

Docket:	<u>A.13-05-017</u>
Exhibit Number:	<u></u>
Commissioner:	<u>Catherine J.K. Sandoval</u>
Admin. Law Judge:	<u>Seaneen M. Wilson</u>
ORA Witness:	<u>Kerrie Evans</u>



**Office of Ratepayer Advocates' Report on  
California American Water Company's  
A.13-05-017:  
Settlement Agreement between California  
American Water, Monterey County Water  
Resources Agency & County of Monterey**

**PUBLIC VERSION**

San Francisco, California

October 22, 2013

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>- 3 -</b>
<b>II.</b>	<b>SUMMARY OF RECOMMENDATIONS.....</b>	<b>- 4 -</b>
<b>III.</b>	<b>BACKGROUND &amp; PROCEDURAL HISTORY .....</b>	<b>- 4 -</b>
	A. SEVENTY PERCENT OF CAW’S MONTEREY PENINSULA WATER SUPPLY MUST BE REPLACED BECAUSE IT IS DELIVERED UNLAWFULLY .....	- 4 -
	B. APPLICATION’S SCOPE AND FILING AUTHORITY .....	- 6 -
<b>III.</b>	<b>ANALYSIS .....</b>	<b>- 8 -</b>
	A. THE SETTLEMENT FAILS TO MEET THE REQUIREMENTS OF RULE 12.1(D).....	- 8 -
	1. There is insufficient information supporting the SETTLEMENT’s reasonableness .....	- 8 -
	2. SETTLEMENT is inconsistent with the law .....	- 9 -
	3. SETTLEMENT’s claim that it avoids expensive litigation is not in the public interest .....	- 12 -
	4. The SETTLEMENT is against the public interest due to missing parties .....	- 13 -
	B. ORA’S REVIEW OF THE APPLICATION’S INVOICES .....	- 14 -
	1. Requirements of the RA, D. 10-08-008 .....	- 14 -
	C. REVIEW OF SUPPORTING DOCUMENTATION .....	- 15 -
	1. Inconsistent findings per category.....	- 17 -
<b>IV.</b>	<b>CONCLUSION .....</b>	<b>- 20 -</b>
<b>V.</b>	<b>QUALIFICATIONS.....</b>	<b>- 21 -</b>

## I. INTRODUCTION

This report is the Office of Ratepayer Advocates' (ORA) analysis of Application ("A.") 13-05-017 ("Application") filed by the California American Water Company ("CAW" or "Cal-Am") at the California Public Utilities Commission ("Commission" or "CPUC") on May 24, 2013.

The Application requests approval of a "Settlement Agreement and Mutual Release" ("SETTLEMENT") between CAW, the Monterey County Water Resources Agency ("MCWRA") and the County of Monterey (collectively CAW, MCWRA and County of Monterey are the "Settling Parties"), transfer of \$2.78 million as "Authorized Costs Related to the Settlement Agreement to Its Special Request 1 Surcharge Balancing Account"<sup>1</sup> and a deposit within thirty days of Commission approval of \$718,315 into a Monterey County maintained trust account for possible disbursement as an escrow account.<sup>2</sup> Total ratepayer obligation with distribution of the escrow account is \$3.5 million.

In addition to ratepayer financial obligations, the SETTLEMENT includes several non-financial obligations, including settlement and resolution of all claims and issues between the Settling Parties regarding the Regional Desalination Project (RDP) agreements—the Reimbursement Agreement (RA) and the Water Purchase Agreement (WPA);<sup>3</sup> promoting development of a successful water project,<sup>4</sup> and avoiding time-consuming and expensive litigation.<sup>5</sup> The SETTLEMENT resolves potential litigation between the Settling Parties related to the RDP agreements. The RDP agreements involved CAW and two Monterey County public agencies,

---

<sup>1</sup> A.13-05-017, page 1.

<sup>2</sup> SETTLEMENT, Ex. A to A.13-05-017 ("SETTLEMENT"), paragraph 4C, page 5.

<sup>3</sup> Id., paragraph K, page 2 (the SETTLEMENT describes several other agreements as constituting the "RDP agreements," as well).

<sup>4</sup> Id., paragraph 1, page 4.

<sup>5</sup> Id.

MCWRA and the Marina Coast Water District (“MCWD”). MCWD is not a party to the SETTLEMENT.

## **II. SUMMARY OF RECOMMENDATIONS**

ORA reviewed the SETTLEMENT as a whole under the Commission’s Rules of Practice and Procedure, Rule 12.1(d). The burden of proving that a proposed settlement agreement meets Rule 12.1(d) is on the Settling Parties.<sup>6</sup> The Settling Parties have not met their burden of proof to demonstrate that the Commission should approve the SETTLEMENT as required by Rule 12.1 (d).

The Commission should reject the Application because the applicant has not demonstrated that the SETTLEMENT is reasonable in light of the whole record. The SETTLEMENT is inconsistent with the law because it does not comply with its stated filing authority<sup>7</sup> and may be inconsistent with the law due to pending litigation. The request for funds to avoid expensive litigation is not shown to be in the public interest because the cost of litigation is not completely resolved by this SETTLEMENT due to a missing party--MCWD. Finally, if the Application’s request is approved, the ratepayer, obligated to pay \$3.5 million, is also a missing party as the SETTLEMENT lacks any ratepayer representation.

For all of the above reasons, ORA recommends the SETTLEMENT be rejected and the Application be dismissed.

## **III. BACKGROUND & PROCEDURAL HISTORY**

### **A. Seventy percent of CAW’s Monterey Peninsula water supply must be replaced because it is delivered unlawfully**

In 1995 the State Water Resources Control Board (“SWRCB”) issued Order No. WR 95-10 (“SWRCB Order”) citing CAW for diverting from the

---

<sup>6</sup> D.01-02-075, p. 10 & Conclusion of Law 1.

<sup>7</sup> A.13-05-017, OP 2, p.11, “[t]o the extent that there are disputed costs related to the Reimbursement Agreement or the Line of Credit under the [WPA] of the RDP (other than legal costs mentioned next) and associated cost recovery must be addressed by this Commission, [CAW] should file a new application.”

Carmel River, on average, 10,730 acre-feet of groundwater per year without adequate water rights. The SWRCB Order determined that roughly 70% of CAW's water delivery to the Monterey community was unlawful.<sup>8</sup> The SWRCB Order requires CAW to develop alternative water sources other than the Carmel River.<sup>9</sup>

In 1997, CAW exceeded the SWRCB Order's water delivery limits and SWRCB issued an Administrative Civil Liability ("ACL") Complaint No. 262-10-03 with a proposed penalty of \$168,000.<sup>10</sup> In lieu of the proposed penalty, CAW sold its Forest Lake Reservoir and invested the net proceeds in the same local community services district that bought the reservoir.<sup>11</sup>

In order to replace the Carmel River water supplies in compliance with the SWRCB Order, CAW has filed numerous applications at the Commission over the past eighteen years. In 2004, CAW filed A.04-09-019, a long-term water supply project identified as the Coastal Water Project ("CWP"). Five years later, in 2009, CAW was still not in compliance with the SWRCB Order, so SWRCB issued a Cease and Desist Order against CAW and cited the unauthorized diversion of water supply as a reason to impose the Cease and Desist Order.<sup>12</sup> The current deadline for compliance with the Cease and Desist Order is December 31, 2016.<sup>13</sup>

In 2010, the CWP in A.04-09-019, became the RDP by D.10-12-016, as modified by D.11-04-035, when the RDP replaced the CWP. In 2012, the RDP failed. The Commission closed A.04-09-019 with D.12-07-008, as modified by D.12-11-031, and granted CAW's withdrawal from the RDP. CAW withdrew

---

<sup>8</sup>Exhibit 1, SWRCB Order No. WR 95-10, July 6, 1995, p. ii.

<sup>9</sup>Id. p. 40.

<sup>10</sup>Exhibit 2, Letter To Larry Foy, CAW from Walt Pettit, SWRCB, attached to ACL Complaint No. 262.5-6 regarding ACL Complaint No. 262-10-03, issued by the SWRCB, October 20, 1997, document p. 8.

<sup>11</sup>Exhibit 2, ACL Complaint No. 262.5-6, issued by the SWRCB, August 19, 1998, document p. 5-6.

<sup>12</sup>Exhibit 3, Order WR 2009-0060, In the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company, p. 57.

<sup>13</sup>Id., p. 57. .

from the RDP because “continued pursuit of the [project] was not reasonable.”<sup>14</sup> CAW previously described the events leading it to end pursuit of the RDP as including: 1) allegations regarding MCWRA board member Stephen Collins’ conflict of interest, 2) letters from MCWRA to Cal-Am and MCWD stating that the WPA was void, 3) the Coastal Commission’s decision not to issue various permits based on the alleged Collins conflict of interest and lawsuits regarding the California Environmental Quality Act (CEQA), 4) the failure of MCWD and MCWRA to obtain financing pursuant to WPA §7.1(a), 5) and other issues.<sup>15</sup>

**B. Application’s Scope and filing authority**

The scope of this proceeding examines the following issues: 1) Should the SETTLEMENT between CAW, the County and MCWRA be approved? 2) Should CAW be authorized to transfer approximately \$2.68 million of costs plus \$98,027 of associated interest and fees to its Special Request #1 Surcharge Balancing Account<sup>16</sup> (“SR #1 BA”) for recovery in rates? 3) Is the SETTLEMENT “reasonable in light of the whole record, consistent with the law and in the public interest”?<sup>17</sup> The scoping memorandum, issued by Catherine J.K. Sandoval, the Assigned Commissioner, allows for the consideration of information available after the SETTLEMENT, was signed on December 4, 2012.

According to CPUC Rules of Practice and Procedures, Rule 2.1, “All applications shall ... cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought...” The Application cites, in part, Ordering Paragraph (“OP”) 2 of D. 12-07-008 as modified by D.12-11-031, “To the extent that there are disputed costs related to

---

<sup>14</sup> D.12-07-008, p. 1.

<sup>15</sup> See D.12-07-008 p. 11.

<sup>16</sup> The CWP memorandum account, per D. 03-09-022 records RA expenses and accrues a 4% interest per D.11-09-039. No ordering paragraph creates CAW’s SR #1 BA nor do CAW’s preliminary statement tariffs contain the SR #1 BA.

<sup>17</sup> Commission’s Rules of Practice and Procedure, Rule 12.1(d).

the Reimbursement Agreement or the Line of Credit under the Water Purchase Agreement of the Regional Desalination Project [RDP] ... and associated cost recovery must be addressed by this Commission, Cal-Am should file a new application...”<sup>18</sup> The Application also states, “California American Water files this Application for approval of the Settlement Agreement and the provisions therein addressing the settlement amongst the Settling Parties of disputed costs related to the RDP.”<sup>19</sup>

### **C. Events after the SETTLEMENT**

On July 31, 2013, approximately three months after the present application was filed, CAW and fifteen other signatories (including ORA, MCWRA, and County of Monterey) executed a settlement agreement for the Monterey Peninsula Water Supply Project (MPWSP), which was submitted to the Commission in A.12-04-019. This settlement agreement “provides for the development, construction, operation and financing of the [MPWSP], as well as the recovery of the costs in rates. The Agreement resolves most of the contested issues in [A.12-04-019] and enjoys the support of a broad coalition of parties representing diverse interests, from environmental to business, public to private entities, utilities to ratepayers.”<sup>20</sup>

Many of the SETTLEMENT’s non-financial obligations are included in the 16-party settlement agreement filed in A.12-04-019 on July 31, 2013 for the MPWSP.

The document identified as Appendix 1 to the MPWSP settlement agreement, “Agreement to Form the Monterey Peninsula Water Supply Project Governance Committee” was executed on March 8, 2013. It is the same document as Exhibit E to this Application.

---

<sup>18</sup> D.12-11-031, OP 2, mimeo at p. 15.

<sup>19</sup> A.13-05-017, page 11 (emphasis added).

### III. ANALYSIS

#### A. The SETTLEMENT fails to meet the requirements of Rule 12.1(d)

##### 1. There is insufficient information supporting the SETTLEMENT's reasonableness

The SETTLEMENT resolves potential litigation; however, there is insufficient information to judge that the SETTLEMENT is reasonable.

The central potential litigation involves the breakdown of the RDP and the conflict of interest allegations surrounding former member of the MCWRA Board of Directors, Stephen Collins, and the impact of those allegations on the RDP-related contracts discussed in the Application. Mr. Collins, indicted for violating Government Code §1090, has a trial scheduled to start January 27, 2014.<sup>21</sup> The uncertainty regarding the conflict of interest allegations is shown by the Monterey County District Attorney's Memorandum of Law in the Collins' case, which demonstrates the complicated background involved in the RDP agreements and the breakdown of the RDP.<sup>22</sup> Mr. Collins resigned as member of the MCWRA Board of Directors<sup>23</sup> after the conflict of interest allegations arose.

In October 2012, CAW commenced a lawsuit against MCWRA and MCWD entitled *California American Water Company v. Marina Coast Water District, et al.*, seeking, among other things, a judicial determination of the validity of the various RDP-related agreements in light of the conflict of interest allegations surrounding Mr. Collins. This lawsuit remains pending at the San

---

(continued from previous page)

<sup>20</sup> A.12-04-019, Settling Parties' Motion To Approve Settlement Agreement, July 31, 2013.

<sup>21</sup> People v. Collins, Monterey County Superior Court case number SS112146a.

<sup>22</sup> Exhibit 10, District of Attorney Memorandum of Law re: Government Code § 1090 filed in Monterey County Superior Court case number SS112146a.

<sup>23</sup> Exhibit 4, Collins resigned April 11, 2011, SEE [http://www.montereyherald.com/local/ci\\_17833786](http://www.montereyherald.com/local/ci_17833786).

Francisco County Superior Court as Case No. CGC-13-528312.<sup>24</sup> Resolution of the conflict of interest case against Mr. Collins impacts each party's likelihood of success in any potential litigation over the RDP, which is central to analyzing the reasonableness of the SETTLEMENT.

In D.12-07-008, the Commission discussed a timeline of events that led to the failure of the RDP and many of the events center on the conflict of interest concerns. (REDACTED)

On August 11, 2011, the Coastal Commission declined to issue a permit for test wells based on conflict of interest allegations and lawsuits regarding California Environmental Quality Act (CEQA).<sup>25</sup> On September 28, 2011, CAW served notice, by letter to MCWD and MCWRA, that it had terminated the WPA and related agreements.<sup>26</sup>

It is unreasonable for the SETTLEMENT to be approved while pending litigation will potentially impact the Application.

## **2. SETTLEMENT is inconsistent with the law**

While the Application states the SETTLEMENT was filed pursuant to<sup>27</sup> OP 2 of D.12-011-031, which states, “[t]o the extent that there are disputed costs related to the Reimbursement Agreement or the Line of Credit under the Water Purchase Agreement of the RDP (other than legal costs mentioned next), and associated cost

---

<sup>24</sup>A. 13-05-017, p. 7.

<sup>25</sup>D.12-07-008, p. 11.

<sup>26</sup>Id.

<sup>27</sup> A.13-05-017, p. 11: “Ordering Paragraph 2 of that decision, as modified by D.12-11-031, provides, in pertinent part, ‘To the extent that there are disputed costs related to the Reimbursement Agreement or the Line of Credit under the [WPA] of the [RDP]... Pursuant to the procedure established by the foregoing Commission decisions, California American Water files this Application for approval of the Settlement Agreement and the provisions therein addressing the settlement amongst the Settling Parties of disputed costs related to the RDP.’”

recovery must be addressed by this Commission, Cal-Am should file a new application.” But many of the costs requested by the Settling Parties are beyond the RA the Line of Credit under the WPA. The SETTLEMENT does not comply with the Rule 12.1 (d) requirement of being consistent with the law.

The following responses to ORA data requests show this inconsistency. “Continuing with Exhibit C ...“Please identify under what authority expenses [were] granted for payment: RA, WPA and/or other?” MCWRA’s response in part, “The applicable contract is the Settlement Agreement approval of which is sought in this proceeding.”<sup>28</sup> Another inquiry by ORA asked MCWRA about its labor expenses regarding “ tasks performed on ALL of the MCWRA time cards state ‘Regional Project’ or ‘RDP’ without identification of tasks performed....a) Please explain how lack of reference to tasks performed as delineated in Section Three of the RA is reasonable justification for recovery in A.13-05-017.” MCWRA’s answer included, “Responding to subpart a) MCWRA states that the applicable contract is the Settlement Agreement approval of which is sought in this proceeding.”<sup>29</sup> A final example involves third party expenditures, where ORA asked MCWRA to “Please confirm under what authority these GEO expenses are paid: the RA, WPA and/or other contract.” MCWRA responded in part, “The applicable contract is the Settlement Agreement approval of which is sought in this proceeding.”<sup>30</sup>

ORA attempted to confirm the Application was filed pursuant with OP 2 of D.12-07-008 as modified by 12-11-031. The “disputed costs” requested in this Application include expenses prior to the time period of the RA and not within the Line of Credit under the WPA. Therefore, the Application is inconsistent with its stated filing authority.

---

<sup>28</sup> Exhibit 11, MCWRA Response to KKE-002, p. 4, question 21.

<sup>29</sup> Exhibit 12, MCWRA Response to KKE-003, p. 3, question 1.

<sup>30</sup> Exhibit 11, MCWRA Response to KKE-002, p. 5, question 20.

Additionally, the SETTLEMENT could be inconsistent with the law because “project cessation,” a term of the WPA, may be determined by pending litigation involving MCWD and the Settling Parties. Section 7.4 of the WPA states, “if the cause of any Regional Desalination Project Cessation is directly due to an Event of Default of MCWD or MCWRA, the defaulting Party responsible for such Regional Desalination Project Cessation shall not be entitled to reimbursement of its costs and expenses and such Party (rather than CAW) shall be liable to MCWRA or MCWD, whichever is not the defaulting Party, for such non-defaulting Party's costs.”<sup>31</sup>

When the RDP ended, the Commission declined to determine that a “project cessation” occurred within the meaning of the WPA, because “the jurisdiction to resolve claims or causes of action under the WPA appears to lie with the judiciary rather than the Commission.”<sup>32</sup> Pending litigation between MCWD and each of the Settling Parties may result in a determination that “project cessation” occurred at the fault of a party to the WPA. There is no pressing need for Commission approval of the SETTLEMENT when it may prove inconsistent with a Superior Court judgment on that agreement’s provisions between MCWD and each of the Settling Parties.

Another example of the SETTLEMENT’s potential inconsistency with the law is the pending Collins conflict of interest case. Results of that case could impact whether the SETTLEMENT is consistent with the law. There is no pressing need for the Commission to approve the Application as filed.

Finally, the SETTLEMENT is inconsistent with the law given the Application’s inclusion of expenses outside the RA time frame of March 10, 2010 through December 31, 2010. The Application’s exhibits that present costs outside

---

<sup>31</sup> Water Purchase Agreement By and Among Marina Coast Water District, Monterey County Water Resources Agency and California-American Water Company, April 6, 2010, mimeo p. 43.

<sup>32</sup> D.12-07-008, footnote 1, mimeo, p. 2.

the RA time frame are identified as “unreimbursable” and the dates for the expenses presented are outside the time line set in the RA.<sup>33</sup> Even the Application recognizes that the RA requires a certain timeframe for MCWRA’s expenses to be reimbursable. For example, “Paragraph 4A of the Settlement Agreement provides...the amounts owed by MCWRA to California American Water for sums advanced by California American Water under the RDP Agreements...”<sup>34</sup>

### **3. SETTLEMENT’s claim that it avoids expensive litigation is not in the public interest**

CAW contends that the SETTLEMENT is beneficial because it avoids the cost of further litigation.<sup>35</sup> However, an appropriate dollar amount for a settlement would need to be supported by analyzing each party’s claims against each other party, the remedies for those claims, and the likelihood of success on each claim. As discussed below, insufficient information has been provided for this analysis to be performed. Furthermore, litigation continues with MCWD, so the full cost of litigation is not avoided by this SETTLEMENT.

Although the Application purports to limit the costs of potential litigation, Settling Parties contend that the information essential to evaluating this assertion is protected from disclosure by attorney-client privilege or by settlement communication confidentiality.<sup>36</sup> The SETTLEMENT states that it resolves claims related to the RDP Agreements,<sup>37</sup> however, the Settling Parties have refused to identify the specific causes of action or amounts of damages they could

---

<sup>33</sup> See, for example, files in Exhibit C to A.13-05-017 identified as “2009 unreimb mcwra labor\_001” or “2011 unreimb travel, mee\_001”

<sup>34</sup> A.13-05-017, p. 16.

<sup>35</sup> A.13-05-017, pp. 8-9.

<sup>36</sup> See Exhibit 6, CAW Response to data request KKE-004, p. 1, question 1; Exhibit 11, A. 13-05-007 MCWRA Partial Responses to DRA Data Req, General Objections, p. 2.

<sup>37</sup> SETTLEMENT, at 10-11.

have sought in litigation against each other.<sup>38</sup> ORA's discovery requests to ascertain the SETTLEMENT's reasonableness as a means to avoiding expensive litigation were repeatedly denied.

For example, ORA requested, "For each claim or cause of action ... state the total damages and all other relief you sought for that claim or cause of action. Explain all reasons for the damages figures and other relief you identify." CAW's responded in part, "CAW objects to this Request to the extent analysis of any of CAW's damages would be subject to the attorney-client privilege and/or attorney work product protection."<sup>39</sup> In addition to this response, CAW submitted a letter as Attachment 1 stating, "Enclosed is a claim by California-American Water Company against Marina Coast Water District."<sup>40</sup>

ORA finds this discovery points to several reasons to reject the Application. The answer is an example of how ORA's attempts to ascertain the SETTLEMENT's reasonableness as a means to avoiding expensive litigation were denied. In addition, CAW's response shows that MCWD is a missing party to this SETTLEMENT and that the lack of MCWD as a SETTLEMENT party is not in the public interest. This rationale for why the SETTLEMENT should be rejected is discussed further below.

#### **4. The SETTLEMENT is against the public interest due to missing parties**

Due to the absence of ratepayer representation in negotiating the SETTLEMENT, the Commission should reject the SETTLEMENT, because it harms CAW ratepayers and is not in the public's interest.

The SETTLEMENT obligates CAW's ratepayers to pay up to \$3.5 million, but no ratepayer representative was present during negotiations of the

---

<sup>38</sup> Exhibit 16, MCWRA response to data request KKE-004a, p. 5, question 3; Exhibit 6, CAW response to data request KKE-004, p. 1.

<sup>39</sup> Exhibit 6 CAW response to data request KKE-004, p. 2, question 2.

SETTLEMENT. Ratepayers are already responsible for more than \$30 million stemming from the RDP,<sup>41</sup> and they have still not received an adequate replacement water supply. The lack of ratepayer representation in negotiating the SETTLEMENT resulted in an agreement that is not fair to all parties, including the ratepayers, and thus is not in the public interest. ORA finds lack of ratepayer representation proof the parties have not fulfilled their burden of demonstrating the SA satisfies Rule 12.1 (d).

MCWD, a signatory to the RA and WPA, is also not a party to the SETTLEMENT. There is a cap of approximately \$4.3 million on the disbursement of RA funds made available collectively to MCWRA and MCWD.<sup>42</sup> The Commission should not approach disbursement of RA funds in a piecemeal fashion, because of the collective cap on these funds. In addition, input from missing parties may result in superior outcomes to the SETTLEMENT. It is not in the public interest to approve the SETTLEMENT when there are missing parties.

**B. ORA's review of the Application's invoices**

**1. Requirements of the RA, D. 10-08-008**

The RA allows funding up to approximately \$4.3 million for costs from March 10, 2010 through December 31, 2010 or the date in which CWP financing is obtained.<sup>43</sup> Financing was never obtained, as shown by an August 12, 2011 letter by CAW.<sup>44</sup> Since the RA was never amended,<sup>45</sup> the only expenses that may be addressed under the RA are those incurred during the ten months from March 10 to December 31 of 2010.

---

(continued from previous page)

<sup>40</sup>Exhibit 7, MCWRA response to data request KKE-004, p.2 question 3, Attachment 1, p. 1.

<sup>41</sup>D.12-11-031, p. 2 (*quoting* D.12-07-008 at 19-20).

<sup>42</sup>Reimbursement Agreement, p. 2.

<sup>43</sup>D.10-08-008, mimeo p. 14.

<sup>44</sup>D.12-07-008, mimeo p. 11.

<sup>45</sup>Exhibit 5, CAW Response to DRA data request KKE-001, p. 5, question 1 (d).

The costs in Section 4A of the SETTLEMENT were recorded in the CWP Memorandum Account.<sup>46</sup> The costs included in the Settlement’s Section 4B, “are not recorded in the D.03-09-022 memorandum account as these were incurred by MCWRA– not California American Water.”<sup>47</sup> None of the costs were incurred by CAW, i.e., Section 4A costs were also incurred by MCWRA and therefore it is not justification to state Section 4B expenses were not recorded in the memorandum account because they were incurred by MCWRA. According to D.10-08-008, which authorized the RA, “Cal-Am should carefully segregate and identify all costs subject to the Reimbursement Agreement in the Coastal Water Project Memorandum Account.”<sup>48</sup>

Request of funds not recorded in a memorandum account can be considered retroactive ratemaking. “A memorandum account allows a utility to track costs arising from events that were not reasonably foreseen in the utility’s last general rate case. By tracking these costs in a memorandum account, a utility preserves the opportunity to seek recovery of these costs at a later date without raising retroactive ratemaking issues. However, when the Commission authorizes a memorandum account, it has not yet determined whether recovery of booked costs is appropriate, unless so specified.”<sup>49</sup>

### **C. Review of supporting documentation**

The supporting documentation, provided with the Application as Exhibits C & D, is basically grouped into two categories, reimbursable (March 10, 2010 through December 31, 2010) and non-reimbursable (all of 2009, all of 2011 and another set of invoices for 2010 that was not part of the reimbursable funds). Both

---

<sup>46</sup> Exhibit 5, CAW Response to data request KKE-001, p. 29, question 5, “The settled upon costs in section 4A were already recorded in the memorandum account authorized in D.03-09-022.

<sup>47</sup> Exhibit 5, CAW Response to DRA data request KKE-001, p. 29, question 5.

<sup>48</sup> D.10-08-008, mimeo p. 23.

<sup>49</sup> CPUC, Energy Division, Resolution G-3453 at 2 n.2 (May 5, 2011) (citing D.10-04-031 mimeo at pp. 43-44).

reimbursable and non-reimbursable costs include the following types of expenses:  
1) Geoscience, 2) Outside legal expenses, 3) MCWRA's use of the County Counsel, 4) MCWRA's use of its own employee labor and 5) Travel and Meeting expenses.

(REDACTED)

ORA's invoice review demonstrates that many of the requested expenses are unreasonable. But the SETTLEMENT itself remains unreasonable and nevertheless should be rejected for all the aforementioned reasons.

(REDACTED)

## **1. Inconsistent findings per category**

### **(a) MCWRA's use of its own employee labor**

The RA's authorizing decision, D. 10-08-008, OP No. 3 allows recovery of expenses incurred by MCWRA and MCWD, but those expenses cannot include expenses "that would be incurred in the normal course of business."<sup>50</sup> RA expenses may be recovered for certain "Administrative, Consultant, and Legal functions . . . to the extent the funds cover direct costs of functions required for the Environmental Scope of Work and the Test Well Scope of Work."<sup>51</sup> Documentation provided with the Application was analyzed for compliance with D.10-08-008.

Supporting documentation for MCWRA labor costs is too vague to find reasonable. The description for all requested MCWRA labor costs is "RDP," or "RDP-related," or "regional project," and there is no description for the work performed. For example, a Curtis Weeks timesheet shows, handwritten under the "Work order number – Description/remarks" column, "Regional Proj" as the only information.<sup>52</sup>

---

<sup>50</sup> D.10-08-008, OP 3(c) and (e), mimeo p.30.

<sup>51</sup> Id.

<sup>52</sup> Exhibit C to A.13-05-017 file *cal am 3\_001 April 2010 -- non-confidential*, p. 6.

When asked about the work performed by MCWRA employees, MCWRA responded, “The applicable contract is the Settlement Agreement approval of which is sought in this proceeding. The Settlement Agreement reflects the settling parties’ compromise on various disputed issues and includes financial terms that are part of an overall settlement which includes agreements and obligations besides those financial terms.”<sup>53</sup> Many of the invoices included with the Application may support the recorded amounts in the workpapers and exhibits accompanying the Application, but none of the MCWRA labor charges and time cards included any substantial description of what tasks were performed.

MCWRA confirmed that it hired no employees to work on the RDP, therefore any employee labor costs associated with the RDP were also removed because they “would be incurred in the normal course of business,” per D.10-08-008. “MCWRA states: The employees who did work on the RDP are those identified in the records which DRA already possesses. Such employees occupied positions that were regularly authorized and budgeted independent of the RDP Agreements.”<sup>54</sup>

#### **(b) Travel and Meeting expenses**

ORA’s review of the requested travel and meeting expenses found various errors that included addition errors and inconsistencies with the terms of the relevant contracts. (REDACTED)

---

<sup>53</sup> Exhibit 11, MCWRA response to data request KKE-002, p. 6, question 22.

<sup>54</sup> Exhibit 9, MCWRA response to data request KKE-004a, p. 3, question 1.

The RA time frame for funds to be under obligation for recovery by CAW's ratepayers is from March 10, 2010 through December 31, 2010. But the Application requests funds for expenditures incurred in 2009, in 2010 before March 10, 2010, and also in 2011. Such funds were removed because they are beyond the terms of the RA.

The Application's Line of Credit request of \$744,290 is discounted against MCWRA's request for funds outside of the reimbursement period of \$1,515,616. The accounting of these funds therefore is the following: \$1,515,616 - \$744,290 (less the request for Collins funds subtracted: \$6,769) for a grand total of \$764,557 "Net Amount Due to County."<sup>55</sup> (See Table 1 below)

The SETTLEMENT seeks payment of funds in Section 4B that are "unreimbursable" or outside the terms of the RA. According to the Application, the "net"<sup>56</sup> money MCWRA would receive in cash is \$764,557.

Table 1 Section 4B of SETTLEMENT

	CAW Request
Section 4B	
"unreimbursable"	\$1,515,616.00
Cash CAW gave MCWRA via WPA Line of Credit	-\$744,290.00
Collins expenses/interest not recoverable	-\$6,769.00
"Net due MCWRA" per Section 4B	\$764,557.00

**(c) Section 4C of the SETTLEMENT**

ORA attempted to ascertain the purpose of the Section 4C funds. These funds would be in the form of an escrow account held for future disbursement. When ORA requested information about the character of the Section 4C request, CAW responded, "California American Water objects to this request as it is

---

<sup>55</sup>A.13-05-017, Exhibit B, p. 1.

<sup>56</sup>Id.

irrelevant. The amount enumerated in section 4C of the settlement agreement is not being sought for recovery in this application.”<sup>57</sup> In all events, if the SETTLEMENT is approved, the funds in Section 4C would also be approved, yet CAW denied ORA any information regarding these funds.

#### **IV. CONCLUSION**

The SETTLEMENT is unreasonable because the claims of each party are a) highly speculative, and involve complex issues surrounding the allegations of Mr. Collins’ conflict of interest b) the avoidance of expensive litigation is speculative, and is incomplete because litigation continues with MCWD, c) the financial burden is entirely upon the ratepayer, who was not represented during the SETTLEMENT negotiations, and d) the SETTLEMENT risks conflict with the outcome of ongoing litigation between MCWD and each of the Settling Parties in Superior Court.

The financial obligations are highly speculative and the entire financial burden of the SETTLEMENT is put upon ratepayers without any ratepayer participation in the SETTLEMENT negotiations, which is unreasonable and against the public interest.

Several provisions of the SETTLEMENT are duplicative of the accomplishments of the 16-party MPWSP settlement agreement motion filed in A.12-04-019 on July 31, 2013 and signed by all of the Application’s Settling Parties.

For the reasons shown above, ORA recommends rejecting A.13-05-017.

---

<sup>57</sup> Exhibit 5, CAW Response to DRA data request KKE-001, p. 55, question 15 (a).

**V. QUALIFICATIONS**

**QUALIFICATIONS AND PREPARED TESTIMONY  
OF  
KERRIE EVANS**

Q1. Please state your name, business address, and position with the California Public Utilities Commission (Commission).

A1. My name is Kerrie Evans and my business address is 505 Van Ness Avenue, San Francisco, California. My position is Utilities Engineer in the Water Branch of the Office of Ratepayer Advocates (ORA).

Q2. Please summarize your educational background.

A2. I graduated from the University of California, Davis, with a Bachelor of Science Degree in Civil Engineering.

Q3 Briefly describe your professional experience.

A3. I joined the Commission in 1991. I have worked in various ORA branches involving water, electric rate design and energy resources; in addition to other divisions at the Commission focused on safety and water regulations.

Q4. What is your responsibility in this proceeding?

A4. I am a witness for this proceeding and I am sponsoring the ORA report. .

Q5. Does this conclude your prepared direct testimony?

A5. Yes, it does.