how the water utilities could have “had no reason to imagine” that the Commission would eliminate the WRAM when the September 2019 ALJ Ruling Inviting Comments specifically asked that question. The Commission cannot be faulted for the Petitioners’ decision to decline to provide evidence for the record.

BullsEye Telecom addressed this due process issue. In that decision, the Court of Appeal found the petitioners had the opportunity to present evidence but had not done so. (*BullsEye Telecom, supra*, 66 Cal.App.5th at 327.) The Court held: “[i]f petitioners had relevant evidence to present on that issue but failed to do so, that was their own strategic decision and they cannot now be heard to complain.” (*Ibid.*) Likewise, in the present case, Petitioners had the opportunity to provide substantive comments in response to the questions in the September 2019 ALJ Ruling Inviting Comments, but declined to

do so. They cannot now complain that they lacked the opportunity to be heard.

Further, Petitioners' reliance on *California Association of Nursing Homes, etc. v. Williams* (1970) 4 Cal.App.3d 800 is misplaced. (Golden State at p. 36, Liberty at p. 34.) In that case, the defendant agency, required by statute to create Medi-Cal reimbursement rates for nursing homes, failed to produce an evidentiary record for the court to review and the defendant agency based its decision on off-the-record, private negotiations with select affected businesses, rather than public hearings as required by statute. (*Cal. Assn. of Nursing Homes, etc. v. Williams, supra*, 4 Cal.App.3d at 810-812.) Golden State and Liberty argue that this case requires that evidence must be made available for rebuttal by affected parties. (Golden State at p. 36, Liberty at 34.) Here, the Commission's Rulemaking was a public proceeding. The entire record is available to the parties on the Commission's website, all parties were entitled to attend the workshops and file opening and reply comments, and there are no allegations of private negotiations.

Nonetheless, Golden State and Liberty argue that the only evidence in the record to support the Decision's elimination of the WRAM is Public Advocates Office's graph and because it had no opportunity to rebut this data, the Commission violated section 1708 and the WRAM utilities' due process rights. (Golden State at pp. 36-37, Liberty at p. 34.)¹²

¹² See page 47 for a discussion that the Public Advocates Office's graph is not "the only evidence in the record to support the Decision's elimination of the WRAM."

It is well established that due process requires "adequate notice" and an opportunity to be heard. "Due process as to the commission's initial action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made." (*People v. Western Airlines, Inc.* (1954) 42 Cal.2d 621, 632.)

Discontinuation of the WRAM/MBCA was raised throughout the proceeding and the opportunity to file opening and reply comments on this specific issue was explicitly provided in the September 2019 ALJ Ruling Inviting Comments. The graph at issue was provided in Public Advocates Office's reply comments in response to CWA's opening comments. (*Reply Comments of the Public Advocates Office on the Water Division's Staff Report and Response to Additional Questions*, September 23, 2019 at pp. 6-7 [Golden State Appx. 461-462].) In the ten months between Public Advocates Office's introduction of the graph and the issuance of the Proposed Decision, Petitioners never sought the opportunity to respond to the graph. Petitioners and the other parties could have filed a motion to strike the graph or a motion requesting the opportunity to respond to the graph. No party did so.

As discussed above, the parties did not avail themselves of the opportunity to address the graph; they "cannot now be heard to complain." Petitioners have not shown that the Commission failed to proceed in the manner required by law.

C. The Decision is supported by record evidence.

Petitioners argue that the Decision is not supported by the record. More specifically, they contend that elimination of the WRAM is not supported by record evidence. Despite these allegations, there is ample record evidence to support the Commission's Decision.

The Decision is an exercise of the Commission's legislative powers. The proceeding from which the Decision arose is a rulemaking, categorized as quasi-legislative, which places the matter within the public utility legislative function. (See *Wood v. Public Utilities Com.* (1971) 4 Cal.3d 288, 291 (finding that "[i]n adopting rules governing service and in fixing rates, a regulatory commission exercises legislative functions delegated to it ...").) A legislative or quasi-legislative proceeding stands in contrast to a quasi-adjudicative proceeding, which involves an agency "applying an existing rule to existing facts," whereas the legislative function involves "creating a new rule for future application." (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 275 (internal citation marks omitted).) Here, the Commission's actions were entirely prospective and clearly legislative in nature — i.e., updating program rules and establishing new programs. When acting in its legislative capacity the Commission has broad discretion. (See e.g., *id.* at p. 306 (applying the narrow arbitrary and capricious standard of review to an agency acting in a quasi-legislative capacity).)

When the Commission is acting in its legislative capacity it can rely on facts beyond just those established in an evidentiary

hearing, with freedom to consider a broader set of record evidence, including “legislative facts.” Indeed, the California Supreme Court explained that the facts found when an agency is performing a quasi-legislative function “must themselves be viewed as quasi-legislative in nature. All are informed with legal, policy, and technical considerations... . Consequently, none is similar to the sort of 'historical or physical facts' ... typically found in the course of administrative adjudication.” (*20th Century Ins., supra*, 8 Cal.4th at 278, fn. 12.) The Court went on to note that agencies can consider “legislative facts” that may fall outside the record (*id.* at p. 306), which are general facts that do not directly concern the parties, but can assist the Commission in deciding “questions of law and policy and discretion.” (*Western Oil & Gas Assn. v. State Lands Com.* (1980) 105 Cal.App.3d 554, 565; *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service* [D.99-07-047] 1999 Cal. PUC Lexis 451 at pp. 23-24.)

In the Rulemaking proceeding, the Decision’s policy determinations are well supported by the record evidence, which includes party comments in response to the July 10, 2017 Rulemaking 17-06-024; party comments in response to the multiple ALJ rulings inviting comments; and the multiple Staff Workshop Reports. The Commission considered this record evidence, along with legal, policy, and technical considerations, to reach its decision to discontinue any future authorization to use the WRAM/MCBA.

The above notwithstanding, Petitioners erroneously

contend that certain findings of fact and conclusions of law are not supported by record evidence in violation of section 1757.1 subdivision (a)(1). (Golden State at pp. 38-45, Cal-Am at pp. 38-44, Liberty at pp. 34-40.) Petitioners support their claims with evidence they provided in their comments on the Proposed Decision. (*Ibid.*)

However, comments on a proposed decision are not record evidence. Comments on a proposed decision must “focus on factual, legal or technical errors in the proposed ... decision and ... shall make specific references to the record or applicable law ... [or are] accorded no weight. (Cal. Code of Regs., tit. 20, § 14.3 subd. (c).)

Findings of Fact #13 and #14

Petitioners specifically argue that a critical determination in the Decision’s discontinuation of the WRAM/MCBA is its finding that the mechanisms are no more effective in promoting conservation than the Monterey-Style WRAM/ICBA mechanisms, as stated in Findings of Fact #13 and #14. (Golden State at pp. 38-41, Cal-Am at pp. 42-43, Liberty at pp. 35-38.)

Findings of Fact #13 and #14 state:

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.

Golden State and Liberty allege Finding of Fact #13 is solely based on the graph submitted in Public Advocates Office's September 2019 reply comments. (Golden State at pp. 39-40, Liberty at p. 36.). However, this argument is in error because the Rehearing Decision modified the Decision to remove Finding of Fact #13 from the Decision because it was not necessary. (Rehrg. Dec. at p. 34 [Golden State Appx. 528].)

Regarding Finding of Fact 14, Golden State and Liberty further argue that because the WRAM utilities were not provided an opportunity to counter Public Advocates Office's graph, no valid record was established on the issue of whether the WRAM/MBCA should be discontinued. (Golden State at pp. 38-39, Liberty at p. 37.) To support this claim, they cite *The Utility Reform Network v. Public Utilities Commission* (2014) 223 Cal.App.4th 945, 959 (*TURN*) and claim the "[C]ourt's point was that the question was not whether hearsay evidence was admissible in Commission proceedings, but whether the Commission may rely only on disputed evidence that has not been subject to cross-examination." (Golden State at p. 39, Liberty at pp. 35-36.) Golden State and Liberty misconstrue this decision. In fact, the Court stated: "Consequently, the issue before us is a narrow one. May the Commission base a finding of fact *solely* upon hearsay evidence where the truth of the extrarecord statements is disputed? The answer is no." (*TURN, supra*, 223 Cal.App.4th at 959, italics added.)

In *TURN*, the Commission held adjudicatory hearings to determine whether to grant permission to Pacific Gas & Electric

Company (PG&E) to enter into an energy contract. PG&E submitted the evidence in dispute, and because of its hearsay nature, the presiding ALJ ruled the materials could not be used as evidence of the need for the project in question. Then the Commission based the approval of the project solely upon that hearsay evidence. (*TURN, supra*, 223 Cal.App.4th at 949.)

Here, in this quasi-legislative proceeding, the Commission based its decision to discontinue the WRAM/MCBA on the voluminous comments submitted by the parties throughout the proceeding and other legislative facts derived from its decade of experience dealing with the WRAM/MCBA. The Decision cites many factors that support the discontinuation of the WRAM/MCBA. For example, it lists actions by the Legislature, the State Water Resources Control Board, and the Commission to achieve conservation; water use reduction mandates by Executive Orders of the Governor; negative customer experiences with WRAM surcharges; and that the WRAM/MCBA adjusts for variances in water sales for factors beyond just reductions caused by conservation. (Decision at p. 69 [Golden State Appx. 346].) The policy determination, in the Rulemaking proceeding, to discontinue the WRAM/MCBA is based on multiple factors and is well supported by the Decision. Therefore, *TURN* is not relevant to this proceeding.

Next, Cal-Am and Golden State claim that there are flaws in the graph provided by Public Advocates Office, so the graph does not support a finding that the M-WRAM is as effective as the WRAM/MCBA in promoting conservation. Therefore, Cal-Am

and Golden State conclude, the Commission failed to establish any valid evidentiary record on this point. (Cal-Am at p. 43, Golden State at pp. 39-40.) This conclusion is inaccurate. Again, Cal-Am and Golden State cite to their comments on the Proposed Decision as evidence to support their argument that there are flaws in Public Advocates Office's graph. As discussed above, new evidence offered in comments on a proposed decision are not part of the record and are accorded no weight. (Cal. Code of Regs., tit. 20, § 14.3 subd. (c).) Additionally, new evidence may not be introduced in the Court's review of this case. (Pub. Util. Code § 1757.1 subd. (c).)

Moreover, Petitioners never disputed the accuracy of the utilities' annual report data submitted to the Commission on which Public Advocates Office relied, nor did they question the accuracy of the calculations Public Advocates Office made to arrive at the data reflected in the graph. Petitioners simply object to the inferences Public Advocates Office made about the data reflected in the graph.

Findings of Fact #15 and #16

Golden State argues there is no evidence to support findings regarding substantial under-collections and intergenerational transfers of costs. However, Golden State erroneously dismisses other parties' comments filed in the Rulemaking's record as cited by the Rehearing Decision at pages 14-15. Instead, Golden State asserts its arguments, provided in comments on the Proposed Decision that are not in the record, disproves the findings in the Decision. (Golden State at p. 43.)

Moreover, the proffered data, which is not record evidence, only addresses two of Golden State's many service areas. However, the Decision considers the WRAM/MCBA mechanism generically for all the service areas of all the WRAM utilities to make its policy determination. The Rehearing Decision sufficiently identifies the basis for the Decision's findings regarding the existence of substantial under-collections and intergenerational transfers of costs, therefore, Golden State's allegation of obfuscation is unfounded. (Rehrg. Dec. at pp. 14-15 [Golden State Appx. 508-509].)

Finding of Fact #19

Cal-Am relies on *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251 and *Camp Meeker Water System, Inc. v. Public Utilities Com.*, *supra*, 51 Cal.3d 845 to support its claim that the Commission commits legal error when it issues a decision which is unsupported by evidence before it. (Cal-Am at p. 38-39.) However, that is not the situation in this proceeding. Cal-Am's petition provides several reasons for its belief that the evidence relied on by the Decision is faulty, however, it fails to provide references to any evidence in the record that contradicts that evidence. (Cal-Am at pp. 39-43.) Cal-Am merely disagrees with the Commission's policy determination. It has not shown legal error.

Cal-Am alleges Finding of Fact #19 is unsupported by the record. Finding of Fact #19 states:

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

This Finding of Fact is supported by Public Advocates Office's comments, which addressed incentives to develop accurate forecasts:

[T]he Public Advocates Office strongly supports the development of forecasts that are as accurate as possible for both revenues and expenses. When revenue variances are tracked in decoupling mechanisms (i.e., Water Revenue Adjustment Mechanisms (WRAMs)), and/or expenses are tracked in balancing and memorandum accounts, it reduces the financial repercussions to the utility of inaccurate forecasts. This, in turn, reduces the utility's incentive to develop accurate forecasts. This can result in misguided attempts by Water IOUs to lower rate increases in General Rate Cases (GRCs) with artificial forecasts that are deliberately inaccurate (e.g. higher adopted sales quantities or lower proposed expenses), with the resulting variances recovered through different mechanisms between GRC cycles that provide for rate increases via a less transparent process.

(Reply Comments of the Public Advocates Office on Administrative Law Judge's Ruling Inviting Comments on Water Division Staff Report and Modifying Proceeding Schedule, July 24, 2019, at p. 2 [Resp. Appx. 015].) Public Advocates Office further addressed the incentive to manipulate forecasts to produce smaller increases in rates:

Utilities should not propose and the Commission should not adopt sales forecasts with any particular rate outcome in mind. Instead of lowering noticed rate impacts with [higher] than reasonable sales forecasts and allowing new mechanisms to "stagger the impact on customers into smaller increments" as suggested by CWA, the water utilities should propose accurate forecasts openly and transparently in GRCs. Customers should not be required to face the

continued uncertainty of stealth rate increases that accompany the operation of existing—much less new—alternative rate mechanisms.

(*Id.* at pp. 2-3 [Resp. Appx. 015-016].)

Cal-Am argues, more specifically, that there is no record to support the claim that eliminating the WRAM/MCBA will provide better incentives to more accurately forecast sales. To support this argument, it alleges that there is no factual or evidentiary support for Public Advocates Office’s statements regarding risks associated with forecasting, on which the Decision relied. (Cal-Am at p. 41.) As discussed above, party comments are the record evidence in rulemaking proceedings. Moreover, Cal-Am cites to no record evidence that contradicts Public Advocates Office’s comments.

Similarly, Cal-Am erroneously argues that there is nothing in the record that addresses whether sales forecasts are more significant with the Monterey-Style WRAM, as stated in Finding of Fact #19. (Cal-Am at p. 41.) Public Advocates Office’s quoted language above stating that when revenue variances are tracked in decoupling mechanisms like the WRAM, it reduces the financial repercussions to the utility of inaccurate forecasts, contradicts Cal-Am’s arguments. Logic dictates when revenue protection for inaccurate forecasts is discontinued, forecasting becomes more significant, both to the utility and the ratepayer.

Conclusion of Law #4

Cal-Am next alleges Conclusion of Law #4 is unsupported by the record. Conclusion of Law #4 states:

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.

Conclusion of Law #4 is based on the language in the Decision on page 18 [Golden State Appx. 296], which reads:

In addition, parties highlighted the reality that drought is the new normal in California and that forecasts need to be more accurate so that WRAMs can be smaller, and that the Monterey-Style WRAM would provide better incentives for parties to more accurately forecast sales while still providing the utility the ability to earn a reasonable rate of return.

This statement is supported by Public Advocates Office's Comments on Phase I Issues, in which it discusses the reduced risk associated with WRAMs:

. . . [W]ith revenue decoupling for water utilities,[fn.] the impact on water utilities of forecast variance is muted since nearly all revenue forecast risk has been transferred from utility investors to ratepayers. As a result of the WRAM decoupling mechanism in California, variance in forecasted revenues manifests not as the normal business risk underpinning rate-of-return regulation but as the perceived cause of large WRAM balances and increased customer surcharges.

By mitigating the consequences of inaccurate sales forecasts, WRAM and other decoupling mechanisms can be reasonably assumed to not only reflect variances in sales forecasts but to exacerbate the actual size of the variance.

(Public Advocates Office Comments on Phase I Issues February 23, 2018, at p. 8 [Cal-Am Appx. 70].) The discussion on increased risk associated with converting WRAMs to M-WRAMs in Southern California Edison's

Comments also support that statement:

In certain situations, implementing a Monterey-Style WRAM with a MCBA may balance the benefits and risks of implementing a conservation rate design more equitably among stakeholders. However, implementing a Monterey-Style WRAM as opposed to a full decoupling WRAM requires shareholders may be required to make up the difference for any shortfalls in authorized revenue not related to the use of a conservation rate design that far exceeds normal business risk. [fn.]

(Southern California Edison Comments on Staff Report, September 16, 2019, at p. 4 [Cal-Am Appx. 97].)

Finally, Cal-Am argues that the Commission's conclusion that utilities will still have the opportunity to earn a reasonable rate of return is contradicted by Cal-Am's experience in Monterey. First, Cal-Am's experience in Monterey is not in the record of this proceeding. More importantly, the Commission did not set rates in the Rulemaking so the Decision does not affect rate of return. In future GRCs of the water utilities, the Commission will make the appropriate changes necessary to provide water utilities the opportunity to earn a reasonable rate of return.

Moreover, Cal-Am provides no citations to the record to support any of these allegations, but refers to language in its comments to the Proposed Decision, which is not part of the evidentiary record.

D. The Commission considered the impact of its decision on conservation and low-income customers.

Golden State and Liberty contend that the Decision violates section 321.1 subdivision (a) by failing to consider the consequences of the Decision on all ratepayers and on low-income customers. Petitioners' claims are unfounded. As discussed below, the Decision addressed the elimination of the WRAM and its effect on ratepayers.

The relevant part of section 321.1 subdivision (a) requires the Commission to assess the consequences of its decisions:

It is the intent of the Legislature that the commission assess the consequences of its decisions, including economic effects . . . as part of each ratemaking, rulemaking, or other proceeding, and that this be accomplished using existing resources and within existing commission structures.

More specifically, Golden State and Liberty argue that nothing in the record addresses how elimination of the WRAM will impact low-income customers. (Golden State at pp. 43-45, Liberty at pp. 38-39.) However, “[t]he plain language of the statute only requires the Commission to ‘assess’ the economic effects of a decision. It does not require the Commission to perform a cost benefit analysis or consider the economic effect of its decision on specific customer groups or competitors.” (*Order Instituting Rulemaking on the Commission’s Own Motion to Establish Consumer Rights and Protection Rules Applicable to All Telecommunications Utilities Rehearing Decision* [D.06-12-042] at pp. 17-18.)

Similarly, Cal Am contends that the Commission erred by failing to consider the consequences of the Decision on rate design, conservation, and low-income customers. Golden State, Liberty, and Cal-Am cite *United States Steel Corporation v. Public Utilities Commission* (1981) 29 Cal.3d 603, 608-609 (*U.S. Steel*) to support this contention. (Golden State at p. 43, Liberty at p. 38, Cal Am at pp. 32, 38.) However, *U.S. Steel* is not on point. In that case, this Court annulled the Commission's decision because the Commission refused to consider the economic effect of authorizing different rates for similar services over similar routes. That decision was the result of a ratesetting proceeding. As discussed above, the challenged Decision in this case came out of a rulemaking proceeding. Here, the Commission requested comments on whether it should consider discontinuing the WRAM/MCBA and the water utilities chose not to put forth any substantive evidence. Now, Cal Am is arguing that the Commission failed to consider evidence it provided in its comments on the Proposed Decision, well after the proceeding was submitted. (Cal Am at pp. 32, 38.) Likewise, Golden State and Liberty allege the Commission failed to consider extra-record evidence. (Golden State at p. 44, Liberty at pp. 38-39.)

It is well established that an agency's duty is to weigh the relevant evidence provided in a proceeding. However, Cal-Am offers nothing to show that the Commission failed to consider all the relevant evidence in this proceeding. For example, it asserts that the Commission failed to consider the potential rate design impacts of eliminating the WRAM and in doing so, the

Commission failed to consider the effect of changed rate design on conservation and low-income customers again citing to its comments on the Proposed Decision, which is not record evidence. (Cal-Am at pp. 33-37.)

Cal-Am's claims are unfounded. The Commission did not set rates in the instant proceeding, therefore, there is no impact on rate design for the Commission to consider. The Commission has considered the material facts and weighed the relevant evidence provided in the record of this proceeding. (Decision at pp. 68-69 [Golden State Appx. 345-346].)

In its consideration of the economic impacts of the Decision, the Commission explains that the appropriate place to address how each utility will provide for conservation and low-income customers, is in the water utilities' individual general rate cases, where rate design can be tailored to the specific circumstances of each district, in the setting of rates. (Decision at p. 68 [Golden State Appx. 345].) CWA's comments, on behalf of the water utilities, reflect a similar opinion:

While the Commission should rightfully strive to set forth general principles and goals for the utilities to achieve in this proceeding, many of the details of implementation are going to depend on the specific circumstances for each utility district and so should be addressed on a district-by-district basis. This will require a careful and nuanced approach.

(Comments of CWA Responding to the Administrative Law Judge's September 4, 2019 Ruling at p. 18 (CWA Appx. 165).)

As stated above, the appropriate place for the Commission to address rate design, on a district-by-district basis, is in a general rate case proceeding in which the Commission sets rates for that specific water utility. Petitioners have failed to show the Commission erred.

E. The Commission properly characterized the proceeding as quasi-legislative.

Cal Water argues that the Commission erroneously mischaracterized the proceeding as quasi-legislative rather than ratesetting, which deprived it of procedural rights available only in ratesetting proceedings.

First, Cal Water claims that eliminating the WRAM is an unlawful ratesetting action, so it was improper for the Commission to categorize the proceeding as quasi-legislative. (Cal Water at p. 40.) Section 1701.1 subsection (d)(1) defines quasi-legislative cases as proceedings that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry. R.17-06-024 is an order instituting rulemaking proceeding that established rules for the entire water industry. It is not a ratesetting proceeding because the Commission was not setting rates for any specific utility. (Pub. Util. Code § 1701.1 subd. (d)(3).) The discontinuation of the WRAM was a policy decision affecting all water utilities, which will be applied in future rate proceedings. While the ordering paragraph identified the utilities that currently employ the WRAM, the adopted policy is applicable to all water utilities. (R.17-06-024 at p. 19, Ordering Paragraph #7 [Cal Water Appx. 70].)

Further, once the Commission has categorized a proceeding, section 1701.1 subsection (a) states, in relevant part, “the decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision or of any subsequent ruling that expands the scope of the proceeding. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review”

As discussed above, the issue was explicitly presented in the September 2019 ALJ Ruling Inviting Comments. At that time CWA, on behalf of the water utilities, filed comments regarding that issue. If Petitioners believed the ALJ had expanded the scope of the proceeding, they had ten days in which to seek rehearing on the original categorization. The parties may not now challenge the categorization of the proceeding.

Next, Cal Water argues that it was denied procedural protections as a result of the improper categorization. (Cal Water at pp. 41-43.) As discussed above, the proceeding was not miscategorized, therefore no procedural protections were denied.

Cal Water next contends that the Commission violated sections 728 and 729 by eliminating the WRAM because it effectively fixed water rates without holding a hearing. (Cal Water at pp. 43-45.) Cal Water’s contention is not correct as the Commission did not fix any water rates. Both section 728 and 729 address the Commission’s authority to fix rates. Cal Water fails to identify any rate that was set during the proceeding.¹³

¹³ Cal Water cites caselaw to show that “these statutory provisions have been construed by the California Supreme Court

Accordingly, Cal Water's related argument that mischaracterization of proceedings is a recurring issue that the Court must address to stem an onslaught of petitions for writ of review challenging future Commission decisions is entirely devoid of merit. It improperly references applications for rehearing that are pending before the Commission that were filed subsequent to the issuance of D.20-08-047, the challenged decision in this case. (Cal Water at pp. 45-46.) The Court should strike this argument and the associated exhibit as Cal Water may not introduce new or additional evidence in its Petition. (Pub. Util. Code § 1757.1 subd. (c).) The issues in those applications for rehearing are not properly before this Court.

VI. CONCLUSION

For the reasons discussed above, each of the petitioners has failed to demonstrate any basis for the Court to grant its writ petition. As a result, the Commission respectfully requests that the Court deny every petition.

as requirements for the Commission to hold hearings prior to the implementation of new rates." (Cal Water at p. 44.) Because rates were not set in this proceeding, these cases are not on point.

January 28, 2022

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Answer of Respondent is 13,557 words in length. In completing this word count, I relied on the “word count” function of the Microsoft Word program.

Dated: January 28, 2022 By: /s/ DARLENE M. CLARK
DARLENE M. CLARK

Attachment 2: Calculation of Rate Increase due to WRAM (WRS Proposal)

	REVENUES WITH WRAM		REVENUES WITHOUT WRAM	
	Present Rate Revenue	Proposed Revenue	Present Rate Revenue	Proposed Revenue
NORTHERN	85,126.6	99,687.3	85,724.4	99,705.6
CENTRAL	89,727.7	99,171.1	89,727.7	99,171.1
SOUTHERN	128,865.1	140,836.0	129,898.5	141,414.2
TOTAL	303,719.4	339,694.4	305,350.6	340,290.9
% Increase	11.8%		11.4%	
Requested Revenue Increase	\$35,975.0		\$34,940.3	
Revenue Increase Attributable to WRAM	\$1,034.7			
Source:	2023-01-27 A2207001 CAW Updated Application Workpapers - Summary of Earnings (w decoupling), page 28 of 73 (Northern), page 40 of 73 (Central), page 16 of 73 (Southern)		2023-01-27 A2207001 CAW Updated Application Workpapers - Summary of Earnings (wo decoupling), page 28 or 73, page 41 of 73 (Central), page 16 of 73 (Southern)	

Attachment 3: Witness Qualifications

QUALIFICATIONS AND PREPARED TESTIMONY
OF
RICHARD RAUSCHMEIER

Q.1 Please state your name and address.

A.1 My name is Richard Rauschmeier, and my business address is 505 Van Ness Avenue, San Francisco, CA 94102.

Q.2 By whom are you employed and what is your job title?

A.2 I am the Program Manager of the Water Branch for the Public Advocates Office at the California Public Utilities Commission.

Q.3 Please describe your educational and professional experience.

A.3 Prior to coming to the Commission in 2008, I worked in finance and business development for several large and small organizations. I have a bachelor's degree from Johns Hopkins University in environmental science with a concentration in water treatment, and a Master of Science degree in Management from Purdue University. I have been certified as both a Grade III Water Treatment and Distribution Operator by the State of California and have attended numerous utility ratemaking trainings and seminars.

Q.4 What is your area of responsibility in this proceeding?

A.4 In addition to general oversight, I am sponsoring the Public Advocates Office Report on Cal Am's Special Request #1.

Q.5 Does that complete your prepared testimony?

A.5 Yes, at this time.

EXHIBIT B

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American
Water Company (U210W) for
Authorization to Increase its Revenues
for Water Service by \$55,771,300 or
18.71% in the year 2024, by \$19,565,300
or 5.50% in the year 2025, and by
\$19,892,400 or 5.30% in the year 2026.

Application 22-07-001

**OPENING BRIEF OF THE PUBLIC ADVOCATES OFFICE
ON DECOUPLING ISSUES**

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December 6, 2023

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
SUMMARY OF RECOMMENDATIONS	iv
I. INTRODUCTION.....	1
II. BACKGROUND/PROCEDURAL HISTORY.....	2
A. History of Full WRAM	2
B. Procedural History.....	3
C. Standard of Review	4
1. Cal Am has not met its burden of proof in this proceeding to establish a full WRAM.....	5
2. Cal Am Offers Weaker Evidence of Full WRAM Conservation Impact Despite Cal Am’s Ability to Produce Stronger Evidence.	5
III. DISCUSSION.....	7
A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM).....	7
1. Water Resources Sustainability Plan (WRSP).....	7
a) Essential Services Balancing Account (ESBA)	11
b) Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)	12
c) Amortization (Updated Special Request No. 14).....	13
d) Rate Design	14
2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM).....	15
a) Full Cost Balancing Account (FCBA) / Incremental Cost Balancing Account (ICBA) (Special Request No. 2).....	16
b) Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3).....	18
c) Amortization (Special Request No. 14)	19
d) Rate Design	19

	(1) Fixed (Meter) Charge versus Quantity Charge Ratios.....	21
	(2) Meter charges.....	23
	(3) Tier breakpoints and consumption ratios per tier	24
B.	Comparison of Impacts of Full WRAM WRSP and M-WRAM	25
1.	Conservation.....	25
a)	Cal Am fails to establish that conservation expenditures are a proxy for actual reduced water usage.....	25
b)	Differences in conservation spending are not proportionately reflected in WRAM and M-WRAM utilities’ water use.	26
2.	Customer Bills.....	28
a)	The WRSP proposal would continue customer confusion experienced under full WRAM.	29
b)	Cal Am’s WRSP proposal does not provide for improved transparency and accuracy in reporting ESRB balances.	29
c)	The WRSP is full WRAM packaged with an array of historical WRAM mitigation measures.	31
3.	Utility Earnings	32
IV.	CONCLUSION	34
ATTACHMENT A		

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Monterey Peninsula Water Management District v. Public Utilities Commission</i> (2016) 62 Cal.4th 693, 699-700	7
 <u>Commission Rules of Practice and Procedure</u>	
Rule 13.12.....	1
 <u>California Public Utilities Code</u>	
451	4
454, subd. (a)	4
727.5	1, 3, 4, 7
 <u>Commission Decisions</u>	
D.08-12-058.....	5
D.16-12-026.....	<i>passim</i>
D.18-12-021.....	4
D.20-08-047.....	<i>passim</i>
D.21-11-018.....	12, 22
 <u>California Constitution</u>	
art. XII, § 6	7

SUMMARY OF RECOMMENDATIONS

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) provides the following summary of recommendations addressed in this opening brief:

1. California American Water Company (Cal Am) has failed to demonstrate by a preponderance of the evidence that its proposal for a full Water Revenue Adjustment Mechanism (WRAM), called the Water Resources Sustainability Plan (WRSP), is just and reasonable.
2. Section 727.5 of the Public Utilities Code must be interpreted consistently with the Commission's statutory mandate to set just and reasonable rates. Section 727.5 does not restrict the Commission's authority and discretion to reject a full decoupling or full WRAM proposal, if upon consideration of the full WRAM proposal, the Commission finds that it is not consistent with just and reasonable rate-setting.
3. The Commission should consider Evidence Code section 412 in evaluating the evidence presented by Cal Am's witnesses because it was reasonably within their power to produce stronger evidence supporting Cal Am's argument that full WRAM has significant conservation benefits compared to the Monterey-style WRAM (M-WRAM), if any such evidence can be produced.
4. The Commission should find that Cal Am's proposed WRSP, as a full WRAM, does not target conservation impacts on revenue and is wholly indifferent to the reasons for reduced consumption and sales in compensating the utility for the difference between actual revenue and authorized revenue.
5. Cal Am's full WRAM proposal would impede Commission reasonableness review safeguards that otherwise apply to recovery of actual costs.
6. Cal Am's full WRAM proposal inequitably distributes risk between the utility and ratepayers.
7. The Commission should deny Cal Am's Updated Special Request No. 3 requesting modifications to the Annual Consumption Adjustment Mechanism (ACAM).
8. The Commission should deny the portions of Cal Am's Updated Special Request No. 14 seeking exceptions to the 15 percent cap on recovery of future undercollected WRAM balances.
9. Full WRAM is unnecessary because Cal Am can prospectively include the cost of conservation programs and anticipated usage reductions in rates, along with its reasonable rate of return.

10. M-WRAM will better address reduced revenues that may result from conservation-oriented tiered rate design, without overbroad revenue protection for consumption changes wholly unrelated to conservation.
11. The Commission should adopt Cal Am's Alternative Special Request No. 1 and direct Cal Am to transition to an M-WRAM.
12. Consistent with transition to an M-WRAM, the Commission should authorize an Incremental Cost Balancing Account (ICBA) for the San Diego and Ventura County Districts, per Cal Am's request.
13. The Commission should deny Cal Am's request for a Full Cost Balancing Account (FCBA) in the Monterey, Los Angeles, Sacramento, and Larkfield districts and direct Cal Am to adopt ICBA's in those districts.
14. Cal Advocates' recommendation that the Commission reject Cal Am's full WRAM WRSP proposal, in addition to Cal Advocates' recommended fixed charge revenue recovery amounts, fully complies with the Commission's direction in D.16-12-026 despite fixed charge recovery amounts below the 40 recommended percent floor.
15. The Commission should adopt Cal Advocates' rate design recommendations, including fixed charge revenue recovery amounts, meter service charges, tier breakpoints, and tier consumption levels as presented in the tables in Attachment 1.
16. Cal Am has not established a causal link between increased conservation expenditures and actual reduced water usage and differences in conservation spending are *not* proportionately reflected in WRAM and M-WRAM utilities' water use.
17. The Commission should reaffirm its finding in D.20-08-047 that full WRAM has had a negative impact on customer bills due to surcharges to recover large undercollected WRAM balances.
18. Cal Am's reporting and accounting of WRAM balances is historically error-prone and lacking transparency. The WRSP proposal would add complexity to already problematic accounting of undercollected ratepayer funds.
19. The Commission should reject the WRSP proposal because it is not an improvement over full WRAM but is WRAM repackaged with an array of historical WRAM mitigation measures.
20. Authorization of Cal Am's full WRAM WRSP proposal would enable Cal Am to retain profits above authorized rates of return and in addition to excess profit that traditional ratemaking already permits utilities to retain as an incentive for increasing efficiency (i.e., the difference between actual cost of operations and actual revenues).

Pursuant to Rule 13.12 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules), and consistent with the schedule established in the October 31, 2023 *Administrative Law Judge’s Ruling Updating the Proceeding Schedule and Providing Direction Regarding Briefing*, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this brief on WRAM/Decoupling Issues in California-American Water Company’s (Cal Am) *Updated Application of California-American Water Company for Authorization to Increase its Revenues for Water Service (Application)*.

I. INTRODUCTION

This general rate case proceeding offers the Commission an opportunity to consider Cal Am’s request for a full-decoupling water revenue adjustment mechanism (or full WRAM) through a finer lens than has previously been possible. The Commission now has the benefit of the analysis, findings, and conclusions about full WRAM in D.20-08-047,¹ along with parties’ testimony and other evidence in the record of this proceeding to inform the Commission’s determination of whether Cal Am’s full WRAM proposal (termed the Water Resources Sustainability Plan or WRSP in Cal Am’s updated application) or the alternative Monterey-style WRAM (M-WRAM) is consistent with just and reasonable rates while allowing the utility a fair rate of return.²

¹ *Decision (D.) 20-08-047 and Order* (August 27, 2020) (resolving Phase I of Rulemaking 17-06-024). The provision of Ordering Paragraph 3 of D.20-08-047 prohibiting certain Class A water utilities from proposing in future general rate cases to continue their “existing Water Revenue Adjustment Mechanisms/Modified Cost Balancing Accounts” was overturned by the legislature in enacting Senate Bill 1467 (codified as Public Utilities Code section 727.5) in 2022. While the legislation requires consideration of a WRAM, it grants the Commission discretion as to whether to grant the WRAM and does not prohibit Monterey WRAM or any other alternative mechanism. See *Administrative Law Judge’s Ruling Directing California-American Water Company to Provide Additional Information and Directing All Parties to Meet and Confer and to Submit a Proposed Schedule* (ALJ Ruling on WRAM Consideration), November 15, 2022, at 2.

² *Administrative Law Judge’s Ruling Directing California-American Water Company to Provide Additional Information and Directing All Parties to Meet and Confer and to Submit a Proposed Schedule*, November 15, 2022, at 3; Exh. CALAM-DM-002, Supplemental Direct Testimony of David Mitchell, dated January 27, 2023, at 4:6-7 (using terms WRAM and WRSP interchangeably to refer to decoupling mechanism).

Cal Advocates and Cal Am agree that over the past decade, the Commission has been running what amounts to a natural experiment on the comparative effects of operating with full WRAM versus M-WRAM.³ While Cal Am takes umbrage with conclusions that the Commission has drawn - chiefly, that full WRAM does not result in actual reductions in water usage to a degree significantly better or worse than M-WRAM⁴ - ultimately Cal Am fails to refute that conclusion. Specifically, Cal Am still has not established that having full WRAM is the actual cause of water savings to any degree greater than M-WRAM.⁵

II. BACKGROUND/PROCEDURAL HISTORY

A. History of Full WRAM

Water utilities began implementing WRAM in 2008 as part of the Commission's pilot program to promote water conservation.⁶ After a long period of reviewing WRAM's effects on conservation and customers, the Commission ordered that water utilities "shall not propose continuing existing [WRAMs]" in their next general rate cases.⁷ Cal Am and other water utilities requested rehearing, which the Commission denied.⁸ On October 27, 2021, various water utilities, including Cal Am, filed writ petitions requesting injunctive relief to set aside D.20-08-047 insofar as it prohibits the

³ See Exh. CALAM-DM-002, at 11:16-19 (stating that the Commission "has, in effect, been running a natural experiment in rate design incentives for the past ten or so years by fully decoupling some of the Class A utilities and keeping the others on the M-WRAM"); CALAD-RR-001, Public Advocates Office Prepared Testimony of Richard Rauschmeier, *Report and Recommendations on Cal Am's Special Request #1*, dated April 13, 2023, at 5:11-13 (noting that "the Commission's natural experiment allowed comparison of actual consumption results of all nine large investor owned water utilities evenly distributed between those having and not having WRAM, operating within a single regulatory jurisdiction with similar state-wide conservation messaging over the same period of time").

⁴ D.20-08-047, Finding of Fact 14, at 102.

⁵ See Reporter's Transcript (RT), Vol. 5, at 256:19-23 to 257:1-11 (CALAM, Mitchell, Cross Exam.) (confirming that a careful statistical analysis comparing water savings between full WRAM and M-WRAM utilities was not performed by Cal Am's consultants or included in their testimony).

⁶ D.20-08-047, at 57.

⁷ D.20-08-047, at 106.

⁸ *Order Denying Rehearing of Decision 20-08-047, as Modified*, September 23, 2023.

water utilities from proposing the continuation of WRAM. This litigation is pending before the California Supreme Court.²

On September 20, 2022, Governor Newsom signed Senate Bill (SB) 1469, codified at Public Utilities Code section 727.5 and effective as of January 1, 2023, which addressed water utility revenue adjustment mechanisms and provided that for Class A water utilities' next general rate cases, the Commission "shall consider and may authorize" proposals for decoupling mechanisms.¹⁰

B. Procedural History

On July 1, 2022, Cal Am submitted its first general rate case application following D.20-08-047. Consistent with the Decision, Cal Am's original application requested authorization to implement Monterey-Style WRAM (M-WRAM). Cal Advocates protested the application.¹¹

In anticipation of SB 1469 taking effect on January 1, 2023, Cal Am sought to update its application to request a full decoupling mechanism (full WRAM) instead of only the M-WRAM.¹² The Commission granted the request, directing Cal Am "to file an updated application proposing WRAM and Monterey WRAM as alternatives for the Commission's consideration..." In addition, the Commission directed that the update "include the necessary supporting documentation, including supporting testimony, to compare the impacts of WRAM and Monterey WRAM side by side."¹³

Cal Am filed an updated application on January 27, 2023, to request implementation of a full WRAM, or alternatively, M-WRAM.¹⁴ Cal Advocates protested

² See *Golden State Water Company v. California Public Utilities Commission*, review granted June 1, 2022, S269099 and S271493.

¹⁰ Sen. Bill No. 1469 (2021-2022 Reg. Sess.), codified at Public Utilities Code Section 727.5.

¹¹ *Protest of the Public Advocates Office*, August 5, 2022,

¹² *Motion for Adoption of a Procedural Schedule to Consider a Decoupling Mechanism* (October 10, 2022) (California American Water Company).

¹³ ALJ Ruling on WRAM Consideration, at 4.

¹⁴ *Updated Application of California-American Water Company to Increase Revenues in Each of its Districts Statewide*, January 27, 2023.

Cal Am’s updated application.¹⁵ The Parties engaged in settlement discussions that resulted in a partial settlement between Cal Am and Cal Advocates on a number of disputed issues in the proceeding. Rate design and Cal Am’s request for a full WRAM were left for Commission resolution after evidentiary hearings and briefing.¹⁶ In anticipation of this partial settlement agreement, Administrative Law Judge Rambo ordered a bifurcated briefing schedule to separately address “WRAM/Decoupling” and “Non-WRAM/Decoupling issues.”¹⁷ Evidentiary hearings concluded on October 10, 2023. Cal Am and Cal Advocates subsequently executed the partial settlement agreement and filed a joint motion on November 17, 2023, seeking the Commission’s adoption of the settlement.¹⁸

This opening brief addresses the WRAM/Decoupling issues.

C. Standard of Review

As Cal-Am bears the burden of proof, it must show that the regulatory relief it requests is just and reasonable and that the related ratemaking mechanisms, in this instance Cal Am’s proposed WRSP, are fair.¹⁹ The Commission has held that the standard of proof a utility applicant must meet in rate cases is that of a preponderance of the evidence, noting that preponderance of the evidence is “usually is defined in terms of

¹⁵ *Protest of the Public Advocates Office to Updated Application of California-American Water Company* February 6, 2023.

¹⁶ The partial settlement left various matters for the Commission to resolve: rate design and Special Request Numbers 1, 2, 3, 4, 5, 6, 9, and 13 in Cal Am’s application (as updated).

¹⁷ *Administrative Law Judge’s Ruling Updating the Proceeding Schedule and Providing Direction regarding Briefing*, October 31, 2023, at 1-2.

¹⁸ *Joint Motion for Adoption of Settlement and Settlement Agreement*, November 17, 2023.

¹⁹ D.18-12-021, *Decision Adopting the 2018, 2019, and 2020 Revenue Requirement for California-American Water Company*, December 13, 2018, at 10. The Commission is charged with ensuring that all rates demanded or received by a public utility are just and reasonable, and that “...no public utility shall change any rate... except upon a showing before the Commission, and a finding by the Commission that the new rate is justified.” Pub. Util. Code, §§ 451, 454, subd. (a).

probability of truth, *e.g.*, ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’”²⁰

1. Cal Am has not met its burden of proof in this proceeding to establish a full WRAM.

Cal Am attempts to package its proposed WRSP as an improvement upon full WRAM that addresses previous Commission concerns with the impacts and effectiveness of full WRAM. However, the record does not support several premises essential to determining whether the WRSP adequately resolves the issues with full WRAM that were the basis for the Commission’s finding it *not* to be a just and reasonable ratemaking mechanism.²¹ Cal Am has not shown that its proposed WRSP would address the Commission’s primary concerns with WRAM as identified in D.20-08-047 – chiefly, that the WRSP would, first, target actual conservation impacts on Cal Am’s revenue or result in any measurable decreases in water use;²² second, incentivize Cal Am’s sales forecasting accuracy in general rate cases;²³ or third, be any more reasonable in the risk and financial burdens it shifts to Cal Am’s ratepayers.²⁴

2. Cal Am Offers Weaker Evidence of Full WRAM Conservation Impact Despite Cal Am’s Ability to Produce Stronger Evidence.

Further, the record of this proceeding raises evidentiary issues that may be instructive in assessing the credibility and weight to be given to parties’ testimony. Cal

²⁰ D.08-12-058 *Granting a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project*, December 24, 2008, at 19, citing Witkin, Calif. Evidence, 4th Edition, Vol. 1, 184.

²¹ D.20-08-047, at 99-100.

²² D.20-08-047, at 55 (observing that “[the] WRAM/MCBA...adjusts for all water consumption reductions, not just consumption reductions due to implementing conservation”).

²³ D.20-08-047, at 50-51 (presenting factors that utilities must consider in sales forecasting in a general rate case).

²⁴ D.20-08-047, at 53. The risk that full WRAM shifts to ratepayers has not been quantified in a previous GRC proceeding, but the Commission determined that full WRAM inappropriately “transfers risk for utility operations from shareholders to ratepayers.”

Am brings significant resources to bear in this proceeding in the form of professional consultants and statistical analysts to support its case for a full WRAM.²⁵

Cal Am suggests that a “careful statistical analysis” comparing water savings between full WRAM and M-WRAM utilities would reasonably have been within the capability of Cal Am to produce, had it chosen to produce such analysis for this proceeding.²⁶ This may be instructive in assessing the credibility and weight to be given to parties’ testimony. Specifically, consistent with Evidence Code section 412, where weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. Here, Cal Am’s failure to provide a comparison of water savings achieved by full WRAM and M-WRAM utilities should be considered as weighing against Cal Am’s evidence.²⁷

Echoing the Commission’s observation in D.20-08-047 that no party had provided persuasive evidence showing that WRAM/MCBA provided “discernable benefits that merit its continuation,” here Cal Am fails to show that there is a meaningful difference between the conservation impacts of full WRAM and M-WRAM. Where any differences appear, Cal Am fails to establish causation between having a full WRAM and greater conservation or conservation-related activity.²⁸ Thus, Cal Am has not met its burden to show that its full WRAM WRSP proposal is justified or reasonable. Therefore, the Commission should reject Cal Am’s proposal.

²⁵ Exh. CALAM-DM-001, Direct Testimony of David Mitchel, dated July 1, 2022, Attachment 1; Exh. CALAM-TWC-001, Supplemental Direct Testimony of Thomas W. Chesnutt, January 27, 2023, Attachment 1; and Exh. CALAM-BP-001, Direct Testimony of Bahman Pourtaherian, July 1, 2022, at 1-2.

²⁶ See RT Vol. 5 at 249:3-5 (CALAM, Mitchell, Cross Exam.) (indicating that consulting firm M.Cubed was never tasked with analyzing water use by full WRAM versus M-WRAM utilities); see also Exh. CALAM-DM-002, Supplemental Direct Testimony of David Mitchell, dated January 27, 2023, Attachment 1 at 22 (stating that “[careful] statistical analysis that controls for confounding factors affecting water use is needed to really figure out what was going on during this period [from 2008 to 2018]”).

²⁷ See Evid. Code, § 412.

²⁸ D.20-08-047, at 68-69.

III. DISCUSSION

A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

Public Utilities Code section 727.5 requires that the Commission “consider” Cal Am’s request for a full WRAM decoupling mechanism, but this consideration must include analysis of whether the proposal for a full WRAM comports with just and reasonable rate-setting.²⁹ Section 727.5 must be interpreted consistently with the Commission’s statutory mandate to set just and reasonable rates. Thus, the Commission has the discretion and authority to reject any full decoupling proposal determined incompatible with just and reasonable rate-setting.³⁰

1. Water Resources Sustainability Plan (WRSP)

As a full decoupling proposal, Cal Am’s Water Resources Sustainability Plan (WRSP) serves the same stated purpose as a full WRAM, “to decouple sales from revenues and thus promote conservation.”³¹ However, neither a full WRAM nor the proposed WRSP target conservation-related revenue impacts.³² The WRSP would allow Cal Am to continue to recover its adopted revenue forecast, regardless of the utility’s actual costs and without further review to ensure that the revenue amounts sought for recovery are just and reasonable.³³

²⁹ Public Utilities Code §§ 451, 454(a); Exh. CALAD-RR-001, at 4:1-3.

³⁰ ALJ Ruling on WRAM Consideration, at 3. *See Monterey Peninsula Water Management District v. Public Utilities Commission* (2016) 62 Cal.4th 693, 699-700 (noting that the Commission’s “authority to enforce the ‘just and reasonable’ standard with respect to public utilities is not rooted in section 451, but instead derives from the Commission’s constitutional power to fix the rates of public utilities (Cal. Const. art. XII, § 6).”

³¹ D.20-08-047, at 101, Finding of Fact 4; *see also* Exh. CALAM-DM-002, at 4:6-7 (stating that “[under] the WRAM or California American Water’s proposed WRSP, revenue is fully decoupled from sales”).

³² Exh. CALAD-RR-001, at 13-14; D.20-08-049, at 69 (stating that the Commission is “not persuaded that the WRAM/MCBA adjusts for consumption reductions due to implementing conservation”).

³³ *See* Exh. CALAM-SWO-002A, at 34:22-24 (noting that because WRAM is a balancing rather than a memorandum account, recovery of WRAM is a ministerial process requiring filing of a Tier 1 advice letter).

A core feature of full WRAM is that the utility’s entire adopted revenue forecast is deemed preemptively reasonable and appropriate for recovery.³⁴ The difference between actual sales and the forecast is then recoverable by annual advice letter filing and ministerial approval by Commission staff.³⁵

Cal Am’s description of the traditional process by which utilities recover their fixed costs and a reasonable rate of return provides a useful point of contrast. As Cal Am’s policy consultant notes, water utilities are highly capital-intensive and a high percentage of water system costs are fixed.³⁶ Utilities recover a large portion of fixed costs through volumetric rates to provide an incentive for efficient water use and conservation.³⁷ However, this process presents risks:

[If] sales are below expected, and particularly in drought scenarios where [sales] may be 20, 30 percent below expected, you're not going to recover *a significant portion of your fixed costs*. And inevitably, whether you're a public or private utility, you ultimately have to recover those [fixed] costs in order to maintain investment and rehabilitation in the system in order to provide safe and reliable water to your customers (emphasis added).³⁸

Full WRAM and traditional regulation both involve rate increases to account for revenue shortfalls. A notable difference is that in the traditional recovery scenario above, Cal Am infers that the utility must “inevitably” adjust rates to recover its *fixed costs*.³⁹ In contrast, with full WRAM the utility is able to recover its *forecasted revenue* regardless

³⁴ Exh. CALAM-SWO-002A, at 48:13-15.

³⁵ See Exh. CALAM-SWO-002A, at 34:22-24 (describing ease of recovering WRAM balances through annual advice letter filings, compared to memorandum account cost recovery that requires the Commission’s discretionary review for reasonableness of the requested costs). WRAM balances are theoretically offset by corresponding decrease in production expenses tracked in the Modified Cost Balancing Account (MCBA), but in practice there is more often an *increase* in production expenses, resulting in compounding of the WRAM undercollection by the MCBA rather than an offset.

³⁶ RT, Vol. 5, at 320:7-12 (Cal Am, Mitchell) (responding to question from ALJ).

³⁷ RT, Vol. 5, at 320:13-25 to 321:1-3 (CALAM, Mitchell) (responding to question from ALJ).

³⁸ RT, Vol. 5, at 320:13-25 to 321:1-3 (CALAM, Mitchell) (responding to question from ALJ).

³⁹ RT, Vol. 5 at 319:25 to 320:1-3 (CALAM, Mitchell) (responding to question from ALJ) (observing that “customers conserve and they’re rewarded with a rate increase. And that...occurs regardless of whether a decoupling [mechanism] is in place....”).

of whether it actually incurred the same estimated costs. Furthermore, ratepayers are required to make full WRAM utilities whole for revenue losses regardless of the causes of the decline in volumetric sales.⁴⁰

Full WRAM/WRSP precludes Commission reasonableness review safeguards that apply to recovery of actual costs. Cal Am lauds the certainty and relative speed of revenue recovery under full WRAM compared to memorandum accounts that require a reasonableness review of actual costs sought for recovery.⁴¹ WRAM is considered “a balancing account recovered through annual advice letter filings” and is “a mechanical calculation that is verified, with ministerial approval, by CPUC staff.”⁴² By comparison, recovery of costs recorded in a memorandum account requires either a Tier 3 advice letter filing subject to Commission reasonableness review and disposition by Commission resolution, or a request for recovery in a general rate case.⁴³

Full WRAM inequitably distributes risk between the utility and ratepayers. The Commission has plainly stated that “WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers.”⁴⁴ The recorded history of WRAM/MCBA balances and

⁴⁰ Exh. CALAD-RR-001, Attachment 1, *Answer of Respondent to Petitions for Writ of Review*, January 28, 2022, at pdf p. 31 (stating that WRAM/MCBA shifts risk of revenue loss due to economic downturn onto ratepayers, in contrast to traditional regulation, where utilities bear the risk of economic contractions).

⁴¹ CALAM-SWO-002A, at 34-35 (comparing recovery under WRAM versus a Lost Revenue Memorandum Account or LRMA and noting that non-WRAM utilities using LRMA were not guaranteed recovery of the full amounts recorded in their LRMAs because of the reasonableness review and other requirements imposed on memorandum account cost recovery).

⁴² CALAM-SWO-002A, at 34:22-24 to 35:1-2.

⁴³ CALAM-SWO-002A, at 34-35. Cal Am’s preference for a full WRAM is understandable given that no reasonableness review of recorded costs is necessary for recovery. The extent of Commission oversight is effectively limited to authorizing the sales forecast.

⁴⁴ D.20-08-047, at 53 (stating “WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers, eliminates the incentives to efficiently manage water production expenses, and eliminates the incentive to accurately forecast sales in a GRC”). Cal Am points to a different portion of D.20-08-047 (at 73) where the Commission states (in a section discussing the need for forecasting accuracy and reliability) that WRAM removes “most of the consequences [of forecasting inaccuracy] from the utility and most of the risk from customers.” Rather than attempting to parse and reconcile the meaning of these two apparently conflicting statements, it makes more sense to consider the statements in the overall context of the decision, which determined that the WRAM/MCBA mechanism provides no discernable benefits that merit its continuation (67-68).

surcharges further demonstrates that the burdens and benefits created by full WRAM disproportionately favor utilities.⁴⁵ While Cal Am asserts that “[equitable] treatment of risk does not require that the risks be evenly distributed,” equitable treatment does require some form of equitable distribution.⁴⁶

Ratepayers underwrite the utility’s recovery of its full revenue requirement regardless of the accuracy of its forecast or reason for decreased sales. Despite Cal Am’s claim that full WRAM protects customers from the risk of revenue overcollection, this purported benefit is almost entirely theoretical, because WRAM/MCBA surcredits on customer bills are extremely rare.⁴⁷ Recovery of undercollections under Cal Am’s proposed WRSP would function in essentially the same manner as a full WRAM via surcharges on customer bills.⁴⁸ Although full WRAM and WRSP would allow for a refund to customers of any overcollected amounts (actual sales exceeding forecasted revenue), actual overcollections are rare in the history of WRAM.⁴⁹ Thus, any risk to

⁴⁵ See Exh. CALAD-RR-001, Attachment 1: Answer of Respondent to Petitions for Writ of Review, at pdf p. 31 (stating that ratepayers

...are required to make WRAM/MCBA utilities whole for revenue losses during these economic downturns. In contrast under traditional regulation, utilities bear the risk of these economic contractions, as do many other types of businesses and industries. Utilities are compensated for this risk of economic contractions in their adopted rates of return.

⁴⁶ Exh. CALAM-DM-003, at 62:7-8. To carry Cal Am’s auto insurance analogy illustrating ‘uneven but equitable’ risk distribution a step further, full WRAM ensures that the 46-year-old driver—who is also the parent (aka, ratepayers)—of the 16-year-old male driver (aka, the utility) will be forced to indefinitely continue paying for the 16-year-old’s high-risk insurance premiums (i.e., utility’s recovery of its entire revenue forecast), along with their own lower premium (i.e., the utility’s actual cost of operations). Further, the 16-year-old is unconcerned with the 46-year-old’s premium as long as his own insurance premium is paid (i.e., WRAM is indifferent to actual cost of operations). Ultimately, however, the analogy only works if every household is required to have a 16-year-old male driver as a necessity of life (eliminating the voluntary assumption of risk by parents that does not apply to ratepayers).

⁴⁷ A cursory review of Cal Am’s Annual Reports Schedule E-1, column (h) “Surcredits” from 2008-2022 shows that for each WRAM/MCBA district over the 14 years of records, a WRAM/MCBA surcredit has been recorded only four times: Monterey in 2009 and Los Angeles in 2014-2016 (See Exhs. CALAD-004, CALAD-015, and CALAD-017). The surcredits column is otherwise empty.

⁴⁸ Exh. CALAM-JTL-002, at 18:8-15 (explaining identical function of ESRB components under WRSP proposal to the WRAM/MCBA).

⁴⁹ See D.20-08-047, at 62 (noting that “review of WRAM utility balancing accounts over the past years rarely indicates an over-collected balance”); D.12-04-048, at 3 (stating “After the WRAM/MCBA

customers of overcollection that WRAM or the WRSP purports to mitigate is negligible compared to the risk shifted to customers under a full decoupling mechanism.⁵⁰ The protection full WRAM provides against negative demand shocks benefits the utility far more than the protection against positive demand shocks benefits ratepayers.⁵¹

Cal Am’s WRSP proposal incorporates re-branded WRAM/MCBA components, along with a revised ACAM intended to further moderate the tendency of a full WRAM to generate undercollection balances more rapidly than Cal Am can recover them through surcharges.⁵²

a) Essential Services Balancing Account (ESBA)

The ESBA performs the same function as full WRAM with two subaccounts serving the same purposes as WRAM and MCBA; respectively, the Essential Service Revenue Balancing Account (ESRBA) and the Essential Service Cost Balancing Account (ESCBA).⁵³ The ESRBA, like the WRAM, tracks the difference between recorded quantity revenues or sales (i.e., recorded ESRBA-eligible revenue) and forecasted sales (i.e., adopted ESRBA-eligible revenue).⁵⁴ Similarly, the ESCBA serves to track

mechanisms were first adopted in 2008, there have primarily been under-collections, and these under-collections are often quite substantial”).

⁵⁰ See Exh. CALAD-RR-001 at 12:14-17; D.20-08-047, at 53 (stating that the WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers).

⁵¹ Exh. CALAD-RR-001, at 12:18-23 (explaining that Negative demand shocks—where actual sales are lower than forecasted—are more unpredictable and severe than positive demand shocks where sales exceed the forecast).

⁵² Exh. CALAD-SWO-026, Cross-Examination Exhibit: 2022 Annual Report of California-American Water Company, Schedule E-1, Line 26, column (i) (showing End of Year WRAM/MCBA undercollected balance of (\$16,913,844); Exh. CALAM-JTL-002, at 2:15-26; and Exh. CALAM-SWO-002, at 6:17-18.

⁵³ RT, Vol. 5 at 349:19-21 (CALAM, Owens) (on cross exam), acknowledging that ESBA “performs the same function” as the full WRAM); CALAM-JTL-002 at 2:21-23. Cal Am describes the operation of WRAM as “[tracking] the difference between the fixed costs recovered in the actual billed quantity revenue and adopted revenue that was authorized to be recovered by the quantity rate to recover fixed costs.” CALAM-SWO-002A at 48-49.

⁵⁴ See Exh. CALAM-JTL-002, at 2:16-17, 3:5-9. “Non-ESRBA-eligible revenue” includes metered service charges, private hydrant service, and flat rate residential service among other items. Non-ESRBA eligible revenue and adopted ESRBA-eligible revenue together generate Cal Am’s adopted revenue requirement.

differences in only some (and not all) costs, namely purchased water and power, pump taxes, chemicals, and similar costs that vary based on the amount of water sold, to offset quantity revenues—the function historically performed by the MCBA.⁵⁵

b) Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)

The Commission should deny Cal Am’s Updated Special Request No. 3 seeking modifications to the ACAM because the proposed additional ACAM filings and trigger provisions would result in multiple rate adjustments between general rate cases.⁵⁶ Further, if the state adopts mandatory conservation requirements, under mandatory conservation both full WRAM and ACAM’s automatic forecasting adjustments to manage WRAM balances would become irrelevant.⁵⁷

The Commission authorized Cal Am’s current Annual Consumption Adjustment Mechanism (ACAM) in D.21-11-018 as a permanent program for the Monterey Service Area and a pilot program for all other Cal Am service areas to bring large undercollected WRAM balances under control.⁵⁸ While ACAM was intended to address one of the problematic effects of full WRAM, it failed to address the cause.⁵⁹ If the Commission rejects Cal Am’s proposed WRSP, the cause of the undercollection balance would be eliminated and none of Cal Am’s proposed modifications to ACAM would be necessary, as no future ESBA balances would require moderation.⁶⁰

⁵⁵ Exh. CALAM-JTL-002, at 2:15-19; D.20-08-047 at 57.

⁵⁶ See CALAD-MD-001, at 49:6-10.

⁵⁷ The California State Water Resources Control Board (SWRCB) is conducting a rulemaking called “Making Conservation a California Way of Life” (SWRCB Rulemaking) to consider permanent urban water use measures. See https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/water_efficiency_legislation.html#reg-docs (accessed on December 6, 2023).

⁵⁸ Exh. CALAM-JTL-001, at 29:1-3.

⁵⁹ D.20-08-047, at 51 (noting that allowing utilities to update sales forecasts annually was an “approach...intended to work in conjunction with a WRAM/MCBA”).

⁶⁰ Exh. CALAD-MD-001, at 48-49. Requested ACAM modifications include 1) a new trigger mechanism, 2) a new customer consumption alignment process, 3) a weather adjustment for the Southern Division, 4) adjustments allowed twice a year on January 1 and July 1, and 5) the ability to automatically adjust tier breakpoints to maintain sales allocations within tiers.

Further, Cal Am notes that in a mandatory conservation environment there would be no need to adjust forecasts and rates in response to unanticipated conservation mandates.⁶¹ Permanent conservation measures are currently the subject of a State Water Resources Board rulemaking.⁶² Traditional ratemaking, where customer rates are based on anticipated costs and revenues, accommodates mandatory conservation by including necessary conservation funding levels and resulting customer consumption to develop the rates customers pay (including the utilities' full authorized rate of return). Under mandatory conservation, Cal Am concedes that a full WRAM (and therefore the ACAM) serves no purpose.⁶³

c) Amortization (Updated Special Request No. 14)

Cal Am's request to continue a 15 percent cap on recovery of existing WRAM balances is included in the proposed settlement agreement between Cal Am and Cal Advocates.⁶⁴ In Cal Am's updated application as part of the WRSP proposal, however, Special Request No. 14 includes a request to exceed the 15 percent cap in order to recover future balances within 24 months.⁶⁵ The Commission should reject this request because the utility cannot realistically calculate in advance the number of months that would be required to recover a future unknown balance—too many variables impact the timing of recovery. The ability to increase the cap by an undetermined amount, in

⁶¹ Exh. CALAM-DM-002 at 24:13-16 (stating that where the utility can expect a supply shortfall or state regulatory mandate “with a reasonable degree of certainty,” it should adjust its sales forecast and water rates accordingly rather than relying on an automatic sales adjustment mechanism); Exh. CALAM-DM-002, Attachment 1, *Impacts on Customer Bills and Water Use of Recoupling Water Utility Revenue and Sales*, Appendix C – Analysis of State Water Board Data, at 33.

⁶² See SWRCB Rulemaking, https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/water_efficiency_legislation.html#reg-docs (accessed on December 6, 2023).

⁶³ See Exh. CALAM-SWO-002A, at 35:23-26, 36:3-5 (stating that full decoupling is less important during drought and mandatory conservation periods because water utilities generally can drive water use reductions under mandatory conservation without full decoupling).

⁶⁴ *Joint Motion for Adoption of Settlement Agreement and Settlement Agreement* (November 17, 2023).

⁶⁵ Exh. CALAM-JTL-002, at 13.

undefined circumstances, simply adds more variables.⁶⁶ The Commission should also reject Cal Am's request for exceptions to the 15 percent cap because it would be possible for Cal Am to impose higher surcharges without Commission oversight on the recovery amount.⁶⁷

d) Rate Design

Because forecasted conservation is built into rates, full WRAM, and by extension the WRSP proposal, is not essential to preserving the utility's opportunity for a fair return while promoting conservation⁶⁸. When the cost of thoughtfully planned conservation programs and concomitant reductions in water usage and revenue are incorporated in customer rates as part of the general rate case, the utility suffers no loss to its authorized profit for achieving the anticipated conservation goals.⁶⁹ Building conservation into rates effectively reconnects ratepayer funds to a discernable conservation benefit and allows for better Commission oversight of the rate impacts of conservation.⁷⁰

Cal Am asserts that the somewhat lower recovery of fixed costs through the meter charge in its WRSP proposal compared to M-WRAM would promote conservation and benefit low income customers, but both of Cal Am's proposals include increases in meter charge recovery compared to Cal Am's current meter charge ratio of 30 percent of its revenue requirement.⁷¹ For the Northern and Southern Divisions, Cal Am's WRSP proposal includes an increase from the current 30 percent of revenue requirement to 45

⁶⁶ Exh. CALAM-JTL-002, at 13.

⁶⁷ Exh. CALAD-MD-001 at 51:16-17; D.12-04-048, at 3 (noting that "high under-collections experienced in many districts lead to substantial surcharges being passed through to customers without notice in Tier 1 Advice Letters").

⁶⁸ See Exh. CALAD-RR-001 at 14-15.

⁶⁹ Exh. CALAD-RR-001, at 15:9-13.

⁷⁰ See Exh. CALAD-RR-001, at 15:5-7 (noting that "WRAM's theoretical basis requires the assumption that any reduction in water usage is the result of unplanned (yet intentional) actions taken by the utility between general rate cases").

⁷¹ See Exh. CALAM-BP-002, at 13:25-27 to 14:1-2 (stating that while WRSP proposed fixed cost recovery is lower than in Cal Am's M-WRAM proposal, the rate of recovery of the fixed cost in the meter will still be higher under the WRSP than currently); Exh. CALAM-JTL-001, at 8:15-18; Exh. CALAM-JTL-002 at 23:24-28.

percent of fixed costs.⁷² Because Cal Am does not present a like-for-like comparison, it is difficult to evaluate the impact of Cal Am’s shift from meter charge recovery as a percentage of revenue requirement to a percentage of fixed costs.⁷³ Further discussion of fixed charge recovery, along with Cal Advocates’ specific rate design recommendations, is continued in the M-WRAM rate design section of this brief and in the tables included in Attachment A.

2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

The Commission has previously indicated a preference for the so-called Monterey-Style WRAM (M-WRAM) over full WRAM, mainly because the M-WRAM is a targeted mechanism that adjusts for conservation-oriented tiered rate design without the broad revenue protection for consumption changes that may be wholly unrelated to conservation.⁷⁴ M-WRAM allows utilities to recover the difference between tiered-rate actual sales and a revenue-neutral uniform or “single quantity” rate.⁷⁵ While the M-WRAM does not fully decouple sales from revenues, it protects the utility from reduced revenues collected under tiered conservation rates as compared to a uniform rate design. Thus, M-WRAM has a clear nexus to conservation that full WRAM lacks.⁷⁶ Accordingly, the Commission should authorize Cal Am’s alternative request to transition to an M-WRAM.⁷⁷

⁷² See Exh. CALAD-HM-001, at 21:10; Exh. CALAM-JTL-002, at 23:24.

⁷³ See RT Vol. 7 at 680:13-19 Cal Advocates, Merida) (addressing difference between recovery of fixed costs versus full revenue requirement); Exh. CALAD-HM-001, at 21-22.

⁷⁴ D.20-08-047, at 57 (stating that “[the] Monterey-Style WRAM, a regulatory mechanism initiated in the Monterey District of California-American Water Company, recognizes that with higher tiered-rate there is an unstable revenue effect on Monterey-Style utilities due to small changes in water usage”).

⁷⁵ See CALAM-JTL-001, at 19:24-27 to 20:1.

⁷⁶ D.20-08-047, at 52.

⁷⁷ Exh. CALAD-RR-001 at 4:19-22 (further recommending that the Commission rename the M-WRAM mechanism to remove its misleading association with Monterey, California, and to avoid needless confusion with the eliminated WRAM mechanism).

**a) Full Cost Balancing Account (FCBA) /
Incremental Cost Balancing Account (ICBA)
(Special Request No. 2)**

The Commission should authorize an Incremental Cost Balancing Account (ICBA) for the San Diego and Ventura County Districts, per Cal Am's request.⁷⁸ The ICBA is the appropriate mechanism with M-WRAM for tracking offsetting (or compounding) volumetric expense differences caused by changes in the unit price for water and power for pumping, without regard to differences in actual volume of water sold.⁷⁹

However, the Commission should deny Cal Am's request for a Full Cost Balancing Account (FCBA) in the Monterey, Los Angeles, Sacramento, and Larkfield districts, however. The FCBA tracks both the expense differences caused by price changes from the original authorized unit price, and variances in quantity from the original authorized amounts.⁸⁰ Thus, FCBA functions identically to the Modified Cost Balancing Account (MCBA) historically associated with WRAM, as well as the proposed ESCBA in Cal Am's WRSP (full WRAM) proposal.⁸¹ In support of its request for an FCBA in certain districts, Cal Am cites an example from San Gabriel Water Company's Fontana Water Company Division (Fontana Division), where a drop in water costs due to changing sources resulted in an overcollection that was refunded to customers.⁸² In San

⁷⁸ Exh. CALAD-MD-001 at 48:5-6; Exh. CALAM-JTL-001, Direct Testimony of Jeffrey T. Linam, dated July 1, 2022, at 23:25-27; Exh. CALAM-SWO-002A at 66:10-11.

⁷⁹ Exh. CALAM-JTL-001, at 25:5-7; D.20-08-047, at 52 (stating that "ICBA protects utilities from changes in the prices of water production components from what was adopted in establishing authorized rates") and at 101, Finding of Fact #6 (noting that "[the] ICBA provides that variable costs are reduced under the Monterey-Style WRAM mechanism when there is a reduction in supply costs").

⁸⁰ See CALAM-JTL-001, at 26:1-4. ICBA only records expense differences caused by supplier unit price changes but ignores any differences caused by changes in supply mix.

⁸¹ See CALAD-MD-001, at 48:7-11.

⁸² See CALAM-JTL-001, at 26-27 (describing scenario where San Gabriel Water Company obtained lower cost supply resulting in overcollection, which was refunded to customers as a result of having a full-cost balancing account that tracked both cost and supply mix). Compare Exh. CALAD-013, Schedule E-1, line 76 "WRAM/MCBA Ventura" indicating a revenue overcollection amount of \$848,258 in column (d) offset by an \$1.5 million increase in expenses in column (e). Cal Am's WRAM/MCBA reporting in Schedule E-1 of its Annual Reports for 2008 through 2022, column (h) "Surcredit," is blank

Gabriel Valley Water Company's subsequent rate case, the Commission authorized continuation of an FCBA for the Fontana Division, stating:

Drought conditions continue to highlight the supply uncertainties and variabilities inherent in [Fontana Division's] lower cost source, Lytle Creek surface water. Tracking all cost variances, including those prompted by actual quantities, of purchased water, purchased power and pump taxes, is therefore warranted for that division.⁸³

Unlike the San Gabriel Water Company example, Cal Am provides no evidence suggesting that a concurrent drop in water supply costs and quantity sold is likely to occur in the districts where Cal Am requests an FCBA. The suggestion that FCBA will protect customers from risk of overcollections is unsupported by the record, given the history of Cal Am's analogous MCBA balances. MCBA was intended to capture the change in production expenses accompanying lower or higher than forecasted sales and offset the WRAM undercollection amount with a corresponding reduction in volumetric expenses.⁸⁴ MCBA can also create an increase in the undercollected balance when volumetric expenses *increase* at the same time that actual sales are below the forecasted amount.⁸⁵ Because FCBA would function the same way, the Commission should reject Cal Am's request for FCBA in Monterey, Los Angeles, Sacramento, and Larkfield districts, and direct Cal Am to adopt ICBA's in those districts instead.⁸⁶

For the power for pumping expense portion of the Cal Am's ICBA's, Cal Am's request for one division-wide per kWh rate and one rate calculation per year is unnecessary because the Commission's authorization of ICBA's for San Diego and

with very limited exceptions (Monterey in 2009 and Los Angeles in 2014-2016). Exhs. CALAD-003, 004, 005, 008, 009, 012, 013, 015, 017, 018, 019, 021, 022, 025, 026.

⁸³ Exh. CALAM-JTL-001, at 27:10-17 (excerpting D.10-04-031).

⁸⁴ D.20-08-047, at 57; Exh. CALAM-DM-002, at 4, FN 4.

⁸⁵ See, e.g., Exh. CALAD-18, Schedule E-1, Attachment 3, col. (e) "Offset Expenses," lines 70, 73-75 (showing increases in expenses that increased total WRAM/MCBA undercollected balance).

⁸⁶ Exh. CALAD-MD-001, at 48:6-11.

Ventura County Districts would not require a division-wide calculation.⁸⁷ Cal Am may use the unit rate for those specific districts.⁸⁸

b) Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3)

The Commission should discontinue the ACAM for all of Cal Am's districts because it enables Cal Am to modify the sales forecast between general rate cases (GRCs), thereby significantly modifying the cost of service outside of the GRC process.⁸⁹ An ACAM filing replaces the sales forecast authorized in the GRC with previous year recorded sales volume.⁹⁰ By changing GRC-authorized sales volumes between GRCs, ACAM effectively changes the cost of service for individual ratepayers reflected in customers' water bills or rates.⁹¹ This contradicts the Commission's Rate Case Plan, which provides for significant rate changes only once every three years.⁹² Moreover, ACAM creates customer planning, forecasting, and billing complications, resulting in unreliable and continually adjusted water bills.⁹³ The mechanism also invites room for error because of its administrative complexity. With ACAM, a cost-of-service calculation is performed based on the outcome of Cal Am's general rate case, then performed again annually. The surcharges calculated for the WRAM/MCBA must correctly correspond with the cost-of-service calculations. Given the large dollar amounts and numerous Cal Am districts, there is too much room for error in this approach.⁹⁴

⁸⁷ Exh. CALAM-JTL-001, at 28:6-8; Exh. CALAD-MD-001, at 48:14-16.

⁸⁸ Exh. CALAD-MD-001, at 48:17.

⁸⁹ Exh. CALAD-MD-001, at 49:6-8.

⁹⁰ RT, Vol. 9, at 659:17-24 (Cal Advocates, Dawadi).

⁹¹ RT, Vol. 9, at 661:2-10 (Cal Advocates, Dawadi).

⁹² Exh. CALAD-MD-001 at 49:8-10.

⁹³ Exh CALAD-MD-001, at 49:16-20.

⁹⁴ Exh CALAD-MD-001, at 49:10-15.

Cal Am claims that the ACAM filing does not modify or propose a new sales forecast.²⁵ However, as Cal Am explains, with ACAM the recorded consumption is used as the adjusted basis of projected consumption in the annual period following the recorded period.²⁶ Changing the following year’s authorized sales forecast based on the previous year’s recorded sales is essentially modifying the sales forecast authorized in the general rate case. Accordingly, the ACAM adjustments would change the cost of service for individual ratepayers and change approved water rates outside of the general rate case process.²⁷

As previously noted, the Commission intended ACAM to mitigate further ballooning of full WRAM balances. Therefore, the Commission should discontinue ACAM for all of Cal Am’s districts if the Commission rejects Cal Am’s WRSP proposal.²⁸

c) Amortization (Special Request No. 14)

Updated Special Request No. 14, requesting continuance of the 15 percent cap on recovery of WRAM and ESBA (if applicable) balances is included in the proposed settlement agreement between Cal Am and Cal Advocates.²⁹

d) Rate Design

Cal Advocates’ rate design recommendations not only “reduce reliance on WRAM/MCBA balances” and surcharges, but support conservation and customer bill control without a full WRAM.¹⁰⁰ In D.16-12-026, the Commission encouraged full

²⁵ Exh CALAM-SWO-002A, at 73:12-14.

²⁶ Exh CALAM-SWO-002A, at 73:13-14.

²⁷ RT, Vol. 7, at 559:12 to 661:15 (CALAD, Dawadi) (on cross exam.).

²⁸ Cal Am’s Preliminary Statement Part BT; CALAD-MD-001, at 49:20 to 50:2.

²⁹ *Joint Motion for Adoption of Settlement* (November 17, 2023).

¹⁰⁰ D.16-12-026, at OP13 (as an alternative to rate design proposals setting fixed charge revenue recovery with 40% floor and 50% ceiling, allowing for “proposals to reduce reliance on [WRAM/MCBA] balances, maintain an incentive for conservation of water, and address utility circumstances”); CALAD-HM-001, at 20:3-6 (stating that conservation and affordability are the basis of well-designed rate structure).

WRAM utilities to phase in higher fixed charge revenue recovery amounts to address the high WRAM/MCBA balances.¹⁰¹ As Cal Am notes, however, higher fixed charges can dampen conservation signals and impact lower-usage customers' bills.¹⁰²

Cal Am asserts that with M-WRAM it would have a less conservation-oriented rate design compared to Cal Am's historical rate design with full WRAM, based on its observation that M-WRAM utilities have less aggressive conservation rate designs.¹⁰³ However, Cal Am has not provided evidence indicating that having an M-WRAM would force Cal Am to adopt a rate design identical to what other M-WRAM utilities have previously used. To the contrary, in Cal Am's original application contemplating the transition to M-WRAM, Cal Am proposes to continue its four-tier conservation rate design, along with instituting other "robust conservation programs," and increasing Customer Assistance Program (CAP) discounts to mitigate impacts on customer bills for lower-tier usage customers.¹⁰⁴

¹⁰¹ D.16-12-026, at 53.

¹⁰² See CALAM-DM-002, at 10:20-23 (stating that recovering more revenue through fixed service charges "adversely impacts conservation and affordability"), 24:2-5 (stating that lower fixed service charges would result in lower bills for lower-volume and lower income customers).

¹⁰³ RT, Vol.5, at 296:9-17 (Cal Am, Mitchell) (stating that if Cal Am transitioned to an M-WRAM "and if [Cal Am] were to transition to rate designs that we've observed M-WRAM utilities or utilities with an M-WRAM adopting, then we would anticipate that...there would be an increase in water usage in their service areas") (emphasis added).

¹⁰⁴ See CALAM-JTL-001, at 8:11-15 (proposing in Cal Am's original application to increase Customer Assistance Program credit to 35% in Monterey Service Area to increase affordability for eligible lower-income customers, which would equate to 30% of the meter charge and volumetric charges in tiers 1 through 3), *id* at 13:10-20 (describing conservation rate designs and other proposals "to preserve gains achieved in water conservation").

(1) Fixed (Meter) Charge versus Quantity Charge Ratios

Cal Advocates' recommended meter or fixed charge ratios are expressed in its testimony as percentages of fixed charge recovery from the revenue requirement, rather than percentages of recovery from *fixed costs*.¹⁰⁵ Revenue requirement is the Commission's point of reference in D.16-12-026 in setting the 40 percent floor and 50 percent ceiling as the target for fixed charge recovery.¹⁰⁶ Cal Am expresses its current 30 percent fixed charge ratio in terms of revenue recovery, but its proposed fixed charge ratios are percentages of fixed costs.¹⁰⁷ To permit like-for-like comparison to Cal Am's proposed fixed charge amounts, Cal Advocates used Results of Operations model data to present its fixed or meter charge recommendations as a percentage of fixed costs in Attachment A, Table 1, Fixed Cost Recovery. As shown in Table 1, Cal Advocates recommends that ratio of fixed cost recovery from fixed or meter charges versus quantity charges should be 40/60 for Monterey County Main and all service areas in the Northern Division, 50/50 for all service areas in the Southern Division, and 35/65 for the Central Satellites.¹⁰⁸

Cal Am asserts that its fixed charge recovery proposal "would result in six of nine California American Water rate areas falling within the service charge revenue recovery range set in D.16-12-026."¹⁰⁹ It is difficult to assess the accuracy of this statement given that Cal Am's proposal is calculated as a percentage of fixed costs, but Cal Am affirms

¹⁰⁵ The terms *fixed charge*, *meter charge*, and *service charge* are used interchangeably in the record of this proceeding. While fixed charge is the somewhat preferred generic term, it may be confusing when fixed charges are discussed in conjunction with *fixed costs*. In this brief, the terms "fixed or meter charge" are sometimes used together for purposes of clarity. Exh. CALAD-HM-001, at 22, Table 2-1.

¹⁰⁶ D.16-12-026, at OP13 (directing utilities to propose "adjustments to the percentage of revenue recovery collected from fixed charges").

¹⁰⁷ Exh. CALAM-JTL-002 at 23.

¹⁰⁸ Exh. CALAD-HM-001, at 20:11-14.

¹⁰⁹ Exh. CALAM-DM-003, at 29:8-10.

that its fixed charge recovery proposals, both for M-WRAM and the full WRAM WRSP proposal, represent an increase over the current fixed charge recovery amount.¹¹⁰

Rejection of Cal Am's full WRAM WRSP proposal, in conjunction with lower fixed charge recovery amounts, fully complies with the Commission's direction in D.16-12-026. When stated as percentages of fixed cost, Cal Advocates' fixed charge recovery recommendations are at or above 40 percent, with one exception (Central Satellites).¹¹¹ Forty percent of fixed costs is not the floor recommended in D.16-12-026, however. When stated as percentages of the revenue requirement, Cal Advocates' fixed charge amounts are lower than the 40 percent floor in all ratemaking areas except Meadowbrook.¹¹² Accordingly, it is important to note that Cal Advocates' recommendations fully comply with the purpose and intent of the Commission's direction in D.16-12-026. The Commission has broad discretion to approve amounts below the 40% floor and specifically permits alternative proposals (to transitioning fixed charges toward the 40 percent floor/50 percent ceiling), which would serve the same purpose as increasing the fixed charges without higher fixed charges' negative effects, specifically: "alternative proposals to reduce reliance on Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account balances, maintain an incentive for conservation of water, and address utility circumstances."¹¹³

Cal Advocates' rate design recommendations are designed to promote conservation, affordability, and equity of water rates for all customers, especially lower and middle-income customers, while supporting Cal Am's transition to an M-WRAM or Conservation Pricing Adjustment mechanism.¹¹⁴ Accordingly, rejection of Cal Am's request for a full WRAM, in conjunction with Cal Advocates' fixed charge recovery

¹¹⁰ Exh. CALAM-JTL-002 at 23:24-25 (stating that the WRSP proposed recovery of 45% of the fixed costs through the meter charge is an increase over the current rate designs approved in D.21-11-018).

¹¹¹ Attachment A, Table 1 – Fixed Cost Recovery.

¹¹² Exh. CALAD-HM-001, at 22, Table 2-1.

¹¹³ D.16-12-026, at Ordering Paragraph (OP)13.

¹¹⁴ See Exh. CALAD-HM-001, at 20:3-6.

ratios and other rate design recommendations, is fully consistent with the Commission’s directive in D.16-12-026 that utilities either transition fixed charge recovery of the revenue requirement gradually to the 40 to 50 percent window *or* propose an alternative method of reducing reliance on full WRAM while preserving conservation price signals.¹¹⁵

As Cal Am recognizes, moving more recovery of fixed costs from quantity to service charges could have a negative impact on conservation signals. Cal Am further notes that higher fixed charges have a negative impact on affordability “because customers [who] use small amounts of water end up paying more overall for water service due to the higher fixed charges.”¹¹⁶ Cal Am’s proposed fixed charge percentage under full WRAM/WRSP is slightly lower than its proposed M-WRAM fixed charge ratio, but Cal Am is still proposing an increase in fixed charge recovery for purposes of mitigating problems caused by the very mechanism it seeks to adopt.¹¹⁷

(2) Meter charges

Standard Practice (SP) U-7-W explicitly indicates that the industry standard meter ratios should be used by all classes of service.¹¹⁸ Accordingly, the Commission should deny Cal Am’s request to deviate from industry standard non-residential meter charge ratios because Cal Advocates’ proposed rate design compensates for the impact of the change in revenue recovery. Cal Advocates’ recommended meter charges are shown in Attachment A, Tables 2.1 through 2.10.

¹¹⁵ D.16-12-026, at OP13.

¹¹⁶ Exh. CALAM-DM-002, at 11:3-5; D.16-12-026, at 16 (noting then-Office of Ratepayer Advocates’ position that “any increased service charge could decrease conservation”).

¹¹⁷ D.16-12-026, at 53 (stating that higher fixed charge recovery is needed to address large WRAM/MCBA balances).

¹¹⁸ Exh. CALAD-HM-001, at 26:9-10.

(3) Tier breakpoints and consumption ratios per tier

Cal Advocates' revenue-neutral residential tier breakpoints are based on the most recent available water consumption data as of the date of Cal Advocates' report, from July 2021 to June 2022.¹¹⁹ Further, Cal Advocates' tier breakpoints align with the baseline monthly amount of water determined essential for human needs (Essential Indoor Use, or EIU, of 600 cubic feet or 6 ccf, roughly 4,488 gallons per month)¹²⁰ by setting the Tier 1 breakpoint at 6 ccf and the Tier 2 breakpoint above the average winter usage for each district.¹²¹ Cal Am's proposed tier breakpoints do not reflect the 6 ccf EIU as directed by the Commission in D.20-08-047, nor do they reflect a reasonable distribution of anticipated water usage across tiers.¹²²

Cal Advocates also applied the most recent available consumption data to determine consumption per tier for its rate design recommendations.¹²³ In contrast, Cal Am's rate design relies on bill impact models using 2021 monthly customer billing data.¹²⁴ Cal Advocates' recommended tier breakpoints and consumption ratios compared to Cal Am's proposed tiers for M-WRAM and WRSP are shown in Attachment A, Tables 3.1 - 3.10.

¹¹⁹ Exh. CALAD-HM-001, at 27:6-8.

¹²⁰ D.20-08-047, at 76-77 and Conclusion of Law 11 (stating:

Water utilities should consider and provide analysis for establishing a baseline not set below both the Essential Indoor Usage of 600 cubic feet per household per month, as stated in the Affordability Rulemaking (R.18-07-006) and the average winter use in each ratemaking district.)

¹²¹ Exh. CALAD-HM-001, at 28.

¹²² Exh. CALAD-HM-001, at 28:7-10.

¹²³ Exh. CALAD-HM-001, at 27:6-8.

¹²⁴ Exh. CALAM-DM-001, Attachment 1, *Impacts on Customer Bills and Water Use of Recoupling Water Utility Revenue and Sales*, at 14.

B. Comparison of Impacts of Full WRAM WRSP and M-WRAM

1. Conservation

Despite Cal Am's criticisms of Cal Advocates' analysis of water usage between full WRAM and M-WRAM utilities, Cal Am has not produced evidence that utilities with full WRAM have experienced greater reductions in water use as a result of having WRAM, compared to reductions in water use by utilities with M-WRAM.¹²⁵ Instead, Cal Am compares a number of other data points that may be conservation-related, but have no apparent causal link either to having a full WRAM versus an M-WRAM, or to a reduction in water use.

a) Cal Am fails to establish that conservation expenditures are a proxy for actual reduced water usage.

Cal Am points to the comparatively high per-customer expenditures on conservation programs by Class A utilities with full WRAM versus utilities with M-WRAM in attempting to defend the conservation benefits of the historical WRAM and, presumably, Cal Am's WRSP proposal.¹²⁶ While a correlation between higher conservation spending and having a full WRAM *may* exist, Cal Am fails to establish a causal link between its per-customer conservation spending and WRAM.¹²⁷ Nor does Cal Am explain how or why it would be unable to provide a comparable level of conservation programming without a full decoupling mechanism, other than pointing to the significant revenue stability utilities enjoy under full WRAM and stating that utilities without the revenue protection of full WRAM have "a financial incentive to discourage water

¹²⁵ RT, Vol. 5, at 245-49 (Cal Am, Mitchell).

¹²⁶ Exh. CALAM-DM-002, at 12:21-24; *see* Attachment 1 Report at 13 and Table 3) finding that authorized annual conservation program expenditures for the fully decoupled Class A utilities were more than double the level for M-WRAM utilities -- \$18 per residential customer compared to \$8 per residential customer.

¹²⁷ CALAM-SWO-002A, at 60:21-23 (asserting that WRAM companies have substantially higher conservation spend on a per customer basis (\$18 per customer versus \$8 per customer) than M-WRAM companies).

conservation.”¹²⁸ The cost of conservation programs and anticipated reduction in water usage and revenue are already incorporated in customer rates as part of the general rate case.¹²⁹ Therefore, the utility suffers no loss to its authorized profit for achieving the anticipated conservation goals.¹³⁰ Continued monitoring of the conservation programs’ effectiveness allows for adjustment in the subsequent general rate case to ensure that both ratepayer funds are spent prudently and that the water utility’s authorized profit remains completely unaffected by achieving the conservation programs’ goals.¹³¹

b) Differences in conservation spending are not proportionately reflected in WRAM and M-WRAM utilities’ water use.

If, as Cal Am implies, utilities’ conservation program spending levels were a proxy for actual conservation results, it is reasonable to infer that significant differences in conservation spending would result in markedly different actual conservation results.¹³² Cal Am states that M-WRAM utilities historically shown about 47 to 56 percent less conservation-related expenditure per residential customer than WRAM utilities.¹³³ This significant difference in conservation spending, however, is not proportionately reflected in the differences in consumption between WRAM and M-WRAM utilities.¹³⁴

The lack of proportional difference in water use reduction, whether due to differences in conservation spending or any other conservation-related factor asserted by Cal Am, is illustrated by superimposing Cal Advocates’ Figure 1 WRAM versus M-

¹²⁸ See, e.g., Exh. CALAM-DM-002, at 64:9-11; Exh. CALAM-JTL-002, at 25:18-19.]

¹²⁹ Exh, CALAD-RR-001, at 15:9-13.

¹³⁰ Exh. CALAD-RR-001, at 15:9-13

¹³¹ Exh. CALAD-RR-001, at 15.

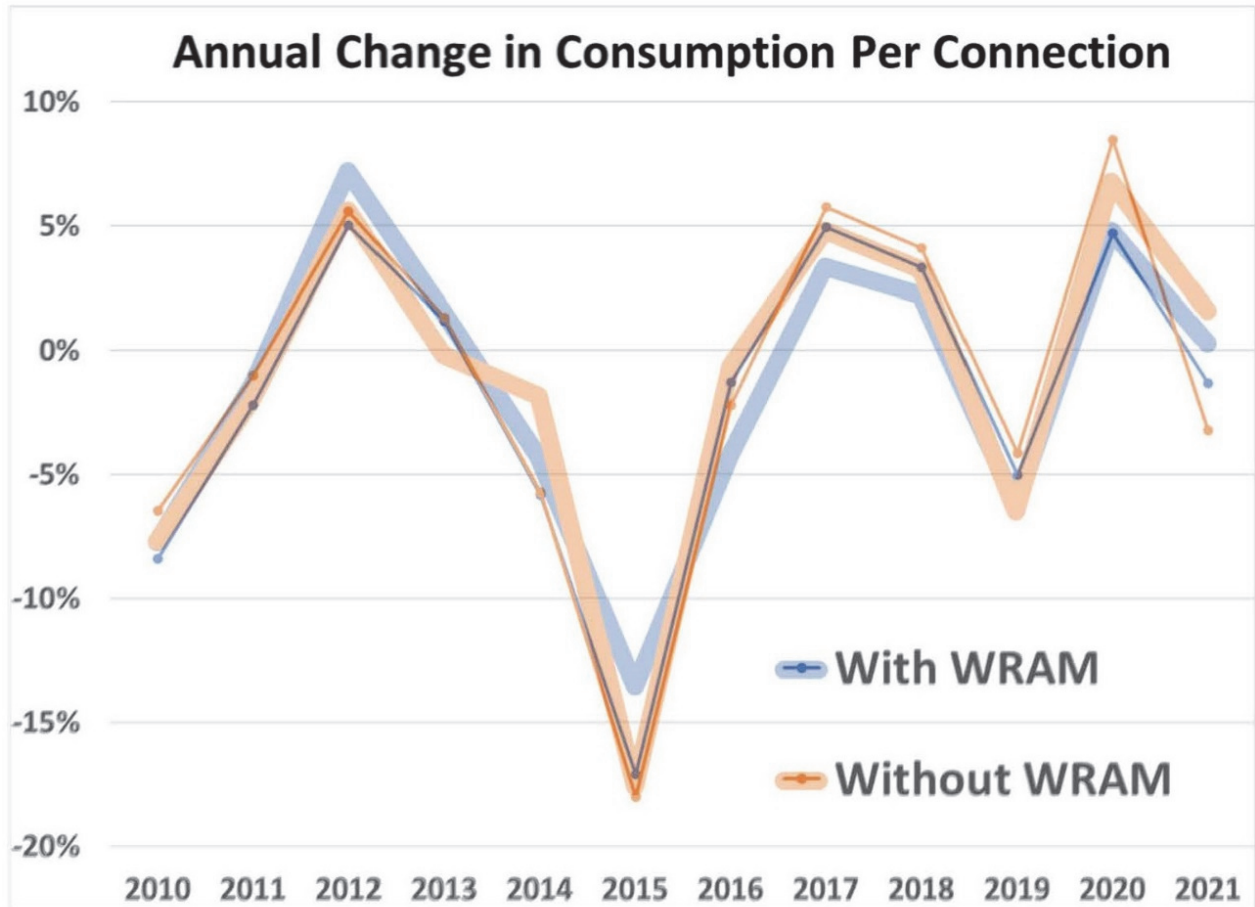
¹³² Exh. CALAM-DM-002, at 12:21-24.

¹³³ Exh. CALAM-DM-002 at 12:10-12.

¹³⁴ Exh. CALAM-SWO-002A, at 21, “Cal Advocates Figure 1 CORRECTED; Exh. CALAD-RR-001, at 6.

WRAM comparative water use reduction graph with Cal Am's version of the graph corrected for alleged methodological errors.

Cal Advocates Fig. 1 with Overlaid Cal Am Corrected Fig. 1¹³⁵



¹³⁵ This combined graph was formed by overlaying the images of the two graphs as shown in Cal Am's rebuttal testimony. Cal Advocates' data with the thicker blue and red lines respectively denoting "with WRAM" versus with M-WRAM, while Cal Am's version uses thin lines. Exh. CALAM-SWO-002A, at 21, "Cal Advocates Figure 1 CORRECTED"; Exh. CALAD-RR-001, at 6.

Cal Advocates’ Figure 1 data points compared to Cal Am’s corrected data (values are percents)¹³⁶

	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am	Cal Adv	Cal Am		
Group	2010		2011		2012		2013		2014		2015		2016		2017		2018		2019		2020		2021	
"with WRAM"	-7.7	-8.4	-1.4	-2.2	7.2	5.0	1.6	1.2	-4.3	-5.8	-13.5	-17.1	-4.1	1.3	3.4	-5.0	2.3	3.3	-6.2	-5.0	4.8	4.7	0.3	-1.3
"without WRAM"	-7.7	-6.5	-1.9	-1.2	5.6	5.7	-0.1	1.1	-1.8	-5.7	-17.5	-18.0	-0.6	-2.2	4.8	5.7	3.3	4.1	-6.4	-4.1	6.8	8.5	1.6	-3.2

As the comparison of graphs and data points indicates, Cal Advocates’ and Cal Am’s are not identical, but the differences in usage between WRAM and non-WRAM utilities are not in proportion to the differences that Cal Am’s claims would suggest, based on significantly greater conservation spending by WRAM compared to non-WRAM utilities and other indicators of how “aggressively” utilities with full WRAM may “promote conservation.”¹³⁷ Based on the available data, aggressive promotion of conservation is not a proxy for reduced water use.

2. Customer Bills

In D.20-08-047, the Commission found that a fundamental policy change on full WRAM was needed because of “certain negative effects on customers,” particularly the impact of recovery of large WRAM/MCBA balances. As early as 2010, the collection of WRAM surcharges on ratepayers’ bills threatened Cal Am’s ability to remain in compliance with financial accounting standards and the Commission’s authorized schedule for recovering surcharges.¹³⁸ This led Cal Am to request a higher cap on WRAM/MCBA surcharge recovery in order to accommodate the shorter time frame for recognizing revenue required by financial accounting standards. By 2019, Cal Am had requested another increase in the Commission’s already modified limits on WRAM

¹³⁶ Exh. CALAM-SWO-002A, at 21, “Cal Advocates Figure 1” and “Cal Advocates Figure 1 CORRECTED.”

¹³⁷ See Exh. CALAM-DM-003, at 63:4-8.

¹³⁸ Exh. CALAD-RR-001, at 8:16-23.

recovery in order to collect larger WRAM amounts at a faster pace in order to keep up with ballooning WRAM balances.¹³⁹

a) The WRSP proposal would continue customer confusion experienced under full WRAM.

Because WRAM balances are historically under-collected or negative, ratepayers experience not only the rate increase attributable to GRC rate changes, including increases in attrition years, but also a rate increase due to amortizing negative WRAM balances.¹⁴⁰ The GRC rate changes and surcharges appear to customers as multiple, perplexing rate increases during the GRC cycle.¹⁴¹ Cal Am's end-of-year WRAM balance for 2022 as reported in Schedule E-1 of Cal Am's Annual Report was \$(16,913,844).¹⁴² This amount would be collected from customers in addition to other updated revenue increases resulting from the present general rate case.¹⁴³ While the measures Cal Am includes in its WRSP proposal are intended to mitigate the accrual of high balances, they would actually result in more frequent rate adjustments between GRCs because of the modified ACAM.¹⁴⁴

b) Cal Am's WRSP proposal does not provide for improved transparency and accuracy in reporting ESRB balances.

Another concern is the inconsistency in Cal Am's reporting of WRAM balances since the mechanism was authorized in 2008.¹⁴⁵ These numbers represent millions of dollars that have been and will be collected from ratepayers. Schedule E-1 of Cal Am's Annual Reports shows annual activity with Cal Am's memorandum and balancing

¹³⁹ Exh. CALAD-RR-001, at 9:5-8.

¹⁴⁰ D.20-08-047 at 55-56.

¹⁴¹ D.20-08-047 at 56 (noting that average customers are unlikely to understand how the WRAM works and be frustrated by the frequency of rate increases).

¹⁴² Clarke Testimony, Attachment 1, row A-2.

¹⁴³ See Updated Application, pp. 3-10.

¹⁴⁴ See CALAD-MD-001, at 49:6-10.

¹⁴⁵ RT, Vol. 5, (CALAM, Owens), at 373-380 (addressing missing and inconsistent data in Schedule E-1 reporting of WRAM/MCBA balances in Cal Am's Annual Reports for 2008-2022).

accounts including the WRAM/MCBA Balancing Account.¹⁴⁶ A review of each year in which Cal Am recorded WRAM/MCBA balance activity reveals that the WRAM information Cal Am reported in Schedule E-1 from 2008 through 2022 is riddled with inconsistencies and unexplained accounting adjustments, including years in which Cal Am did not report WRAM/MCBA balances on Schedule E-1.¹⁴⁷ Further, in 2019 Cal Am stopped reporting WRAM/MCBA information for individual districts in its Schedule E-1 in favor of one consolidated balance.¹⁴⁸ Cal Am based this decision to consolidate on the observation that another water utility, with more districts than Cal Am, reported one rolled-up WRAM/MCBA balance amount and was not subject to the same scrutiny for its number of balancing and memorandum accounts.¹⁴⁹ This roll-up effectively inhibited further detection of discrepancies in Cal Am's individual districts' WRAM/MCBA balances.¹⁵⁰

There is no indication that Cal Am's accounting and reporting of ESBA surcharges under the WRSP would be more transparent or accurate than its reporting of

¹⁴⁶ Exh. CALAM-SWO-002A, at 38.

¹⁴⁷ RT, Vol. 5, (CALAM, Owens), at 373-380 (addressing missing and inconsistent data in Schedule E-1 reporting of WRAM/MCBA balances in Cal Am's Annual Reports for 2008-2022).

¹⁴⁸ RT, Vol. 5, at 380:10-23 (Cal Am, Owens) (stating that Cal Am was at the time in the middle of its 2019 rate case and noticed that

[there] was Public Advocates' testimony about the number of balancing and memorandum accounts that we maintained. We noticed that they did not provide the same testimony for California Water, who has 24 districts to our five or six, [and] likely maintains separate accounts for these districts and rolls them all up into one balance,...thereby not reflecting a multitude of balancing accounts,...so, we made the determination...to roll the accounts into one balance.)

¹⁴⁹ RT, Vol. 5, at 380:10-23 (Cal Am, Owens) (stating that Cal Am was at the time in the middle of its 2019 rate case and noticed that

[there] was Public Advocates' testimony about the number of balancing and memorandum accounts that we maintained. We noticed that they did not provide the same testimony for California Water, who has 24 districts to our five or six, [and] likely maintains separate accounts for these districts and rolls them all up into one balance,...thereby not reflecting a multitude of balancing accounts,...so, we made the determination...to roll the accounts into one balance.)

¹⁵⁰ RT, Vol. 5, at 381:4-14 (Cal Am, Owens).

WRAM/MCBA balances.¹⁵¹ Given the complexity of additional forecasting adjustment mechanisms incorporated in the WRSP, the history of discrepancies and lack of transparency in Cal Am's reporting is problematic. Further, the portion of Cal Am's Special Request No. 14 requesting exceptions to the 15% cap on recovery (for existing WRAM/MCBA balances and the proposed ESBA) would create even more uncertainty due to the impossibility of determining in advance whether an undercollected balance can be recovered in 24 months.¹⁵²

c) The WRSP is full WRAM packaged with an array of historical WRAM mitigation measures.

Cal Am's WRSP proposal is not an improvement over the historical full WRAM. It is full WRAM with more aggressive versions of mitigation measures implemented by the Commission over the years to manage the fallout of full WRAM. The mitigation measures themselves have created new problems and hindered the Commission's oversight of water utility ratesetting.¹⁵³ In addition to adjustments made over the years to the amortization cap, the Commission has adopted a laundry list of mechanisms and approaches to mitigate the negative effects of full WRAM since its implementation 2008, as partially listed in D.16-12-026:

¹⁵¹ D.20-08-047, p. 75.

¹⁵² See Exh. CALAM-JTL-002, at 13 (stating that "in extraordinary circumstances" where balances grow large enough that they cannot be recovered in less than 24 months, Cal Am is requesting the ability to collect balances beyond the 15 percent cap).

¹⁵³ CALAD-MD-001, at 49:6-10 (addressing problematic nature of ACAM because

it enables Cal Am to modify the sales forecast in between GRCs and thereby significantly modify the cost of service outside the GRC process. This is a significant departure from the Commission's 8 Rate Case Plan, which provides for significant rate changes only once every three years).

See also CALAM-JTL-002, at 7:27-28 to 8:1-3 (explaining how the modified ACAM under Cal Am's WRSP proposal would double the current frequency of sales forecast modifications between general rate cases).

...SRMs, adjustments to forecast mechanisms, recovery of more rates through fixed rather than variable charges, and flexibility in tiers, with increased deployment of AMI and low-income programs are well-calculated to reduce reliance on high WRAM balances and delayed billing on ratepayers.¹⁵⁴

Essentially, Cal Am's WRSP proposal is a consolidated full WRAM plus more aggressive WRAM mitigation mechanisms. It presents an enhanced version of the WRAM status quo before the Commission's attempt to end WRAM in D.20-08-047.

3. Utility Earnings

The operation of full WRAM has allowed utilities to collect the unearned revenue they estimate, rather than the revenue actually needed to cover the utility's costs of providing water service.¹⁵⁵ This has resulted in Cal Am earning above its authorized Return on Equity at the same time it recorded WRAM surcharges for the same period to be collected.¹⁵⁶ Cal Am concedes that not only is exceeding its authorized return on equity plausible, but that this scenario has actually occurred.¹⁵⁷

Cal Am avoids the issue of excess profit under full WRAM by leaving actual costs (other than the volumetric costs tracked under the MCBA) out of the full WRAM/WRSP discussion.¹⁵⁸ For example, in Cal Am's rebuttal to Cal Advocates' hypothetical showing how WRAM enables recovery of excess profit, Cal Am presents an example of "how WRAM works" that omits the key point of Cal Advocates' hypothetical.¹⁵⁹ Because full WRAM does not track the difference between the utility's actual cost of operations and

¹⁵⁴ D.16-12-026, at 43.

¹⁵⁵ Rauschmeier Direct Testimony, at 10:18-20.

¹⁵⁶ RT, Vol. 5 (CALAM, Owens) (on cross examination) at 385:3-7 (ultimately confirming that testimony accurately shows that Cal Am overearned its authorized Return on Equity for at least two, and possibly three years in which Cal Am also recorded WRAM undercollections); CALAD-RR-001, at 10:18-23.

¹⁵⁷ Exh. CALAM-SWO-002A, at 57:7-9.

¹⁵⁸ See Exh. CALAM-DM-003, at 60:4-14. Cal Am's premise here that excess utility profits generated by WRAM/MCBA would "empirically" show up in utilities' reporting of earnings in Annual Reports is faulty due to 1) lack of district-level data in the reports, and 2) failure to acknowledge that under cost of service ratemaking, utilities are already routinely permitted to exceed their authorized rate of return when actual cost of operations is lower than actual revenues, as an incentive for increased efficiency.

¹⁵⁹ Exh. CALAM-SWO-002A, at 50-53.

its revenue requirement, it allows for extra profit not available under traditional cost of service ratemaking.¹⁶⁰ In traditional ratemaking, the utility is permitted to retain as profit the difference between lower actual costs and actual revenues, as an incentive for increasing efficiency.¹⁶¹ In contrast, Full WRAM or WRAM/MCBA tracks the difference between actual revenue and authorized revenue (plus the change in certain production costs related to usage). Nowhere does full WRAM require consideration of the utility’s actual total operating costs, as Cal Am demonstrates in its 2018 Ventura WRAM/MCBA example.¹⁶² Actual costs are irrelevant to determining what the utility can recover under full WRAM because WRAM transforms approved budgets into the functional equivalent of the actual cost of operations.¹⁶³

Further, because full WRAM does not account for the difference between actual cost of operating the system and actual revenues, it allows for recovery of not only the difference between actual and forecasted revenue, but also recovery of the difference between actual costs and actual revenue.¹⁶⁴ Because it is nothing more than repackaged

¹⁶⁰ See Exh. CALAM-SWO-002A, at 51-53. The MCBA tracks variations in certain production costs that may be affected by consumption, but full WRAM does not otherwise account for actual cost of operations.

¹⁶¹ Exh. CALAD-RR-001, at 11:1-13 (noting that actual cost of operations may be lower for reasons other than increased efficiency).

¹⁶² Exh. CALAM-SWO-002A, at 50-53 (providing an example of full WRAM operation from Ventura in 2018. Cal Am’s example makes no reference to Cal Am’s actual cost of operations, as actual costs are not relevant to determining undercollection amounts under full WRAM).

¹⁶³ See Exh. CALAM-DM-003, at 57:8-9 (stating that “WRAM balances consist of unrecovered authorized expenditures that were determined to be reasonable and prudent in a prior rate case.” “Unrecovered authorized expenditures” refers not to the utility’s actual cost of operations, but to the utility’s revenue requirement—a Commission-approved estimated budget).

¹⁶⁴ See Exh. CALAD-RR-001, at 11:14-22. Cal Am’s objection to terms Cal Advocates uses to describe profits under full WRAM as “extraordinary” or “windfall” comes from a core feature of full WRAM: that the Commission’s authorization of a revenue requirement—a budget forecast—in a general rate case transforms that forecast into the equivalent of actual cost of operations that the WRAM utility is then entitled to recover in full. Notably, the desire for transformation is also a common motif in fairy tales, where the heroes must undergo a series of trials to establish their worthiness, and magical figures ultimately facilitate some form of the desired transformation. See, e.g., *The Wizard of Oz* (heroes rewarded with brain, heart, courage, and ability to go home) and *Pinocchio* (titular hero transformed into a “real boy”); but see *The Little Mermaid* (original Hans Christian Anderson story ending with the Little Mermaid’s transformation into sea foam).

full WRAM, the WRSP would enable Cal Am to continue collecting extraordinary profit.¹⁶⁵

IV. CONCLUSION

Cal Am has not shown that its full WRAM WRSP proposal will promote conservation more effectively than M-WRAM. A decoupling mechanism branded as a “water resources sustainability plan” should target conservation impacts on the utility’s revenue, but WRSP like full WRAM is indifferent to the reason for below-forecast revenue. Cal Am has not demonstrated that the WRSP mitigates the risk burden that full WRAM historically shifts to ratepayers. The elements of the WRSP proposed to prevent accrual of huge undercollected balances are contrary to Rate Case Plan requirements and impair the Commission’s oversight of utility rate changes—effectively preventing the Commission from doing its job under Public Utilities Code section 451. The Commission is statutorily required to consider Cal Am’s full decoupling proposal and must do so with the same scrutiny that applies to any other ratemaking proposal, ensuring that the proposal is consistent with just and reasonable rates.

For the reasons stated above, Cal Advocates respectfully requests that the Commission:

- Deny Cal Am’s WRSP proposal requesting a full WRAM and authorize instead an M-WRAM or Conservation Pricing Adjustment mechanism (Special Request No. 1);
- Deny Cal Am’s request to exceed the 15 percent cap on WRAM/MCBA recovery (Special Request No. 14);
- Deny Cal Am’s request Full Cost Balancing Accounts in its Monterey, Sacramento, Larkfield, and Los Angeles districts (Special Request No. 2);
- Authorize Cal Am’s request for Incremental Cost Balancing Accounts and permit Cal Am to establish ICBA in the districts where an FCBA was requested (Special Request No. 2);

¹⁶⁵ Exh. CALAD-RR-001, at 10-11.

- Deny Cal Am’s request for an ACAM, either with or without the proposed modifications, because this mechanism was intended specifically to keep WRAM/MCBA undercollections balances under control and is unnecessary in the absence of full WRAM; and
- Adopt Cal Advocates’ rate design recommendations including fixed charge recovery amounts, meter service charges, and tier breakpoints.

Respectfully submitted,

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ATTACHMENT A

RATE DESIGN RECOMMENDATIONS

Table 1 - Fixed Cost Recovery

Division/ Service Area	Cal Advocates Recommended ¹		Cal Am Requested (M-WRAM) ²		Cal Am Requested (WRSP) ³	
	Meter Charges	Quantity Charges	Meter Charges	Quantity Charges	Meter Charges	Quantity Charges
Sacramento	40%	60%	50%	50%	45%	55%
Larkfield	40%	60%	50%	50%	50%	50%
Meadowbrook	40%	60%	50%	50%	50%	50%
Monterey	40%	60%	50%	50%	50%	50%
Central Satellites	35%	65%	35%	65%	35%	65%
East Pasadena	50%	50%	50%	50%	50%	50%
Bellflower	50%	50%	50%	50%	50%	50%
Warring	50%	50%	50%	50%	50%	50%
Southern	50%	50%	50%	50%	45%	55%

¹ Ex. CALAD-HM-001 at 20.

² Ex. CALAD-HM-001 at 21 (stating “[in] this GRC, except for the Central Satellite systems, Cal Am is proposing a rate design that collects 50% of its fixed costs from meter charges and 50% of the fixed cost and all variable costs from quantity charges. For the Central Satellite systems in the Central Division, Cal Am proposes to collect 35% of its fixed costs from meter charges and 65% of the fixed cost from quantity charges.”).

³ Ex. CALAM-BP-002 at 9, 11 (noting an increase from 50% to 55% of fixed costs recovered through quantity charges in certain Divisions); Ex. CALAM-007 at 413, Line 43 (Percentage of Fixed Cost to Be Recovered from Service Charges), 416.

METER SERVICE CHARGES

Table 2.1 - Sacramento Meter Service Charges Comparison

Meter Size / Service Connection⁴	Cal Advocates Recommended Rates⁵	Cal Am Current Rates⁶	Cal Am Requested Rates (M-WRAM)⁷	Cal Am Requested Rates (WRSP)⁸
5/8"	\$23.14	\$19.16	\$30.64	\$26.89
0.75"	\$34.71	\$28.75	\$45.97	\$40.34
1"	\$57.85	\$47.91	\$76.61	\$67.23
1.5"	\$115.69	\$95.82	\$153.22	\$134.46
2"	\$185.11	\$153.31	\$245.16	\$215.13
3"	\$347.08	\$287.47	\$459.67	\$403.37
4"	\$578.47	\$479.11	\$766.11	\$672.29
6"	\$1,156.94	\$958.22	\$1,532.22	\$1,344.57
8"	\$1,851.11	\$1,533.15	\$2,451.56	\$2,151.31
10"	\$2,660.97	\$2,203.90	\$3,524.11	\$3,092.51

⁴ Ex. CALAD-HM-001 at 58 (Attachment 2-1).

⁵ Ex. CALAD-HM-001 at 58 (Attachment 2-1).

⁶ Ex. CALAD-HM-001 at 58 (Attachment 2-1).

⁷ Ex. CALAD-HM-001 at 58 (Attachment 2-1) (Column "Cal Am Requested Rates").

⁸ Ex. CALAM-07 at 423 (Sacramento District, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.2 - Meadowbrook Meter Service Charges Comparison

Meter Size / Service Connection²	Cal Advocates Recommended Rates¹⁰	Cal Am Current Rates¹¹	Cal Am Requested Rates (M-WRAM)¹²	Cal Am Requested Rates (WRSP)¹³
5/8"	\$18.34	\$19.77	\$27.71	\$26.08
0.75"	\$27.51	\$29.65	\$41.57	\$39.12
1"	\$45.85	\$49.42	\$69.28	\$65.20
1.5"	\$91.70	\$98.83	\$138.55	\$130.39
2"	\$146.72	\$158.13	\$221.69	\$208.63
3"	\$275.10	\$296.49	\$415.66	\$391.18
4"	\$458.50	\$494.15	\$692.77	\$651.97
6"	\$917.00	\$988.31	\$1,385.54	\$1,303.94

² Ex. CALAD-HM-001 at 58 (Attachment 2-1).

¹⁰ Ex. CALAD-HM-001 at 58 (Attachment 2-1).

¹¹ Ex. CALAD-HM-001 at 58 (Attachment 2-1).

¹² Ex. CALAD-HM-001 at 58 (Attachment 2-1) (Column "Cal Am Requested Rates").

¹³ Ex. CALAM-07 at 425 (Meadowbrook District, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.3 - Fruitridge Meter Service Charges Comparison

Meter Size / Service Connection¹⁴	Cal Adv Recommended Rates¹⁵	Cal Am Current Rates¹⁶	Cal Am Requested Rates (M-WRAM)¹⁷	Cal Am Requested Rates (WRSP)¹⁸
5/8"	\$23.14	\$15.58	\$30.64	\$26.89
0.75"	\$34.71	\$23.40	\$45.97	\$40.34
1"	\$57.85	\$38.98	\$76.61	\$67.23
1.5"	\$115.69	\$77.92	\$153.22	\$134.46
2"	\$185.11	\$124.69	\$245.16	\$215.13
3"	\$347.08	\$233.77	\$459.67	\$403.37
4"	\$578.47	\$389.66	\$766.11	\$672.29
6"	\$1,156.94	\$779.32	\$1,532.22	\$1,344.57
8"	\$1,851.11		\$2,451.56	\$2,151.31
10"	\$2,660.97		\$3,524.11	\$3,092.51

¹⁴ Ex. CALAD-HM-001 at 58-59 (Attachment 2-1).

¹⁵ Ex. CALAD-HM-001 at 58-59 (Attachment 2-1).

¹⁶ Ex. CALAD-HM-001 at 58-59 (Attachment 2-1).

¹⁷ Ex. CALAD-HM-001 at 58-59 (Attachment 2-1) (Column "Cal Am Requested Rates").

¹⁸ Ex. CALAM-07 at 423 (Sacramento District, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.4 - Larkfield Meter Service Charges Comparison

Meter Size / Service Connection¹⁹	Cal Adv Recommended Rates²⁰	Cal Am Current Rates²¹	Cal Am Requested Rates (M-WRAM)²²	Cal Am Requested Rates (WRSP)²³
5/8"	\$20.91	\$17.99	\$23.49	\$23.53
0.75"	\$31.36	\$26.99	\$35.23	\$35.30
1"	\$52.27	\$44.98	\$58.72	\$58.83
1.5"	\$104.54	\$89.96	\$117.43	\$117.66
2"	\$167.26	\$143.94	\$187.89	\$188.25
3"	\$313.62	\$269.89	\$352.29	\$352.98
4"	\$522.70	\$449.81	\$587.15	\$588.29
6"	\$1,045.41	\$899.62	\$1,174.30	\$1,176.58
8"	\$1,672.65	\$1,439.39	\$1,878.89	\$1,882.53
10"	\$2,404.43	\$2,069.13	\$2,700.90	\$2,706.14

¹⁹ Ex. CALAD-HM-001 at 59 (Attachment 2-1).

²⁰ Ex. CALAD-HM-001 at 59 (Attachment 2-1).

²¹ Ex. CALAD-HM-001 at 59 (Attachment 2-1).

²² Ex. CALAD-HM-001 at 59 (Attachment 2-1) (Column "Cal Am Requested Rates").

²³ Ex. CALAM-07 at 423 (Larkfield District, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.5 - Monterey Main Meter Service Charges Comparison

Meter Size / Service Connection²⁴	Cal Adv Recommended Rates²⁵	Cal Am Current Rates²⁶	Cal Am Requested Rates (M-WRAM)²⁷	Cal Am Requested Rates (WRSP)²⁸
5/8"	\$36.99	\$28.68	\$45.78	\$45.49
0.75"	\$57.88	\$46.76	\$71.64	\$71.19
1"	\$101.71	\$86.05	\$125.88	\$125.09
1.5"	\$240.22	\$229.19	\$297.32	\$295.45
2"	\$395.01	\$383.23	\$488.89	\$485.82
3"	\$740.65	\$718.56	\$916.66	\$910.91
4"	\$1,261.59	\$1,239.76	\$1,561.42	\$1,551.62
6"	\$2,604.19	\$2,605.17	\$3,223.09	\$3,202.86
8"	\$4,166.67	\$4,168.21	\$5,156.89	\$5,124.53
10"	\$4,253.40		\$5,264.24	\$5,231.20

²⁴ Ex. CALAD-HM-001 at 59 (Attachment 2-1).

²⁵ Ex. CALAD-HM-001 at 59 (Attachment 2-1).

²⁶ Ex. CALAD-HM-001 at 59 (Attachment 2-1).

²⁷ Ex. CALAD-HM-001 at 59 (Attachment 2-1) (Column "Cal Am Requested Rates").

²⁸ Ex. CALAM-07 at 421 (Monterey County District, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.6 - Central Satellites Meter Service Charges Comparison

Meter Size / Service Connection²⁹	Cal Adv Recommended Rates³⁰	Cal Am Current Rates³¹	Cal Am Requested Rates (M-WRAM)³²	Cal Am Requested Rates (WRSP)³³
5/8"	\$21.22	\$15.18	\$19.61	\$20.81
0.75"	\$31.83	\$22.77	\$29.41	\$31.22
1"	\$53.05	\$37.96	\$49.02	\$52.03
1.5"	\$106.09	\$75.90	\$98.04	\$104.06
2"	\$169.75	\$121.43	\$156.87	\$166.50
3"	\$318.28	\$227.69	\$294.13	\$312.19
4"	\$530.47	\$379.49	\$490.21	\$520.32
6"	\$1,060.94	\$758.97	\$980.42	\$1,040.64
8"	\$1,697.51	\$1,214.36	\$1,568.68	\$1,665.02
10"	\$2,440.17		\$2,254.98	\$2,393.46

²⁹ Ex. CALAD-HM-001 at 60 (Attachment 2-1).

³⁰ Ex. CALAD-HM-001 at 60 (Attachment 2-1).

³¹ Ex. CALAD-HM-001 at 60 (Attachment 2-1).

³² Ex. CALAD-HM-001 at 60 (Attachment 2-1) (Column "Cal Am Requested Rates").

³³ Ex. CALAM-07 at 419 (Central Satellite Systems, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.7 - Southern Division Meter Service Charges Comparison³⁴

Meter Size / Service Connection³⁵	Cal Adv Recommended Rates³⁶	Cal Am Current Rates³⁷	Cal Am Requested Rates (M-WRAM)³⁸	Cal Am Requested Rates (WRSP)³⁹
5/8"	\$22.04	\$16.52	\$22.96	\$20.62
0.75"	\$33.06	\$24.78	\$34.44	\$30.94
1"	\$55.10	\$41.31	\$57.39	\$51.56
1.5"	\$110.19	\$82.62	\$114.79	\$103.12
2"	\$176.31	\$132.18	\$183.66	\$164.99
3"	\$330.58	\$247.85	\$344.37	\$309.35
4"	\$550.97	\$413.08	\$573.94	\$515.59
6"	\$1,101.94	\$826.15	\$1,147.89	\$1,031.18
8"	\$1,763.11	\$1,321.85	\$1,836.62	\$1,649.89
10"	\$2,534.47	\$1,900.15	\$2,640.14	\$2,371.71

³⁴ Comprised of Baldwin Hills, Duarte, San Diego, San Marino, and Ventura.

³⁵ Ex. CALAD-HM-001 at 60 (Attachment 2-1).

³⁶ Ex. CALAD-HM-001 at 60 (Attachment 2-1).

³⁷ Ex. CALAD-HM-001 at 60 (Attachment 2-1).

³⁸ Ex. CALAD-HM-001 at 60 (Attachment 2-1) (Column "Cal Am Requested Rates").

³⁹ Ex. CALAM-07 at 431 (Southern Division, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.8 - Bellflower Meter Service Charges Comparison

Meter Size / Service Connection⁴⁰	Cal Adv Recommended Rates⁴¹	Cal Am Current Rates⁴²	Cal Am Requested Rates (M-WRAM)⁴³	Cal Am Requested Rates (WRSP)⁴⁴
5/8"	\$21.26	\$25.23	\$29.63	\$23.04
0.75"	\$31.89	\$37.84	\$49.29	\$34.55
1"	\$53.15	\$63.07	\$85.37	\$57.59
1.5"	\$106.30	\$126.14	\$178.18	\$115.18
2"	\$170.07	\$201.82	\$289.61	\$184.29
3"	\$318.89	\$378.41	\$549.56	\$345.55

⁴⁰ Ex. CALAD-HM-001 at 60-61 (Attachment 2-1).

⁴¹ Ex. CALAD-HM-001 at 60-61 (Attachment 2-1).

⁴² Ex. CALAD-HM-001 at 60-61 (Attachment 2-1).

⁴³ Ex. CALAD-HM-001 at 60-61 (Attachment 2-1) (Column “Cal Am Requested Rates”).

⁴⁴ Ex. CALAM-07 at 429 (Bellflower Division, “Service Charge Rate By Meter Size” table, “Conservation Rates Test Year 2024” Column).

Table 2.9 - East Pasadena Meter Service Charges Comparison

Meter Size / Service Connection⁴⁵	Cal Adv Recommended Rates⁴⁶	Cal Am Current Rates⁴⁷	Cal Am Requested Rates (M-WRAM)⁴⁸	Cal Am Requested Rates (WRSP)⁴⁹
5/8"	\$16.19	\$17.44	\$14.59	\$14.59
0.75"	\$24.29	\$26.18	\$21.88	\$21.88
1"	\$40.48	\$43.61	\$36.47	\$36.47
1.5"	\$80.95	\$87.21	\$72.94	\$72.94
2"	\$129.52	\$139.53	\$116.70	\$116.70
3"	\$242.85	\$261.62	\$218.81	\$218.81
4"	\$404.76	\$436.03	\$364.68	\$364.68

⁴⁵ Ex. CALAD-HM-001 at 61 (Attachment 2-1).

⁴⁶ Ex. CALAD-HM-001 at 61 (Attachment 2-1).

⁴⁷ Ex. CALAD-HM-001 at 61 (Attachment 2-1).

⁴⁸ Ex. CALAD-HM-001 at 61 (Attachment 2-1) (Column "Cal Am Requested Rates").

⁴⁹ Ex. CALAM-07 at 427 (East Pasadena Division, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

Table 2.10 - Warring Meter Service Charges Comparison

Meter Size / Service Connection⁵⁰	Cal Adv Recommended Rates⁵¹	Cal Am Current Rates⁵²	Cal Am Requested Rates (M-WRAM)⁵³	Cal Am Requested Rates (WRSP)⁵⁴
5/8"	\$26.22	\$28.40	\$30.88	\$30.66
0.75"	\$39.32	\$42.59	\$46.33	\$45.99
1"	\$65.54	\$71.01	\$77.21	\$76.65
1.5"	\$131.08	\$142.01	\$154.42	\$153.30
2"	\$209.73	\$227.31	\$247.07	\$245.28
3"	\$393.24	\$426.02	\$463.26	\$459.90
4"	\$655.40	\$710.00	\$772.11	\$766.49
6"	\$1,310.80	\$1,421.32	\$1,544.21	\$1,532.99

⁵⁰ Ex. CALAD-HM-001 at 61 (Attachment 2-1).

⁵¹ Ex. CALAD-HM-001 at 61 (Attachment 2-1).

⁵² Ex. CALAD-HM-001 at 61 (Attachment 2-1).

⁵³ Ex. CALAD-HM-001 at 61 (Attachment 2-1) (Column "Cal Am Requested Rates").

⁵⁴ Ex. CALAM-07 at 429 (Warring Division, "Service Charge Rate By Meter Size" table, "Conservation Rates Test Year 2024" Column).

TIER BREAKPOINTS AND CONSUMPTION RATIOS

A. Table 3.1 - Sacramento and Fruitridge Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints ⁵⁵	Cal Adv Recommended Consumption Ratio ⁵⁶	Cal Am Requested Tier Breakpoints ⁵⁷	Cal Am Requested Consumption Ratio (M-WRAM) ⁵⁸	Cal Am Requested Consumption Ratio (WRSP) ⁵⁹
1	0 to 6 Ccf	48.2%	0 to 10 Ccf	65.4%	65.4%
2	7 to 18 Ccf	37.0%	11 to 20 Ccf	22.4%	22.4%
3	Over 18 Ccf	14.8%	21 to 33Ccf	12.2%	10.2%
4			Over 33 Ccf		2.0%

B. Table 3.2 - Larkfield Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints ⁶⁰	Cal Adv Recommended Consumption Ratio ⁶¹	Cal Am Requested Tier Breakpoints ⁶²	Cal Am Requested Consumption Ratio (M-WRAM and WRSP) ⁶³
1	0 to 6 Ccf	62.1%	0 to 5 Ccf	45.7%
2	7 to 11 Ccf	19.8%	6 to 18 Ccf	43.4%
3	12 to 17 Ccf	9.5%	19 to 25 Ccf	5.6%
4	Over 17 Ccf	8.6%	Over 25 Ccf	5.3%

⁵⁵ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁵⁶ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁵⁷ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁵⁸ Ex. CALAM-005 at 311 (Ratio %).

⁵⁹ Ex. CALAD-HM-001 at 63 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”); Ex. CALAM-BP-002 at 11 (discussing fourth tier).

⁶⁰ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁶¹ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁶² Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁶³ Ex. CALAD-HM-001 at 63 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

C. Table 3.3 - Meadowbrook Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁶⁴	Cal Adv Recommended Consumption Ratio⁶⁵	Cal Am Requested Tier Breakpoints⁶⁶	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁶⁷
1	0 to 6 Ccf	33.4%	0 to 5 Ccf	26.0%
2	7 to 28 Ccf	51.6%	6 to 8 Ccf	15.0%
3	Over 28 Ccf	15.0%	Over 8 Ccf	59.0%

D. Table 3.4 - Monterey Single Family Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁶⁸	Cal Adv Recommended Consumption Ratio⁶⁹	Cal Am Requested Tier Breakpoints⁷⁰	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁷¹
1	0 to 6 Ccf	74.8%	0 to 4 Ccf	58.0%
2	7 to 12 Ccf	15.5%	5 to 8 Ccf	24.1%
3	13 to 20 Ccf	4.9%	9 to 15 Ccf	11.6%
4	Over 20 Ccf	4.8%	Over 15 Ccf	6.4%

⁶⁴ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁶⁵ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁶⁶ Ex. CALAD-HM-001 at 63 (Attachment 2-2).

⁶⁷ Ex. CALAD-HM-001 at 63 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

⁶⁸ Ex. CALAD-HM-001 at 63-64 (Attachment 2-2).

⁶⁹ Ex. CALAD-HM-001 at 63-64 (Attachment 2-2).

⁷⁰ Ex. CALAD-HM-001 at 63-64 (Attachment 2-2).

⁷¹ Ex. CALAD-HM-001 at 63-64 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

E. Table 3.5 - Monterey Multi-Family Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁷²	Cal Adv Recommended Consumption Ratio⁷³	Cal Am Requested Tier Breakpoints⁷⁴	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁷⁵
1	0 to 6 Ccf	74.8%	0 to 3 Ccf	68.9%
2	7 to 12 Ccf	15.5%	4 to 5 Ccf	24.8%
3	13 to 20 Ccf	4.9%	6 to 7 Ccf	3.5%
4	Over 20 Ccf	4.8%	Over 7 Ccf	2.8%

F. Table 3.6 - Central Satellites Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁷⁶	Cal Adv Recommended Consumption Ratio⁷⁷	Cal Am Requested Tier Breakpoints⁷⁸	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁷⁹
1	0 to 6 Ccf	38.6%	0 to 8 Ccf	53.1%
2	7 to 25 Ccf	41.6%	9 to 18 Ccf	23.9%
3	26 to 43 Ccf	9.8%	19 to 44 Ccf	18.0%
4	Over 43 Ccf	10.0%	Over 44 Ccf	5.0%

⁷² Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁷³ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁷⁴ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁷⁵ Ex. CALAD-HM-001 at 64 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

⁷⁶ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁷⁷ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁷⁸ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁷⁹ Ex. CALAD-HM-001 at 64 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

G. Table 3.7 - Baldwin Hills, Duarte, San Diego, San Marino, and Ventura Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁸⁰	Cal Adv Recommended Consumption Ratio⁸¹	Cal Am Requested Tier Breakpoints⁸²	Cal Am Requested Consumption Ratio (M-WRAM)⁸³	Cal Am Requested Consumption Ratio (WRSP)⁸⁴
1	0 to 6 Ccf	38.1%	0 to 11 Ccf	59.9%	59.9%
2	7 to 23 Ccf	42.7%	12 to 18 Ccf	16.40%	16.4%
3	24 to 40 Ccf	9.9%	19 to 40 Ccf	17.6%	17.6%
4	Over 40 Ccf	9.3%	41 to 63 Ccf	6.1%	4.1%
5			Over 63 Ccf		2.0%

H.

I. Table 3.8 - Bellflower Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁸⁵	Cal Adv Recommended Consumption Ratio⁸⁶	Cal Am Requested Tier Breakpoints⁸⁷	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁸⁸
1	0 to 6 Ccf	42.6%	0 to 11 Ccf	65.4%
2	7 to 17 Ccf	39.3%	12 to 18 Ccf	17.6%
3	Over 17 Ccf	18.0%	Over 18 Ccf	17.0%

⁸⁰ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁸¹ Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁸² Ex. CALAD-HM-001 at 64 (Attachment 2-2).

⁸³ Ex. CALAM-005 at 19 (San Diego), 87 (Baldwin Hills), 127 (Duarte), 187 (San Marino), 248 (Ventura) (Ratio %).

⁸⁴ Ex. CALAD-HM-001 at 64 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”); CALAM-BP-002 at 9-10 (discussing fifth tier in Southern Division).

⁸⁵ Ex. CALAD-HM-001 at 64-65 (Attachment 2-2).

⁸⁶ Ex. CALAD-HM-001 at 64-65 (Attachment 2-2).

⁸⁷ Ex. CALAD-HM-001 at 64-65 (Attachment 2-2).

⁸⁸ Ex. CALAD-HM-001 at 64-65 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

J. Table 3.9 - East Pasadena Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁸⁹	Cal Adv Recommended Consumption Ratio⁹⁰	Cal Am Requested Tier Breakpoints⁹¹	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁹²
1	0 to 6 Ccf	29.4%	0 to 18 Ccf	66.2%
2	7 to 27 Ccf	46.4%	19 to 40 Ccf	22.6%
3	Over 27 Ccf	24.2%	Over 40 Ccf	11.2%

K.

L. Table 3.10 - Warring Tier Breakpoints and Consumption Ratios

Tiers	Cal Advocates Recommended Tier Breakpoints⁹³	Cal Adv Recommended Consumption Ratio⁹⁴	Cal Am Requested Tier Breakpoints⁹⁵	Cal Am Requested Consumption Ratio (M-WRAM and WRSP)⁹⁶
1	0 to 6 Ccf	38.1%	0 to 40 Ccf	93.9%
2	7 to 40 Ccf	52.7%	Over 40 Ccf	6.1%
3	Over 40 Ccf	9.3%		

⁸⁹ Ex. CALAD-HM-001 at 65 (Attachment 2-2).

⁹⁰ Ex. CALAD-HM-001 at 65 (Attachment 2-2).

⁹¹ Ex. CALAD-HM-001 at 65 (Attachment 2-2).

⁹² Ex. CALAD-HM-001 at 65 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

⁹³ Ex. CALAD-HM-001 at 65 (Attachment 2-2).

⁹⁴ Ex. CALAD-HM-001 at 65 (Attachment 2-2).

⁹⁵ Ex. CALAD-HM-001 at 65 (Attachment 2-2).

⁹⁶ Ex. CALAD-HM-001 at 65 (Attachment 2-2) (Column “Cal Am Requested Consumption Ratio”).

EXHIBIT C

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

Application of California-American
Water Company (U210W) for Authorization
to Increase Its Revenues for Water Service
by \$55,771,300 or 18.71% in the year 2024,
by \$19,565,300 or 5.50% in the year 2025, and
by \$19,892,400 or 5.30% in the year 2026.

Application 22-07-001
(Filed July 1, 2022)

**OPENING BRIEF OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ON THE SUBJECT OF WRAM/DECOUPLING**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND/PROCEDURAL HISTORY	1
III. DISCUSSION	3
A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)	3
1. Water Resources Sustainability Plan (WRSP)	4
a. Essential Services Balancing Account (ESBA)	5
b. Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)	6
c. Amortization (Updated Special Request No. 14)	6
d. Rate Design.....	6
2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)	7
a. Full Cost Balancing Account (FCBA)/Incremental Cost Balancing Account (ICBA) (Special Request No. 2)	8
b. Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3)	8
c. Amortization (Special Request No. 14)	8
d. Rate Design.....	8
B. Comparison of Impacts of WRSP and M-WRAM	8
IV. CONCLUSION.....	9

TABLE OF AUTHORITIES

Page

Statutes

Pub. Resources Code 8727.54

California Public Utilities Commission Decisions

D.21-09-047, *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*, Order Denying Rehearing of Decision 20-08-047, as Modified, issued September 27, 2021.4

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, issued September 3, 2020.3,4,5,7,8,9

D.96-12-005, *Application of the California-American Water Company (U210W) for Authority to Increase Rates in Its Monterey Division by \$2.16 million (11.2%) in 1997, \$479,400 (2.46%) in 1998, and \$442,900 (2.02%) in 1999.*7

California Public Utilities Commission Rules of Practice and Procedure

Rule 13.121

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

Application of California-American Water Company (U210W) for Authorization to Increase Its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026.

Application 22-07-001
(Filed July 1, 2022)

**OPENING BRIEF OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ON THE SUBJECT OF WRAM/DECOUPLING**

I. INTRODUCTION

Pursuant to Rule 13.12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), the Monterey Peninsula Water Management District (MPWMD) files this Opening Brief on the Subject of WRAM/Decoupling in Application (A.) 22-07-001. Administrative Law Judge (ALJ) Jacob L. Rambo established that opening briefs on the WRAM/Decoupling issue are due on December 6, 2023, and reply briefs are due on January 9, 2024.

II. BACKGROUND/PROCEDURAL HISTORY

California-American Water Company (Cal-Am) filed its 2022 General Rate Case (GRC) with the Commission on July 1, 2022. Rates approved in this proceeding apply to the years 2024, 2025, and 2026.

Among the many special requests, Cal-Am sought a Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM) and Full Cost Balancing Accounts (FCBA) or Incremental Cost Balancing Accounts (ICBA) in Special Request (SR) Nos. 1 and 2.

A Prehearing Conference (PHC) was held September 12, 2022. Commissioner Genevieve Shiroma and ALJ Rambo conducted the hearing to confirm party status¹ and discuss the procedural schedule.

Cal-Am filed its 100-day update on October 10, 2022. This is the point at which the GRC schedule changed due to legislation² signed by the Governor on September 30, 2022, becoming effective January 1, 2023. Cal-Am requested an opportunity to amend its application and proceed with a bifurcated process to consider the decoupling issue separate from the other GRC requests. In a ruling issued on November 15, 2022, Cal-Am was authorized to file an updated application with supporting documentation and testimony comparing WRAM and M-WRAM. The Parties filed a Joint Statement on December 5, 2022, with a proposed revised procedural schedule.

Cal-Am filed the Updated Application on January 27, 2023. An ALJ Ruling was issued on March 23, 2023, modifying the schedule for the submission of testimony. The Public Advocates Office (Cal Advocates) served its report on April 13, 2023, and all other parties including MPWMD served testimony on April 20, 2023. Cal-Am served rebuttal testimony on May 25, 2023.

¹ Four parties made appearances at the prehearing conference: California-American Water Company (Cal-Am), Public Advocates Office (Cal Advocates), Monterey Peninsula Water Management District (MPWMD), and the City of Thousand Oaks. The number of parties increased to eight with the addition of the California Water Association (CWA), California Water Efficiency Partnership (CalWEP), National Association of Water Companies (NAWC), and Public Water Now (PWN).

² Senate Bill No. 1469 affects California water corporations with more than 10,000 service connections. Upon application in a General Rate Case (GRC), the Public Utilities Commission “shall consider, and may authorize, the implementation of a mechanism that separates the water corporation’s revenues and its water sales, commonly referred to as a ‘decoupling mechanism.’”

Public Participation Hearings (PPH) began April 11, 2023, and concluded May 2, 2023, with Monterey’s hearing on April 25, 2023.

Mandatory Alternative Dispute Resolution (ADR) commenced May 24, 2023, with ADR neutrals ALJ Valerie U. Kao (lead) and ALJ Susan Lee. Four sessions were held with an announcement on September 28, 2023, that Cal-Am and Cal Advocates had reached a “high-level settlement.”

The evidentiary hearing required four days of testimony that began October 5, 2023, and concluded October 2023.

III. DISCUSSION

A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

To understand why the Parties to this proceeding have addressed Cal-Am’s Special Request (SR) No. 1, begin with Commission Rulemaking 17-06-024. That proceeding began June 29, 2017, with a Decision and Order on August 27, 2020.³ During this period, parties including Cal-Am and California Water Association⁴ (CWA) had opportunities to participate in five (5) joint workshops with the State Water Resources Control Board (SWRCB) that permitted comments and reply comments on each workshop’s staff report.

³ 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, issued September 3, 2020.

⁴ California Water Association (CWA) is a party to this GRC proceeding with a focus on Special Request (SR) No. 1. CWA represents more than 90 water utilities regulated by the Commission in California.

After the 2020 decision, both Cal-Am and CWA filed Applications for Rehearing. An Order Denying Rehearing⁵ issued September 27, 2021, left Cal-Am and CWA with two options: file an appeal with the California Supreme Court or seek relief from the California Legislature. They proceeded with both. The appeal to the Supreme Court is still pending but the California Legislature provided some relief with Senate Bill No. 1469.⁶ The legislative action enabled Cal-Am to submit a revised application in January 2023 requiring an evaluation of a new WRAM proposal.

MPWMD may comment further in its reply brief on additional common outline topics but restricts its argument here to primarily address whether it is necessary to deviate from the Commission's prior determination in 2020 that using an M-WRAM mechanism is preferred to Cal-Am's current proposal for an "enhanced" WRAM that it labels WRSP.

1. Water Resources Sustainability Plan (WRSP)

Decision No. 20-08-047 Summary begins with the following statement, "This decision evaluates the sales forecasting processes used by water utilities and concludes that, after years as a pilot program, the Water Revenue Adjustment Mechanisms have proven to be ineffective in achieving its primary goal of conservation."⁷

The WRAM protects utilities from revenue shortfalls that occur when customers use less water. The assumption is that lower water use results from the tiered rate design because it is

⁵ D.21-09-047, *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*, Order Denying Rehearing of Decision 20-08-047, as Modified, issued September 27, 2021.

⁶ Pub. Resources Code §727.5. Section 727.5(d)(2)(A) was amended in 2022. It provides the Commission may authorize implementation of a decoupling mechanism that separates revenues and sales.

⁷ D.20-08-047, p. 2.

described as a “conservation” rate design. But the WRAM does not distinguish whether the lower water use comes from conservation programs or messaging or “drought, economic effects, or inaccurate sales forecast.”⁸

The argument is then made in this proceeding that WRAM utilities spend more on conservation messaging and programs than M-WRAM utilities.⁹ This is a false equivalent. Perhaps M-WRAM utilities were making capital investments to reduce system leaks or maybe their customers already were low users. Those are equally plausible possibilities.

Once water is priced on an inclining scale for increased usage, the law of demand applies – when the cost goes up, demand goes down. David Mitchell, Cal-Am’s expert witness on sales forecasting described it this way:

I don’t think that the rate design depends necessarily on knowing the motivations or thinkings of the customers, it relies primarily on the law of demand. And that’s a pretty simple law, but also the one that is most confirmed by empirical evidence in terms of – you know – in terms of economic theory. The one thing economists can really hang their hat on is the law of demand, which is a very simple law. It says that as price goes up, consumers, in general, will demand less of a good or service; and as the price goes down, they’ll demand more of the good or the service. And that’s been shown repeatedly through empirical study to be true for water service. I think at this point I would say it’s irrefutable empirically that that is the case.¹⁰

a. Essential Services Balancing Account (ESBA)

Please see Section III.A. 1 above.

⁸ *Id.*, p. 55.

⁹ CALAM-SWO-002A, p. 27:24-26 citing Keith Switzer Direct Testimony.

¹⁰ Reporter’s Transcript Volume 5 (5RT) 271:12 to 272:2 (CALAM/Mitchell).

b. Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)

Annual Consumption Adjustment Mechanisms (ACAM) are intended to work with a WRAM/MCBA approach. If the Commission authorizes the WRSP, MPWMD objects to additional adjustments as proposed in Special Request No. 3.

If the Commission denies Cal-Am's WRSP, then the need for this mechanism is eliminated except for the collection of outstanding balances.

c. Amortization (Updated Special Request No. 14)

MPWMD offers no position on Special Request No. 14 at this time.

d. Rate Design

Sales forecasting remains problematic given complex rate designs. The disconnect for water customers of why it costs more when less water is used is not solved by Cal-Am's proposal. WRAM balances remain significant even with reductions over recent years and are another source of confusion when customers see these surcharges on their monthly bills. One should ask why customers are completely responsible for revenue shortfalls when the problem lies with the water utility's forecast over which ratepayers have no control. In this proceeding, Cal-Am proposes modifications to current rate structures by adding 4th and 5th tiers in some of its divisions. The complexity of these calculations can only add to sales forecasting errors.

The "Law of Demand" as articulated above by Cal-Am's witness David Mitchell is fundamental to rate design. The assumption that WRAM promotes conservation is easily refuted.

A proper price signal can provide a basic amount of water at a low quantity rate¹¹ while promoting conservation by increasing the cost for high water use.

Perhaps it is time to overhaul current rate design practices and focus on the primary mission of providing quality water for basic human needs at the lowest possible cost and fewer additional tiers that send the price signal that water conservation is the way of life in California. For example, the Commission has responded to drought events and could establish permanent triggers so that if certain events occur, accounts are automatically established to record the revenue impacts. Concerns about affordability for low-income customers are addressed in a variety of programs and funding sources. Water rate design should reward low-use customers while providing appropriate price signals that clearly show how using more water costs more.

2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

The Monterey-Style WRAM dates from 1996.¹² Following a 1995 order from the SWRCB, Cal-Am required new measures to control consumption due to its reduced Monterey water supply. The solution was the M-WRAM because it afforded Cal-Am protection from the reduced revenues resulting from a highly tiered rate structure when compared to a uniform or flat rate.

The Decision No. 20-08-047 Summary concludes, “This decision therefore identifies other benefits the Water Revenue Adjustment Mechanisms provide that are better achieved through the

¹¹ Cal Advocates previously suggested that Tier 1 breakpoints be linked to either projected essential use quantities or assumed indoor water usage. See D.20-08-047, pp.37-38.

¹² D.96-12-005, *Application of the California-American Water Company (U210W) for Authority to Increase Rates in Its Monterey Division by \$2.16 million (11.2%) in 1997, \$479,400 (2.46%) in 1998, and \$442,900 (2.02%) in 1999.*

Monterey-Style Water Revenue Adjustment Mechanisms and requires water utilities to propose Monterey-Style Water Revenue Adjustment Mechanisms in future general rate cases.”¹³

a. Full Cost Balancing Account (FCBA)/Incremental Cost Balancing Account (ICBA) (Special Request No. 2)

MPWMD offers no position on Special Request No. 2 at this time.

b. Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3)

Please see Section III.A.1. b above.

c. Amortization (Special Request No. 14)

MPWMD offers no position on Special Request No. 14 at this time.

d. Rate Design

As has been previously stated by Cal Advocates in D.20-08-047, “...forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling mechanism in California.”¹⁴ In contrast, the use of the Monterey-style WRAM places the sales risk on the water utilities, not the ratepayers. MPWMD supports an M-WRAM mechanism, preferably with a new name.

B. Comparison of Impacts of WRSP and M-WRAM

MPWMD reserves comment on the impacts of WRSP and M-WRAM in its reply brief.

¹³ D.20-08-047, p. 2.

¹⁴ *Id.*, p. 30.

IV. CONCLUSION

Ratepayers experience too many rate increases. The GRC alone causes three rate changes which are further compounded by WRAM surcharges and other offsets from authorized advice letters or emergency authorizations. Cal-Am customers still do not understand why using less water costs them more, a situation that may intensify with the requested increased meter charge.

The Commission concluded in 2020 that the “WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers, eliminates the incentives to efficiently manage water production expenses, and eliminates the incentive to accurately forecast sales in a GRC.”¹⁵ The Commission should make a similar determination in the instant proceeding and approve an M-WRAM mechanism, preferably renamed to avoid confusion.¹⁶

Dated: December 6, 2023

Respectfully submitted,

/s/ David C. Laredo

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¹⁵*Id.*, p. 53.

¹⁶ CALAD-RR-001, Public Advocates Office Prepared Testimony of Richard Rauschmeier, Report on Recommendations on Cal Am’s Special Request #1, dated April 13, 2023 (Rauschmeier Report).

EXHIBIT D

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American
Water Company (U210W) for
Authorization to Increase its Revenues for
Water Service by \$55,771,300 or 18.71%
in the year 2024, by \$19,565,300 or
5.50% in the year 2025, and by
\$19,892,400 or 5.30% in the year 2026.

Application 22-07-001

**REPLY BRIEF OF THE PUBLIC ADVOCATES OFFICE
ON DECOUPLING ISSUES**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. BACKGROUND	1
A. Cal Am’s Full WRAM WRSP is Inconsistent with Legislative Intent Because the Proposed Decoupling Mechanism Fails to Target Conservation.	1
B. Cal Am Fails to Support its Claim that Decoupling is a Water Utility Industry Best Practice.	2
1. High Sales Variability and Forecasting Inaccuracy Risk Make Full WRAM Decoupling Unfairly Burdensome to Water Utility Ratepayers.	2
2. The National Association of Regulated Utility Commissioners Did Not Endorse Water Utility Decoupling for Conservation.....	4
3. Decoupling Mechanisms Adopted by Public Utilities Do Not Support Cal Am’s Full WRAM Proposal.	4
C. Cal Am Inaccurately Claims that the M-WRAM is not a Decoupling Mechanism.	5
D. Cal Am Has Failed to Meet its Evidentiary Burden.	6
III. DISCUSSION	8
A. Cal Am Fails to Support its Claim that Full WRAM has “Clearly Worked” as a Conservation Tool.	8
1. The Record Does Not Establish that Either Full WRAM or M-WRAM is the Cause of Any Amount of Water Usage Reduction.	9
2. Cal Am’s Proposed Full WRAM WRSP Does Not Target Conservation More Effectively than Traditional WRAM.	10
B. Cal Am’s Full WRAM WRSP Fails to Address the Forecasting Risk Shifted to Cal Am’s Ratepayers.....	11
1. The Record Does Not Support Cal Am’s Claim that the Full WRAM WRSP Will Result in Customers’ Long-Term Cost Savings.	12
2. The National Association of Water Companies Conflates Rate or Price Shock with Demand Shock.....	12
3. Cal Am’s Unspecified Amortization Cap Increase (Special Request No. 14) Will Exacerbate the WRSP’s Negative Impact on Customer Bills.	13

4. Proposed Annual Consumption Adjustment Mechanism Modifications Would Undermine Commission Oversight of Forecasted Revenue.	13
C. Cal Am’s Aggressive Rate Design Under the Full WRAM WRSP Requires Increased Meter Charges and is Enabled by Customers Bearing All Forecasting Risk.....	14
IV. CONCLUSION	16

TABLE OF AUTHORITIES

	<u>Page (s)</u>
<u>California Public Utilities Code</u>	
§727.5	1
§727.5 (d)	4
<u>Commission Decisions</u>	
D.16-12-206.....	3, 6, 8
D.20-08-047.....	passim
<u>Commission Rules of Practice and Procedure</u>	
Rule 13.12.....	1

I. INTRODUCTION

Pursuant to Rule 13.12 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules) and the schedule established in the October 31, 2023 *Administrative Law Judge’s Ruling Updating the Proceeding Schedule and Providing Direction Regarding Briefing*, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this reply to the *Opening Brief of California American Water Company (Cal Am) on Decoupling Issues (Cal Am Opening Brief on Decoupling)*.

II. BACKGROUND

In this proceeding Cal Am asks the Commission to disregard nearly 15 years of direct experience with the full Water Revenue Adjustment Mechanism (WRAM) – experience culminating in the Commission’s finding that WRAM is inconsistent with just and reasonable rate setting.¹ Further, Cal Am has unsuccessfully attempted to characterize its proposed Water Resources Sustainability Plan (WRSP) as just and reasonable by claiming that the WRSP addresses “some of the concerns” that led the Commission to determine that WRAM was not just and reasonable in D.20-08-047.²

A. Cal Am’s Full WRAM WRSP is Inconsistent with Legislative Intent Because the Proposed Decoupling Mechanism Fails to Target Conservation.

Cal Am asserts that authorization of its proposed WRSP would fulfill the legislative intent of Senate Bill (SB) 1469 (Public Utilities Code section 727.5), which provides that water utilities’ proposed decoupling mechanisms are authorized by the Commission *in order to further incentivize water conservation efforts*.³ However, the

¹ D.20-08-047, at 99-100 (concluding that WRAM is inconsistent with the Commission’s duty to set just and reasonable rates); see Ex. CWA-KS-001, *Prepared Direct Testimony of Keith Switzer on behalf of the California Water Association*, at 7.

² See D.20-08-047, at 99-100; *Opening Brief of California American Water Company on Decoupling Issues (Cal Am Opening Brief on Decoupling)*, at 8.

³ Senate Bill (SB) 1469, Section 1(b).

full WRAM WRSP is a proposed decoupling mechanism that insures the utility from any and all potential causes of reduced revenue. The WRSP is not targeted to shield Cal Am from reduced revenue related to conservation and as such, it contravenes the legislative intent of the statute.⁴

B. Cal Am Fails to Support its Claim that Decoupling is a Water Utility Industry Best Practice.

Cal Am asserts that decoupling should be considered a “best practice” for water utilities based on the history of decoupling in the energy sector, stating that “the Commission should provide...similar revenue stability mechanisms to water utilities” as are used by energy utilities.⁵ The implication that full WRAM has provided revenue stability to Cal Am is not an issue directly addressed in this proceeding, but the Commission has previously determined that WRAM is not an appropriate revenue stability mechanism due to the impact it has had on customers.⁶ Further, there is no evidence in the record that those Class A water utilities without WRAM from 2010 to 2021 experienced a lack of revenue stability with their use of the Monterey-style WRAM (M-WRAM).

1. High Sales Variability and Forecasting Inaccuracy Risk Make Full WRAM Decoupling Unfairly Burdensome to Water Utility Ratepayers.

Cal Am’s suggestion that water and energy utilities are equally suited for decoupling does not account for water utility-specific issues and the effects of full

⁴ See *Opening Brief of the Public Advocates Office on Decoupling Issues* (December 6, 2023) (Cal Advocates Opening Brief on Decoupling), at 7.

⁵ *Opening Brief of California American Water Company on Decoupling Issues* (Cal Am Opening Brief on Decoupling), at 1, 2.

⁶ D.20-08-047, at 69 (noting that due to impacts of WRAM and negative customer experience, WRAM/MCBA is not preferred as a “mechanism to adjust rates mid-year or end of year if shortfalls occur”).

WRAM on water utility customers.⁷ Cal Am points out that compared to the energy sector, water utilities have ongoing “issues related to forecasting” and much higher sales variability – meaning greater business risk – while steadfastly denying that full WRAM shifts this risk burden to ratepayers.⁸ Cal Am asserts that these forecasting and revenue volatility factors mean that water utilities have a greater need for decoupling⁹ Contrary to this claim, the Commission determined in D.20-08-047 that full WRAM gives water utilities a disincentive to develop more accurate sales forecasts, resulting in greater forecasting inaccuracy and higher sales variability.¹⁰ Water utilities are already compensated for forecasting risk in their authorized rates of return.¹¹ Further, in the absence of revenue protection for inaccurate forecasts, forecasting becomes more significant, both to the utility and the customer.¹² As noted by the Monterey Peninsula Wastewater Management District (MPWMD), full WRAM unfairly makes “customers...completely responsible for revenue shortfalls when the problem lies with the water utility’s forecast over which ratepayers have no control.”¹³

⁷ See D.16-12-206, *Decision Providing Guidance on Water Structure and Tiered Rates*, at 30 (noting disparity in standards of energy and water demand forecasting, encouraging water utilities to leverage work of other organizations “attempting to bring water demand forecasting to a higher standard, such as the level employed by energy utilities”).

⁸ Cal Am Opening Brief on Decoupling, at 3, 10-11; *compare* D.20-08-047, at 53 (stating that “the WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers”).

⁹ Cal Am Opening Brief on Decoupling, at 3.

¹⁰ D.20-08-047, at 75 (concluding that “in order to improve water sales forecasting the WRAM/MCBA mechanism cannot continue”); Cal Advocates Opening Brief on Decoupling, at 9-10; *Opening Brief of Monterey Peninsula Wastewater Management District (MPWMD) on the Subject of WRAM/Decoupling* (MPWMD Opening Brief on WRAM), at 6.

¹¹ Ex. CALAD-RR-001, at 9.

¹² Ex. CALAD-RR-001, Attachment 1, Attachment 1: Answer of Respondent to Petitions for Writ of Review, at 69.

¹³ MPWMD Opening Brief on WRAM, at 6.

2. The National Association of Regulated Utility Commissioners Did Not Endorse Water Utility Decoupling for Conservation.

Cal Am erroneously states that 2013 Resolution by the National Association of Regulated Utility Commissioners (NARUC) endorsed decoupling for water utilities.¹⁴ The authority cited, the 2013 NARUC *Resolution Endorsing Consideration of Alternative Regulation that Supports Capital Investment in the 21st Century for Water and Wastewater Utilities*, does not mention decoupling or conservation.¹⁵ As the title of the resolution indicates, its subject matter is facilitation of capital investment, which is not Cal Am's stated purpose for the full WRAM WRSP.¹⁶ Because the NARUC resolution lacks any mention of decoupling, conservation, or incentives for conservation, Cal Am's claim that NARUC endorsed decoupling is false.¹⁷

3. Decoupling Mechanisms Adopted by Public Utilities Do Not Support Cal Am's Full WRAM Proposal.

To support its claim that full WRAM should be considered a water utility best practice, Cal Am notes that the Los Angeles Department of Water and Power (LADWP), a public agency providing water and electric service, uses a decoupling mechanism for

¹⁴ Cal Am Opening Brief on Decoupling, at 3, citing NAWC-NJK-001, *Opening Testimony of Norman J. Kennard on Behalf of the National Association of Water Companies* (NAWC), at 17.

¹⁵ Cal Am Opening Brief on Decoupling, at 3. Specifically, the NARUC resolution "supports consideration of alternative regulation plans and mechanisms along with and in addition to the policies and mechanisms outlined in the *Resolution Supporting Consideration of Regulatory Policies Deemed as "Best Practices"* adopted by the NARUC Board of Directors on July 27, 2005." Full text of the 2013 NARUC resolution, *Resolution Endorsing Consideration of Alternative Regulation that Supports Capital Investment in the 21st Century for Water and Wastewater Utilities*, is available at: http://pubs.naruc.org/pub/53A0858A-2354-D714-5175-3BF53CDDC767?_gl=1*1p3oxrt*_ga*MTM2ODYzMjk2LjE3MMDM3OTgzMTk.*_ga_QLH1N3Q1NF*MTewMzc5ODMxOC4xLjEuMTcwMzc5ODMzOC4wLjAuMA.

¹⁶ See Cal Am Opening Brief on Decoupling, at 9 (describing function of the Essential Services Balancing Account).

¹⁷ If the "alternative regulation" language in the resolution implies decoupling, it would address decoupling as a revenue stabilizing, capital investment-promoting mechanism, not a means of promoting conservation. Support for capital investment and water utility revenue stabilization are not part of the legislative intent for Public Utilities Code section 727.5(d).

both energy and water.¹⁸ In pointing to LADWP or other public utilities as examples of decoupling in the public sector to justify investor-owned water utility decoupling, Cal Am does not account for the differences in public accountability, profit incentives, governance, transparency requirements, and other factors that legally apply to LADWP as a public utility.¹⁹ The record in this proceeding does not contain adequate evidence of the similarities and differences between Cal Am and LADWP.²⁰ Therefore, the mere existence of a decoupling mechanism at LADWP does not support Cal Am's full WRAM WRSP proposal.

C. Cal Am Inaccurately Claims that the M-WRAM is not a Decoupling Mechanism.

Cal Am asserts that the M-WRAM is not a decoupling mechanism because “[M-WRAM] does not adjust revenues for sales fluctuations due to conservation-oriented tiered [rate] designs.”²¹ Based on this definition of decoupling, neither WRAM nor the decoupling components of the Cal Am's full WRAM WRSP proposal would be decoupling mechanisms because they do not target sales fluctuations on the basis of conservation.²² The M-WRAM was developed in conjunction with tiered conservation rate designs and decouples sales from the revenue amount that would have occurred at a

¹⁸ Cal Am Opening Brief on Decoupling, at 19; Ex. CWEP-MAD-001, at 4, 7.

¹⁹ Cal Am suggested in evidentiary hearings that LADWP's bondholders are analogous to Cal Am's shareholders; this comparison is inapt. RT, Vol. 5 (CALAM/Mitchell), at 316. LADWP is a municipal entity with a governing Board of Commissioners, whose meetings and agendas must be noticed in advance and open to the public subject to the Ralph M. Brown Act ([Government Code 54950 et seq.](#), the municipal equivalent of the Bagley-Keene Act applicable to state agency meetings). As a public entity, LADWP is also subject to the California Public Records Act ([Government Code 7920 et seq.](#)).

²⁰ Cal Am's witness David Mitchell noted in the evidentiary hearing that LADWP has bond financing obligations. (RT, Vol. 5 (CALAM/Mitchell), at 317:6-13.

²¹ Cal Am Opening Brief on Decoupling, at 12.

²² Cal Am Opening Brief on Decoupling, at 8 (indicating that the purpose of the full WRAM component of the WRSP, called the Essential Services Balancing Account or ESBA, is to track the difference between the adopted revenue forecast and actual revenue, as well as the difference between forecasted and recorded expenses for certain volumetric expenses). Like WRAM the ESBA is indifferent to the reasons for the difference between the adopted revenue forecast/authorized revenue requirement and actual revenue.

uniform single quantity rate (SQR).²³ Over 10 years of data comparing full WRAM and M-WRAM utilities shows little difference in water usage outcomes, but the comparative impact on customers has been severe.²⁴

Further, in describing the choice before the Commission between full WRAM WRSP and M-WRAM, Cal Am erroneously implies that the WRSP *would* address changes in consumption due to conservation by stating that the M-WRAM does not.²⁵ The full WRAM WRSP is indifferent to the reasons for changes in usage and revenue shortfalls.²⁶

D. Cal Am Has Failed to Meet its Evidentiary Burden.

For the reasons stated in Cal Advocates' opening brief on decoupling, Cal Am fails to establish by preponderance of the evidence that its full WRAM WRSP proposal is just and reasonable.²⁷

The Commission determined that full WRAM is not just and reasonable after more than a decade of observing the negative impacts of WRAM and implementing a series of damage control measures in attempts to mitigate those negative impacts.²⁸ Therefore, any subsequent full WRAM proposal considered by the Commission must adequately

²³ See Cal Am Opening Brief on Decoupling, at 12.

²⁴ Ex. CALAD-RR-001, at 8:15-23.

²⁵ Cal Am Opening Brief on Decoupling, at 8.

²⁶ Ex. CALAD-RR-001, at 14:2-6 (noting that for water utilities with WRAM, any loss in revenue brought about by any event, whether a natural or human-created disaster, is “automatically attributed to the utility’s intentional promotion of conservation and recovered from ratepayers”).

²⁷ See Cal Advocates Opening Brief on Decoupling, at 5.

²⁸ See, e.g., D.16-12-206, at 80, Finding of Fact 5 (addressing 10 percent cap on WRAM balance recovery and other mechanisms implemented to reduce WRAM balances and improve forecasting accuracy); Cal Advocates Opening Brief on Decoupling, at 31 (discussing history of WRAM mitigation measures); Ex. CALAD-RR-001, Attachment 1, at 32 (discussing history of measures by the Commission to mitigate WRAM impacts).

address the concerns that formed the basis for the Commission’s determination that WRAM was not a just and reasonable ratemaking mechanism.²⁹

Cal Am attempts to distinguish its WRSP proposal from historical full WRAM by claiming that various added components of the WRSP address “some of the concerns” that the Commission identified with WRAM.³⁰ Comparison of the Commission’s concerns about WRAM with the components of the WRSP shows that Cal Am’s proposal would likely create more new concerns than it addresses.³¹

The Commission cannot authorize Cal Am’s full WRAM WRSP without first determining that the proposal is just and reasonable.³² The Commission found that WRAM was inconsistent with just and reasonable ratemaking for three main reasons: first, WRAM does not target actual conservation impacts on Cal Am’s revenue or result in any measurable decreases in water use;³³ second, WRAM does not incentivize Cal Am’s sales forecasting accuracy in general rate cases;³⁴ and third, WRAM is unreasonable in the risk and financial burdens it shifts to Cal Am’s ratepayers.³⁵

²⁹ Cal Advocates Opening Brief on Decoupling, at 5. The issue of Cal Am’s failure to resolve the problems identified with WRAM is discussed in Section III.C. of this reply brief.

³⁰ Cal Am Opening Brief on Decoupling, at 8; R.T., Vol. 5 (CALAM/Mitchell) at 289:15-19 (stating that Cal Am WRSP proposal “differs [in] some ways from the previous WRAM. It...tries to address some of the...challenges or limitations that were learned through that experience”).

³¹ Cal Advocates Opening Brief on Decoupling, at 5 (identifying the Commission’s chief concerns with WRAM as stated in D.20-08-047).

³² Cal. Const. art. XII, § 6; Public Utilities Code Section 451.

³³ D.20-08-047, at 55 (observing that “[the] WRAM/MCBA...adjusts for all water consumption reductions, not just consumption reductions due to implementing conservation”).

³⁴ D.20-08-047, at 50-51 (presenting factors that utilities must consider in sales forecasting in a general rate case).

³⁵ D.20-08-047, at 53. The risk that full WRAM shifts to ratepayers has not been quantified in a previous GRC proceeding, but the Commission determined that full WRAM inappropriately “transfers risk for utility operations from shareholders to ratepayers.”

Accordingly, if the full WRAM WRSP proposal does not adequately address the Commission’s reasons for finding that WRAM was not just and reasonable, the Commission must reject Cal Am’s proposal.³⁶

III. DISCUSSION

Cal Am asks the Commission to ignore conclusions drawn from more than fifteen years of experience with the WRAM pilot program, culminating in D.20-08-047: full WRAM does account for actual conservation impacts on sales, it does not incentivize improved forecasting accuracy, and it shifts all of the utility’s forecasting risk to customers, creating an undue financial burden.³⁷ The only result of full WRAM proven by evidence in the record is guaranteed revenue for the utility.³⁸

A. Cal Am Fails to Support its Claim that Full WRAM has “Clearly Worked” as a Conservation Tool.

California should deploy the most effective tools available to conserve water.³⁹ As previously discussed, however, Cal Am’s full WRAM WRSP proposal does not target conservation-related reductions in sales – a defect that the Commission identified in determining that WRAM did not provide conservation benefits adequate to warrant its continuation.⁴⁰ Lingering full WRAM balances and surcharges also dampen conservation pricing signals, impeding rather than promoting conservation.⁴¹

³⁶ Cal Advocates Opening Brief on Decoupling, at 5.

³⁷ Cal Advocates Opening Brief on Decoupling, at 25-26.

³⁸ Cal Advocates Opening Brief on Decoupling, at 9.

³⁹ See, e.g., Cal Am Opening Brief on Decoupling, at 8; Ex. NAWC-NJK-001, at 12:12-13.

⁴⁰ D.20-08-047, at 69 (stating that “[we] are...not persuaded that the WRAM/MCBA adjusts for consumption reductions due to implementing conservation”).

⁴¹ As the Commission opined in D.16-12-206, at 31:

Like the Big Bang Echo, WRAMs and surcharges that collect authorized revenue years after a change in water sales or conditions caused authorized and actual revenue to diverge send nearly unintelligible signals originating from events in the distant past, discernible only to the cognoscenti of rate design.

1. The Record Does Not Establish that Either Full WRAM or M-WRAM is the Cause of Any Amount of Water Usage Reduction.

No party in this proceeding has demonstrated that reductions in water usage over time would not have occurred but for the utility having either a WRAM or an M-WRAM.⁴² In rebuttal testimony and opening briefs, Cal Am and the California Water Association (CWA) critique Cal Advocates' testimony comparing annual water usage reduction between WRAM and non-WRAM utilities, claiming that the values in Cal Advocates' Table 1 and Table 2 are "meaningless" and "untethered from any physical quantity."⁴³ The intensity of the criticism creates some expectation of results radically different from those Cal Advocates presented. Instead, the differences in water reduction between WRAM and non-WRAM utilities are minor and grossly disproportional to the criticism.⁴⁴ Cal Am and CWA ultimately fail to rebut the point illustrated by Tables 1 and 2 of Cal Advocates' testimony: water usage reduction generally followed the same pattern, whether the utility had a full WRAM or an M-WRAM.⁴⁵

Accordingly, the issue of which utility or category of utilities experienced higher water usage reduction, whether viewed year-to-year or cumulatively, is ultimately irrelevant.⁴⁶ None of the variables that may have contributed to changes in water usage were identified and considered in any party's analysis.⁴⁷ Further, Cal Am has not

⁴² Cal Advocates Opening Brief on Decoupling, at 24-25.

⁴³ Cal Am Opening Brief on Decoupling, at 23.

⁴⁴ Cal Advocates Opening Brief on Decoupling, at 27.

⁴⁵ See Cal Advocates Opening Brief on Decoupling, at 27; Cal Am Opening Brief on Decoupling, at 24; Ex. CWA-KS-001, at 6:4-14 (stating that CWA's water usage analysis was based on the same data that Cal Advocates used, i.e., Annual Report consumption data). See also William Shakespeare, *Hamlet*, Act III, Scene II, 210-219.

⁴⁶ Cal Am uses the word "achieved" in discussing water usage reduction, but provides no evidence that any reduced water usage (for either WRAM or M-WRAM utilities) was the result of any intentional conservation effort. See Cal Am Opening Brief on Decoupling, at 24.

⁴⁷ See Ex. CALAM-DM-003, at 47-50, (discussing lack of accounting for "confounding variables" in Cal Advocates' water usage reduction comparison); but see Cal Advocates Opening Brief on Decoupling, at

(continued on next page)

demonstrated that higher conservation-related expenditures purportedly enabled by full WRAM have produced commensurate reductions in water usage.⁴⁸

2. Cal Am’s Proposed Full WRAM WRSP Does Not Target Conservation More Effectively than Traditional WRAM.

Cal Am attempts to address the problem of full WRAM’s failure to target conservation-related revenue impacts by adding a more “aggressive,” steeply-tiered rate design to the WRSP proposal.⁴⁹ In a rate design/decoupling feedback loop, Cal Am asserts that more aggressive rate design increases revenue volatility (due to increased forecasting risk), which in turn increases the need for a mechanism to address the increased forecasting risk.⁵⁰ However, Cal Am has acknowledged that it can and would continue to have aggressive conservation-oriented rate designs without full WRAM.⁵¹ Full WRAM by operation corrects for forecasting inaccuracy and revenue fluctuations beyond the utility’s control – it is unrelated to intentional conservation measures that the utility plans for and includes in rates.⁵² The full WRAM component and heart of Cal Am’s WRSP proposal, termed the Essential Services Balancing Account (ESBA),

6, FN 26 (noting that Cal Am’s witness did not perform analysis of water usage that accounted for confounding variables either); *see also* MPWMD Opening Brief on WRAM, at 5.

⁴⁸ Cal Advocates Opening Brief on Decoupling, at 26; *see also* MPWMD Opening Brief on WRAM, at 5 (noting that differences in conservation expenditures between M-WRAM and WRAM utilities could easily be attributable to other factors than having a full WRAM or an M-WRAM).

⁴⁹ Cal Am Opening Brief on Decoupling, at 8.

⁵⁰ Cal Am Opening Brief on Decoupling, at 4 and 20 (stating that as Cal Am pursued more aggressive rate tiers in Monterey, the steeper tiers “meant greater revenue volatility, making it impossible for CAW to recover its revenue requirement,” until full WRAM was adopted and eliminated the increased forecasting risk created by steeper rate tiers).

⁵¹ Cal Advocates Opening Brief on Decoupling, at 20 (discussing four-tier conservation rate design and other “robust conservation programs” Cal Am proposed in its original application in this proceeding, requesting an M-WRAM).

⁵² Cal Advocates Opening Brief on Decoupling, at 14 (stating that because forecasted conservation is built into rates, full WRAM, and by extension the WRSP proposal, is not essential to preserving the utility’s opportunity for a fair return while promoting conservation). *See* Ex. CALAD-RR-001, at 15 (WRAM’s theoretical basis requires the assumption that any reduction in water usage is the result of unplanned (yet intentional) actions taken by the utility between general rate cases). The Commission acknowledged a need for some revenue stabilization mechanism in D.20-08-047, but determined that WRAM was the right tool neither for revenue stabilization nor conservation (D.20-08-047, at 67).

remains indifferent to the reason for reduced revenue.⁵³ As with WRAM, the purpose of the ESBA is revenue stabilization whether conservation is a factor or not.⁵⁴ Cal Am's WRSP targets conservation no differently or more effectively than did traditional WRAM. Accordingly, the full WRAM WRSP fails to address the Commission's concern that WRAM does not adequately target conservation.

B. Cal Am's Full WRAM WRSP Fails to Address the Forecasting Risk Shifted to Cal Am's Ratepayers

Cal Am's claims as to the customer benefits of its full WRAM WRSP proposal are theoretical and contradicted by the Commission's years of experience with the impacts of WRAM on customers.⁵⁵ As MPWMD notes, "[one] should ask why customers are completely responsible for revenue shortfalls when the problem lies with the water utility's forecast over which ratepayers have no control."⁵⁶ The volatility in water utility revenues, acknowledged by Cal Am, makes decoupling unduly burdensome on customers by shifting the utility's entire sales volatility risk to customers.⁵⁷ Even Cal Am acknowledges that is "more likely for sales to come in under forecast than over."⁵⁸

⁵³ Cal Am Opening Brief on Decoupling, at 8. The ESBA would merely track the difference between the adopted revenue forecast and recorded revenues, as well as the difference between certain forecasted and recorded volumetric expenses. Volumetric expenses may or may not decrease with decreased sales. *See, e.g.*, Cal Advocates' Opening Brief on Decoupling, at 17, FN 85; Cal Am Opening Brief on Decoupling, at 8. Cal Am avoids use of the term 'forecast' in connection with its adopted revenue requirement, but the revenue requirement is still a Commission-approved forecast and reflects a budget rather than the actual costs of service.

⁵⁴ Cal Advocates Opening Brief on Decoupling, at 11.

⁵⁵ *See* D.20-08-047, at 75 (stating that "employing the WRAM/MCBA mechanism has certain negative effects on customers and that there should be a fundamental change in policy regarding this subject").

⁵⁶ MPWMD Opening Brief on WRAM, at 6.

⁵⁷ Cal Advocates Opening Brief on Decoupling, at 9-11; MPWMD Opening Brief on WRAM, at 9 (citing D.20-08-047).

⁵⁸ Cal Am Opening Brief on Decoupling, at 20.

1. The Record Does Not Support Cal Am’s Claim that the Full WRAM WRSP Will Result in Customers’ Long-Term Cost Savings.

Cal Am claims that its full WRAM WRSP proposal will lead to long-term cost savings due to conservation, pointing to a correlation between conservation and savings. This claim is meritless because the record does not establish a link between full WRAM and actual reduced water usage.⁵⁹ Conservation over time may lower rates, but full WRAM WRSP is unnecessary to achieve conservation.⁶⁰ The record does not support the premise that Cal Am’s customers have achieved long-term cost savings under full WRAM, given the size and duration of undercollected WRAM balances.⁶¹ Accordingly, Cal Am’s claim that the full WRAM WRSP would result in long-term cost savings due to conservation has no merit.⁶²

2. The National Association of Water Companies Conflates Rate or Price Shock with Demand Shock

The National Association of Water Companies (NAWC) misunderstands the difference between rate or price shock and demand shock.⁶³ Cal Advocates’ testimony in this proceeding does not discuss rate or price shock. Rather, Cal Advocates points out that the operation of full WRAM is only beneficial to ratepayers when there is *positive* demand shock (i.e., sales greater than forecasted).⁶⁴ During periods of *negative* demand shock (i.e., sales less than forecasted), the utility benefits from operation of the WRAM.

⁵⁹ Cal Advocates Opening Brief on Decoupling, at 24-25.

⁶⁰ Cal Advocates Opening Brief on Decoupling, at 14 (noting that cost of intentional conservation programming can be included in rates).

⁶¹ Cal Advocates Opening Brief on Decoupling, at 10 (addressing the comparative rarity of overcollected balances under WRAM).

⁶² Cal Am Opening Brief on Decoupling, at 26; Ex. CALAD-RR-001, Attachment 1, at 30 (noting that “if a water utility’s WRAM/MBCA is perpetually under-collected, customers may experience continually increasing surcharges on their water bills).

⁶³ NAWC Opening Brief on Decoupling, at 12.

⁶⁴ Ex. CALAD-RR-001, at 12:18-23 (addressing different impact of positive versus negative demand shock).

However, as discussed in Cal Advocates testimony (which remains unaddressed by other parties), periods of positive and negative demand shock are not evenly distributed. Periods of negative demand shock occur more suddenly and severely, thus providing the utility with a grossly disproportionate share of the benefit compared to the ratepayers.⁶⁵

3. Cal Am’s Unspecified Amortization Cap Increase (Special Request No. 14) Will Exacerbate the WRSP’s Negative Impact on Customer Bills.

NAWC asserts that enabling Cal Am to raise the amortization cap beyond 15% to recover undercollected WRAM and ESBA balances more rapidly would “not create inequities for customers or shortfalls for the utility.”⁶⁶ However, Cal Am’s request fails to explain how Cal Am would determine in advance that an undercollected balance will not be recoverable in two years. Cal Am further fails to specify the amount of any potential increase in surcharge amounts to accelerate recovery.⁶⁷ Accordingly, Special Request 14 would give Cal Am ultimate discretion in determining the amount of surcharges, seriously impacting customer bills. Accordingly, the amortization cap component of Cal Am’s full WRAM WRSP proposal does not address the Commission’s concerns about the impacts of WRAM on customers.⁶⁸

4. Proposed Annual Consumption Adjustment Mechanism Modifications Would Undermine Commission Oversight of Forecasted Revenue.

The Annual Consumption Adjustment Mechanism (ACAM) component of Cal Am’s full WRAM WRSP proposal (Special Request No. 3) would allow Cal Am to impose more frequent bill increases between general rate cases.⁶⁹ The proposed ACAM

⁶⁵ Cal Advocates Opening Brief on Decoupling, at 11.

⁶⁶ NAWC Opening Brief on Decoupling, at 8.

⁶⁷ Cal Advocates Opening Brief on Decoupling, at 13-14.

⁶⁸ See Ex. CALAD-MD-001, at 51:12-19; Cal Advocates Opening Brief on Decoupling, at 14.

⁶⁹ Cal Am Opening Brief on Decoupling, at 18-19.

modifications might reduce the amount of interest customers are forced to pay on high WRAM and ESBA surcharge balances, but the modifications would prevent accrual of high balances mainly by recovering undercollections more rapidly with less Commission oversight.

In addition, more frequent ACAM adjustments would undermine the concept that Cal Am's forecasted revenue represents an amount that the Commission has reviewed, determined to be just and reasonable, and authorized for recovery.⁷⁰ More frequent revenue forecast adjustments outside of the general rate case process conflict with Cal Am's assertion that the adopted forecast has been predetermined as reasonable regardless of whether actual fixed costs match the forecast. "Fixed costs" are considered fixed not because they do not vary from adopted forecast amounts, but because they represent costs not tied to sales volume.⁷¹

Finally, the ACAM was adopted as a WRAM balance mitigation measure.⁷² Therefore, when the Commission rejected full WRAM it rejected ACAM as well. Expanding ACAM does not resolve the Commission's concerns that WRAM disincentivizes forecasting accuracy and negatively impacts customers.

C. Cal Am's Aggressive Rate Design Under the Full WRAM WRSP Requires Increased Meter Charges and is Enabled by Customers Bearing All Forecasting Risk.

Cal Am asserts that its proposed fixed charge recovery ratios are within the Commission's recommended window of 40% to 50% except for the Monterey.⁷³ This

⁷⁰ Cal Am Opening Brief on Decoupling, at 25 (stating that undercollected WRAM/ESBA amounts are "not additional revenue for CAW," but rather "revenue that the CPUC found to be just and reasonable as part of the GRC process, but which CAW was unable to recover due to the inherent variability of water sales and aggressive conservation rates.").

⁷¹ Cal Am Opening Brief on Decoupling, at 3 (costs that do not fluctuate based on sales volume are considered fixed); Ex. CALAM-SWO-003, at 52:1-3 (emphasizing that fixed costs are termed thus because they do not fluctuate based on usage).

⁷² Cal Advocates Opening Brief on Decoupling, at 18-19.

⁷³ Cal Am Opening Brief on Decoupling, at 11-12.

statement should be qualified by the fact that Cal Am’s ratios are based on percentage of fixed costs rather than percentage of revenue requirement.⁷⁴ Cal Am further asserts, however, that higher fixed or meter charges may dampen conservation pricing signals and create a burden on lower-income or lower volume water customers.⁷⁵

Cal Am’s claim that it would be unable to adopt its more steeply inclined, aggressive rate design tiers without full WRAM indicates that its rate design proposal included with the WRSP is not reasonable.⁷⁶ If the tiers are too steep (or too many) to be viable without shifting all of the sales volatility risk to customers, the negative impact of the rate design on customers will outweigh any possible conservation benefit: instead, customers will simply continue to pay even more for using even less water while also paying the inevitable surcharges that accompany full WRAM.⁷⁷ As MPWMD observes, “it is time to overhaul current rate design practices and focus on the primary mission of providing quality water for basic human needs at the lowest possible cost and fewer additional tiers,” signaling that “water conservation is the way of life in California.”⁷⁸

Cal Advocates’ recommended rate design is incompatible with Cal Am’s full WRAM WRSP because it focuses on providing lowest possible monthly bills Cal Am’s customers consistent with safety, reliability, and conservation. Accordingly, the Commission should reject Cal Am’s unnecessarily aggressive full WRAM rate design proposals and adopt the recommendations as outlined in Cal Advocates’ opening brief on decoupling and testimony.

⁷⁴ Cal Advocates Opening Brief on Decoupling, at 21-22.

⁷⁵ See Cal Advocates Opening Brief on Decoupling, at 20.

⁷⁶ Cal Am Opening Brief on Decoupling, at 22-24 (comparing rate design proposals); MPWMD Opening Brief on WRAM, at 6 (noting that Cal Am’s proposed rate design modifications, including adding fourth and fifth tiers in some cases, would increase complexity that “can only add to sales forecasting errors”).

⁷⁷ See Cal Am Opening Brief on Decoupling, at 20 (Cal Am acknowledges that sales are more likely to come in under forecast than over – a statement fully supported by the record);

⁷⁸ MPWMD Opening Brief on WRAM, at 7.

IV. CONCLUSION

Cal Am's full WRAM WRSP proposal fails to address the Commission's concerns articulated in D.20-08-047 that full WRAM is not consistent with just and reasonable ratemaking. Based on the foregoing and as argued in Cal Advocates Opening Brief on Decoupling Issues, Cal Advocates respectfully requests that the Commission deny Cal Am's request for the proposed full WRAM WRSP, authorize an M-WRAM or Conservation Pricing Mechanism, and adopt Cal Advocates' rate design recommendations.

Respectfully submitted,

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January 9, 2024

EXHIBIT E

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

Application of California-American
Water Company (U210W) for Authorization
to Increase Its Revenues for Water Service
by \$55,771,300 or 18.71% in the year 2024,
by \$19,565,300 or 5.50% in the year 2025, and
by \$19,892,400 or 5.30% in the year 2026.

Application 22-07-001
(Filed July 1, 2022)

**REPLY BRIEF OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ON WRAM/DECOUPLING ISSUES**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND/PROCEDURAL HISTORY	1
III. DISCUSSION	2
A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)	2
1. Water Resources Sustainability Plan (WRSP)	3
a. Essential Services Balancing Account (ESBA)	4
b. Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)	4
c. Amortization (Updated Special Request No. 14)	5
d. Rate Design.....	5
2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)	6
a. Full Cost Balancing Account (FCBA)/Incremental Cost Balancing Account (ICBA) (Special Request No. 2)	7
b. Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3)	7
c. Amortization (Special Request No. 14)	7
d. Rate Design.....	7
B. Comparison of Impacts of WRSP and M-WRAM	8
IV. CONCLUSION.....	8

**BEFORE THE PUBLIC UTILITIES COMMISSION
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Application of California-American Water Company (U210W) for Authorization to Increase Its Revenues for Water Service by \$55,771,300 or 18.71% in the year 2024, by \$19,565,300 or 5.50% in the year 2025, and by \$19,892,400 or 5.30% in the year 2026.

Application 22-07-001
(Filed July 1, 2022)

**REPLY BRIEF OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ON WRAM/DECOUPLING ISSUES**

I. INTRODUCTION

Pursuant to Rule 13.12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), the Monterey Peninsula Water Management District (MPWMD) files this Reply Brief on the WRAM/Decoupling Issues in Application (A.) 22-07-001.

II. BACKGROUND/PROCEDURAL HISTORY

California-American Water Company (Cal-Am) filed its 2022 General Rate Case (GRC) with the Commission on July 1, 2022. Shortly after filing the 100-day application update, Cal-Am moved to amend the application to include a full decoupling proposal. A ruling on November 15, 2022, authorized the filing of another application update with supporting documentation and testimony comparing a Water Revenue Adjustment Mechanism (WRAM) and a Monterey-style WRAM (M-WRAM).

Cal-Am’s updated application was filed on January 27, 2023, followed by the Public Advocates Office (Cal Advocates) Report on April 13, 2023, and all other parties’ testimony on April 20, 2023. Cal-Am served rebuttal testimony on May 25, 2023.

Mandatory Alternative Dispute Resolution resulted in an announcement on September 28, 2023, that Cal-Am and Cal Advocates had reached a high-level settlement. Evidentiary hearings began on October 5, 2023, and concluded on October 10, 2023.

The Settlement Agreement was filed on November 17, 2023, but it did not resolve Cal-Am’s decoupling requests identified as Special Request Nos. 1, 3, and 14, and the M-WRAM Incremental Cost Balancing Account in Special Request No. 2. Concurrent opening briefs were filed on December 6, 2023.

Rates approved in this proceeding apply to the years 2024, 2025, and 2026.

III. DISCUSSION

A. Special Request No. 1: Authorization of a Water Resources Sustainability Plan (WRSP) or Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

“WRAM/MCBA ratemaking mechanisms were adopted by Settlements in GRCs...to decouple sales from revenues and thus promote conservation” as the major purpose.¹ When the Commission decided in 2020 to eliminate the use of WRAM,² it cited several reasons. The WRAM coupled with a Modified Cost Balancing Account (MCBA) adjusted for all water consumption

¹ 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, issued September 3, 2020, p. 101, Findings of Fact (FOF) 3 and 4.

² *Id.*, p. 106, Order ¶3.

reductions, not just reductions caused by conservation programs, legislation, water-saving devices, and messaging. Sales forecasting methods were another factor with too many “confounding factors.” The Commission also determined that the WRAM transferred operation risks from shareholders to ratepayers and concluded that the use of the M-WRAM was preferred as a reasonable ratemaking mechanism.

1. Water Resources Sustainability Plan (WRSP)

Cal-Am’s Water Resources Sustainability Plan (WRSP) is little more than a new name for WRAM/MCBA. While it clearly decouples sales from revenues, there is no evidence to support the premise that the water reductions result from conservation. MPWMD agrees with Cal Advocates that Cal-Am had multiple expert witnesses available but never requested a proper statistical analysis comparing historical water reductions between WRAM and M-WRAM utilities. For example, David Mitchell testified that his firm was never tasked to do a complete statistical analysis analyzing water use by full WRAM versus M-WRAM utilities.³ Cal-Am failed to address the Commission’s concern that the use of the WRAM mechanism allows recovery for all revenue reductions regardless of the reason.

There was significant testimony regarding sales forecasting. Improvements in the methodology have reduced the size of WRAM balances but the complexity of tiered rates and the nature of recovery through balancing accounts prevents a reasonableness review of forecasted revenues versus offsetting costs.

³ Reporter’s Transcript, Volume 5 (5RT) 249:3-5 (CALAM/Mitchell).

The WRSP still transfers the risk of errors in forecasted revenues to customers and the record showed clearly that WRAM balances favored the utilities over the customers.⁴

a. Essential Services Balancing Account (ESBA)

The Essential Services Balancing Account (ESBA) has two subaccounts: the Essential Service *Revenue* Balancing Account (ESRBA) and the Essential Service *Cost* Balancing Account (ESCBA). The ESRBA tracks the difference between recorded revenue and forecasted revenue like the WRAM. The ESCBA tracks the differences in some costs (purchased water and power, pump taxes, chemicals, and similar variable costs that vary based on the quantity of water sold) like the MCBA. These newly named ESBA accounts do not address or resolve the Commission's prior concerns with WRAM/MCBA mechanisms and should be denied.

b. Annual Consumption Adjustment Mechanism (ACAM) (Updated Special Request No. 3)

The Commission noted that Annual Consumption Adjustment Mechanisms (ACAM) were intended to work with a WRAM/MCBA approach.⁵ This enabled annual updating of sales forecasting rather than relying on the GRC's three-year forecast but is contrary to the Commission's Rate Case Plan. New conservation standards will be mandated by the State Water Resources Control Board (SWRCB) to establish conservation as a way of life for Californians that will reduce the need for any ACAM. If the Commission denies Cal-Am's WRSP, then the need for the ACAM is eliminated except for the collection of outstanding balances.

⁴ Exhibits (Exh.) CALAD-004, CALAD-015, and CALAD-017, Cal-Am Annual Reports Schedule E-1 column (h). Surcredits for the period 2008-2022 show that for each WRAM district, a surcredit appeared only four times.

⁵ D.20-08-047, p. 51.

Alternatively, if the Commission authorizes the WRSP, MPWMD objects to additional adjustments as proposed in Special Request No. 3 which confuse customers with rate changes not disclosed in the GRC proceeding.

c. Amortization (Updated Special Request No. 14)

Cal-Am requests authority to exceed the current 15% cap on recovering WRAM balances so it can recover future balances within 24 months. It is obvious that revenue would be recovered more quickly under this proposal, but the impact on customers is not known. There is no limit placed on the balance size nor the percentage impact on water bills. Monterey's experience with huge WRAM surcharge balances remains the poster child for why this approach should be avoided.⁶ This is not just and reasonable ratemaking.

MPWMD agrees with Cal Advocates that authorizing future unknown balances in undefined circumstances could result in greater surcharges without Commission oversight.⁷ The Commission should deny this request.

d. Rate Design

A proper rate design sends a signal to customers that using more water means higher water bills. Also, given the Commission's current standard for meter charges increasing to 40%

⁶ Exh. CALAD-010, Monterey 2012 Annual WRAM MCBA Report, Table 1. This report showed a Monterey WRAM balance in 2012 in excess of \$9.3 million resulting from Cal-Am's sales forecasting errors. See also 5RT 341:14 through 342:7 (CALAM/Owens). This exhibit was received into evidence at 5RT 388:20-21.

⁷ Opening Brief of the Public Advocates Office on Decoupling Issues, pp. 13-14.

guaranteeing more fixed cost recovery, there should be even less need for WRAM or WRSP mechanisms.

D.20-08-047 directed Cal-Am and others “to determine the appropriate Tier 1 breakpoint that is not less than the baseline amount of water for basic human needs.”⁸ Conclusion of Law 11 stated baseline should not be set below *both* the “Essential Indoor Usage” of 600 cubic feet per household per month and the average winter use in each ratemaking district.⁹ Yet Cal-Am set Monterey District’s essential usage at its winter use which is below the 600 cubic feet per household standard. The Commission should modify this error.

2. Monterey-Style Water Revenue Adjustment Mechanism (M-WRAM)

The Monterey-Style WRAM dates from 1996.¹⁰ Following a 1995 order from the SWRCB, Cal-Am required new measures to control consumption due to its reduced Monterey water supply. The solution was the M-WRAM because it afforded Cal-Am protection from the reduced revenues resulting from a highly tiered rate structure when compared to a uniform or flat rate design. This mechanism thus provided a direct correlation between reduced revenues resulting from a tiered rate structure designed to encourage water conservation when compared to the single quantity rate or SQR design.

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⁸ D.20-08-047, p. 106, Order ¶2.

⁹ *Id.*, p. 105, Conclusion of Law 11.

¹⁰ D.96-12-005, *Application of the California-American Water Company (U210W) for Authority to Increase Rates in Its Monterey Division by \$2.16 million (11.2%) in 1997, \$479,400 (2.46%) in 1998, and \$442,900 (2.02%) in 1999.*

a. Full Cost Balancing Account (FCBA)/Incremental Cost Balancing Account (ICBA) (Special Request No. 2)

MPWMD supports an Incremental Cost Balancing Account (ICBA) as the appropriate mechanism to be used with the M-WRAM mechanism because the ICBA tracks volumetric expense differences caused by changes in the unit price for pumped water and power from forecasted costs. Cal-Am's proposed Full Cost Balancing Accounts (FCBA) tracks differences for both price changes from authorized unit price *and* changes in actual water sold. This results in a blurring of the direct correlation provided by the M-WRAM design.

b. Annual Consumption Adjustment Mechanism (ACAM) (Special Request No. 3)

Please see Section III.A.1. b above.

c. Amortization (Special Request No. 14)

Please see Section III.A.1.c above.

d. Rate Design

As has been previously stated by Cal Advocates in D.20-08-047, "...forecast variance is inevitable in rate-of-return regulation, but that the impact on water utilities has been muted as the result of the WRAM decoupling mechanism in California."¹¹ In contrast, the use of the Monterey-style WRAM places the sales risk on the water utilities, not the ratepayers.

MPWMD supports an M-WRAM mechanism with ICBA, but preferably with a new name so as to distinguish it from the 1996 iteration.

¹¹ D.20-08-047, p. 30.

B. Comparison of Impacts of WRSP and M-WRAM

MPWMD agrees with Cal Advocates that Cal-Am failed to “establish a causal link between its per-customer conservation spending and WRAM.”¹²

IV. CONCLUSION

Whether achieving water conservation through rate structure is for the purpose of extending the life of existing water resources and avoiding the cost of new supplies or for complying with legislative mandates, the M-WRAM is exclusively designed to address the differential created by using a tiered-rate structure versus a standard or flat-rate design.

The Commission concluded in 2020 that the “WRAM/MCBA transfers risk for utility operations from shareholders to ratepayers, eliminates the incentives to efficiently manage water production expenses, and eliminates the incentive to accurately forecast sales in a GRC.”¹³ The totality of evidence in the present proceeding fails to establish that the WRSP successfully addresses the Commission’s concerns.

Therefore, the Commission should deny Cal-Am’s Special Request Nos. 1 for the WRSP, 3 (for any ACAM) and 14 (to exceed the 15% cap on WRAM/MCBA recovery)) and approve an M-WRAM mechanism (Special Request No. 1), preferably renamed to avoid confusion, and an ICBA (Special Request No. 2) for all Cal-Am districts. The Commission should also adjust the Monterey Rate Design to reflect 6 CCF as the baseline amount of water for basic human needs.

¹² Opening Brief of the Public Advocates Office on Decoupling Issues, p. 25.

¹³D.20-08-047, p. 53.

Dated: January 9, 2024

Respectfully submitted,

/s/ David C. Laredo

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CERTIFICATE OF SERVICE

I, Sarah Smith, am over 18 years old and not a party to this action. I am employed in the City and County of San Francisco, California. My business address is Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

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Executed on January 31, 2024 in San Francisco, California.



Sarah Smith

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **GOLDEN STATE WATER COMPANY v. PUBLIC UTILITIES
COMMISSION**

Case Number: **S269099**

Lower Court Case Number:

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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.

1/31/2024

Date

/s/Joseph Karp

Signature

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