

ALJ/KOT/sid

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Decision 98-08-036 August 6, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) for an order allowing immediate implementation of changes to Phase IV of mandatory water conservation plan and creation of related balancing account, and for order to expedite processing of all applications.

Application 98-05-008
(Filed May 6, 1998)

In the Matter of Application of CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) for an order authorizing it to increase its rates for water service in its Monterey Division.

Application 98-05-009
(Filed May 6, 1998)

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) for an order for authority to impose a moratorium on all new or expanded water service connections in its Monterey Division.

Application 98-05-010
(Filed May 6, 1998)

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) for an order authorizing adoption of Rule No. 14.2 and Tariff Schedule Nos. MO-8A and MO-8B.

Application 98-05-011
(Filed May 6, 1998)

**OPINION DISMISSING APPLICATIONS
WITHOUT PREJUDICE**

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1. Summary

In today's decision, we authorize the applicant, California-American Water Company (Cal-Am), to establish a memorandum account for this water year and for the water year ending September 30, 1999, to record any fines imposed on Cal-Am for excessive withdrawals from the Carmel River system during those water years. In all other respects, the four applications captioned above are dismissed without prejudice, and Cal-Am is directed to pursue the requested relief in its soon-to-be-filed general rate case (GRC) for its Monterey Division.¹

2. Background

Cal-Am is a public utility and the largest supplier of water to the Monterey Peninsula, an area with a long history of water supply problems due to: (1) the frequency of drought conditions, and (2) the area's limited capability for storing water within the watershed or acquiring water from sources outside the watershed. The supply picture was further complicated in July 1995 by Order WR 95-10 of the State Water Resources Control Board (SWRCB). There, the SWRCB held, in principal part, that Cal-Am's wells along the lower Carmel River were not drawing percolating ground water, but instead were drawing water from a subterranean stream associated with the Carmel River. Consequently, these wells, which were and are the main source of water supply for the Monterey Peninsula, were diverting water illegally. The SWRCB required that Cal-Am "diligently implement one or more ... actions" to replace 69% of the

¹ Unless otherwise specified, whenever we subsequently refer to "GRC" in today's decision, we have in mind Cal-Am's next GRC for its Monterey Division, which is scheduled to be filed in January 1999.

water it now takes from the Carmel River system, and the SWRCB also required that Cal-Am cut back by 20% the overall water consumption by Cal-Am's Monterey Division customers.

As a result of these circumstances, Cal-Am has had to develop and pursue both long-term and short-term strategies for improving the water supply situation for its Monterey Division. Cal-Am's long-term strategy to increase storage and replace water drawn from illegal diversions is to construct a new dam on the Carmel River, a proposal which is the subject of Application (A.) 97-03-052. To meet the requirement of a 20% cutback, Cal-Am has promoted water conservation in various ways. Notably, in A.96-03-008, Cal-Am's GRC following Order WR 95-10, Cal-Am proposed and the Commission approved a new rate design to encourage water conservation by residential customers. See Decision (D.) 96-12-005.

During the first water year following Order WR 95-10, i.e., the water year ending September 30, 1996, Cal-Am met the cutback requirement. However, Cal-Am was unable to meet the cutback for the water year ending September 30, 1997.² On October 20, 1997, the SWRCB imposed a \$168,000 fine on Cal-Am for this violation of Order WR 95-10. In addition, Cal-Am found that the rate of water consumption in the first few months of the current water year was high enough to create a substantial likelihood that Cal-Am again would fail to meet the cutback. Such a failure, and consequent violation of Order WR 95-10 for two consecutive water years, would expose Cal-Am to further, possibly more severe sanctions by the SWRCB. The four applications we address in today's decision

² Under the 20% cutback provision of Order WR 95-10, Cal-Am can withdraw 11,285 acre-feet annually from the Carmel River system. Cal-Am exceeded this limit by over 1,500 acre-feet during the water year ending September 30, 1997.

represent Cal-Am's attempt to better ensure compliance with Order WR 95-10 over the short-term, until a long-term solution to the water supply problem is achieved.

In brief, Cal-Am seeks authority to put in place an even more steeply inverted block rate design than that adopted in D.96-12-005, as well as authority to implement water rationing and a moratorium on new or expanded water service connections in Cal-Am's Monterey Division. Rationing and the moratorium would not start at once; rather, Cal-Am would implement rationing and the moratorium if and when it became clear that Cal-Am's various conservation initiatives were not curtailing consumption sufficiently to comply with the cutback requirement of Order WR 95-10. Cal-Am also wants to create a balancing account for eventual recovery of new costs it may incur in implementing these initiatives, and finally Cal-Am seeks assurance that it may pass through to its customers any additional fines the SWRCB may impose for future violations of the cutback requirement.

3. Response to the Applications

The following parties have filed formal protests to one or more of the applications, in whole or part: the Monterey Peninsula Water Management District (WMD); the Ratepayer Representation Branch (RRB) of our Water Division; the Monterey Peninsula Citizens for Water Solution (CWS); Lou Haddad and Alliance of Citizens with Water Alternatives (ACWA); Mallery Associates and Kermit Dorius (Mallery/Dorius); A. Russel Gallaway (Gallaway); the Department of Defense (DOD); and Patricia Bernardi and Cal-Am Rate Payers (C.A.R.P.). The following table sorts the protests by application:

<u>Application</u>	<u>Protestants</u>
• A.98-05-008 (modify rate design, pass through future fines)	ACWA, C.A.R.P., DOD, RRB
• A.98-05-009 (establish balancing account)	ACWA, C.A.R.P., DOD, RRB
• A.98-05-010 (authorize moratorium)	ACWA, CWS, Gallaway, Mallery/Dorius, WMD
• A.98-05-011 (authorize rationing)	ACWA, CWS, WMD

On June 24, 1998, the Assigned Commissioner and Administrative Law Judge (ALJ) conducted a Prehearing Conference (PHC) in Monterey, and received oral and written PHC statements from individuals as well as representatives of various organizations and the Cities of Pacific Grove and Seaside.³ All of the applications were criticized, in whole or part, at the PHC. However, many of the protests and PHC statements expressed support for some of the applications, or supported certain applications in concept but questioned the specific implementation proposed by Cal-Am. Notably, many of the commenters who oppose rationing are supportive of Cal-Am's rate design proposals, while the commenters who object to those proposals tend to support

³ The Assigned Commissioner and ALJ also provided an opportunity to submit written comments, following the PHC, to be filed and served by July 8. In addition to supplemental comments from Cal-Am and many of the parties mentioned in the text, comments were submitted by the SWRCB, the Cities of Del Rey Oaks and Carmel-by-the-Sea, the Monterey Peninsula Airport District, the Monterey Commercial Property Owners Association, and various individuals and companies.

rationing and a moratorium. We summarize below the principal objections to the applications.

Regarding Cal-Am's rate design and related proposals, these result in a rate increase and a modification to the tariff plan adopted in D.96-12-005 for Cal-Am's current three-year rate cycle (1997-99). Based on current projections of Cal-Am and the WMD, the danger of excess withdrawals during the water year ending September 30, 1998, has declined, and a new GRC application is due from Cal-Am in January 1999. Some protestants argue, from these circumstances, that there is no compelling reason to adopt these proposals now, on an expedited and ex parte basis, and without a careful inquiry into the basis of the proposals.

Regarding approval of a rationing plan and a moratorium, some protestants argue that there is no current physical shortage of water but only a regulatory shortage owing to the SWRCB's cutback requirement. The WMD, in particular, believes that Order WR 95-10 contains broad provisions allowing waiver of the cutback requirement, and that Cal-Am should seek relief under these provisions before seeking to impose rationing or a moratorium.⁴ Furthermore, several parties note that Cal-Am's reported system losses in its Monterey Division are unusually high; these parties believe that Cal-Am should not be authorized to ration water if the failure to meet the cutback requirement is due to Cal-Am's own waste.⁵

If there is to be rationing or a moratorium, many parties argue that such severe measures should be developed and administered by the WMD. Many

⁴ We note that the SWRCB representatives do not agree with the WMD's reading of Order WR 95-10 in this regard.

⁵ Cal-Am now says there was a typo in its data on unaccounted-for water; the typo, and not actual system losses, is responsible for the high level of losses recently reported.

parties assert that Cal-Am's rationing and moratorium proposals are vague, and do not appropriately recognize entitlements arising under the WMD's allocation system. The WMD believes that its allocation system already functions substantially as a moratorium: under that system, less than 120 acre-feet remain available for new or expanded uses out of the total allocation of 17,641 acre-feet available within the Cal-Am distribution system.

The WMD recognizes the desirability of having a rationing plan in place in case of need, and the WMD commits to adopting its own rationing plan before December 1, 1998. With this timing, according to the WMD, there is no need for us to grant Cal-Am authority to ration, even as a contingency measure. The WMD intends to use a "per capita" basis for its rationing plan; the WMD asserts this approach better promotes conservation, and is more fair, than Cal-Am's plan, which is formulated on a "base year" method.

Finally, as to all of Cal-Am's proposals, there are criticisms that the proposals are unfair to large water users, do not require conservation efforts by small water users, and fail to credit prior conservation efforts.

4. Discussion

We will dispose of these applications as follows:

First, we authorize Cal-Am to establish a memorandum account, only for this water year (ending September 30, 1998) and the water year ending September 30, 1999, to record any fines incurred for failure to meet the cutback requirement. Recovery of any such fines will be allowed, subject to review of Cal-Am's system management (including its implementation of existing conservation programs and minimization of system losses) to ensure that Cal-Am takes all reasonable steps to avoid over-pumping. Cal-Am's shareholders would have to absorb some portion of the fines, to the extent that Cal-Am reasonably could have avoided the over-pumping. We will consider in the GRC whether to

continue the memorandum account beyond the water year ending September 30, 1999.

Second, except as provided in the preceding paragraph, we dismiss all four of these applications without prejudice. In the GRC, Cal-Am should seek authorization of its Phase IV mandatory conservation plan and associated balancing account. Also, Cal-Am should seek authority to implement a specific rationing plan in a water supply emergency. Cal-Am's proposed plan should utilize that of the WMD, if developed as promised by the WMD. However, if the WMD's plan is not available prior to the filing of the GRC, Cal-Am should resubmit its own plan, with whatever modifications Cal-Am deems appropriate after considering the various comments that Cal-Am has received.

Third, Cal-Am should seek authority in the GRC to implement a moratorium on new or expanded water service connections during a water supply emergency in the Monterey Division. As with the rationing plan, we expect Cal-Am to work with the WMD and the relevant local jurisdictions in order to (1) make adjustments to the existing allocation program, if feasible and appropriate, and (2) develop terms, conditions, and a "trigger" mechanism for the moratorium. We hope these consultations develop a consensus proposal, but if consensus cannot be reached before the filing of the GRC, Cal-Am should submit its own moratorium proposal.

Fourth, the GRC application shall include comprehensive short-term and long-term contingency plans for managing water shortages and avoiding imposition of fines. The short-term contingency plan shall include the mandatory conservation, rationing, and moratorium components discussed above, and any other short-term measure to conserve or add to water supply. The long-term contingency plan shall describe the program or combination of

programs Cal-Am would pursue if for any reason the proposed new Carmel River Dam does not go forward.

Our reasoning behind these dispositions is set forth below.

4.1. Memorandum Account

The obligation of this Commission and the WMD is to ensure that Cal-Am has all appropriate means to comply with the cutback requirement, and then to ensure that Cal-Am makes reasonable use of the means available to it to achieve compliance. In this way, the question of who must pay fines for noncompliance may become moot.

Cal-Am has reasonably requested additional means to deal with the cutback requirement. For reasons we explain below, we prefer to consider these requests in the Monterey Division GRC starting in January 1999. The heavy rains this year hopefully will minimize the risk of overpumping before we address these requests. However, the risk still exists, for example, if this summer is unusually hot. It is not fair to Cal-Am's shareholders to expose them to fines that Cal-Am has only limited ability to avoid if the weather proves uncooperative.

Therefore, we direct Cal-Am to record in a memorandum account any SWRCB fines imposed for overpumping in this or the succeeding water year. Assuming Cal-Am satisfies our reasonableness review, we will authorize recovery in rates of any balance so recorded. However, we do not promise "automatic" pass-through to ratepayers of SWRCB fines; to do so would be unjust and unreasonable to ratepayers and would relieve Cal-Am management of its responsibility to run the system as best it can to avoid such fines.

We emphasize that even entertaining the possibility of passing fines through to ratepayers is extraordinary. We do so only under the unique circumstances of this case, in which Cal-Am potentially may have to choose between having to violate either its public utility obligation to serve its customers

or the SWRCB's requirement to immediately reduce its pumping from the Carmel River watershed.

We expect these circumstances to be of brief duration. The WMD's rationing plan, together with other measures proposed by Cal-Am, should enable Cal-Am to assume full responsibility for managing water supply in compliance with the cutback requirement. However, the WMD's plan is vital for this purpose, and we urge the WMD to adopt the plan under its announced schedule or sooner.

Finally, we emphasize that this memorandum account is not and cannot be a substitute for means, such as Cal-Am proposes, to manage water supply emergencies. Whether and in what form to continue the memorandum account once such means have been authorized is an issue we will address in the GRC.

4.2. *New Rate Design*

Cal-Am already has an inverted block rate design for residential customers in its Monterey Division; further steepening the rate design is a logical conservation incentive. Except in unusual circumstances, however, the Commission's strong policy is not to tinker with rate design between GRCs. To deal with rate design and revenue requirements on a piecemeal basis increases the risk of inconsistent policies and unintended consequences. Also, to have Commission rate proceedings following each other in rapid succession is confusing and burdensome for staff and interested parties. The next GRC is less than six months away; in present circumstances, that GRC will provide a timely

and convenient forum to deal with the many rate design and planning issues that Cal-Am is raising.⁴

4.3. Rationing, Moratorium

Even assuming our wet winter is followed by a mild summer and at least average rainfall in the next water year, we must not lose our sense of urgency about the water situation on the Monterey Peninsula. The peninsula's physical supply of water is adequate for now, but the way that Cal-Am is taking the water for its Monterey Peninsula customers has been found to be both illegal and harmful to the environment.⁷ The supply emergency has temporarily receded, but the planning emergency has not.

Even in non-drought conditions, compliance with the cutback requirement has proven difficult. Still worse, the recurrence of drought is all-too-likely. Since we are still years away from a long-term solution to the Monterey Peninsula's water supply problems, there is a significant likelihood of another drought occurring before that solution is fully in place. Our basic point is that there still would be a pressing need to do contingency planning, regardless of how one characterizes the current situation. Moreover, many measures to prevent or mitigate an emergency are infeasible or too late to be effective once it has started.

In short, Cal-Am is reasonably requesting authority to implement rationing and a moratorium at such time as those measures may become necessary. We recognize that they are extreme measures with deep and

⁴ GRCs, by their nature, are broad in scope and are intended to deal with rate design and planning issues, among others.

⁷ Because of the harm to the environment in both cases, the distinction some parties have made between a physical and a regulatory water shortage seems unhelpful.

disturbing ramifications for the people and communities of the Monterey Peninsula. Accordingly, we recognize the desirability of having such authority complement the WMD's planning and allocation activities. Indeed, the WMD has broad powers regarding use of water within the district, including the ability to restrict use during drought or other threatened or existing water shortage. To minimize disruption and facilitate orderly planning by everyone who would be affected by rationing or a moratorium, we want the authority Cal-Am seeks to be consistent with the WMD's programs.*

For these reasons, we do not expect to litigate issues such as rationing methodology (base year versus per capita) in the GRC. Assuming the WMD follows the schedule it has announced, these issues will be resolved at the WMD, and Cal-Am's rationing plan should reflect the WMD's determinations.

The WMD has not committed to do a moratorium plan. The record does not give a full understanding of the WMD's allocation system, but the WMD's point is that such a small amount remains to be allocated to new uses (about 120 acre feet) that imposing a moratorium would have minimal impact on Cal-Am's compliance with Order WR 95-10.⁹ In rebuttal, Cal-Am offers the following justification:

* Such consistency is a goal we have frequently stated, at least implicitly, in prior orders in the Carmel Dam proceeding (A.97-03-052). For example, in D.98-06-025, we noted that with respect to Monterey Peninsula water issues, we exercise concurrent jurisdiction with other governmental agencies, specifically, the SWRCB and the WMD. Also, in their scoping memo in that proceeding, the assigned Commissioner and Administrative Law Judge stated their intention to avoid duplicating the WMD's work. Joint Ruling, page 6 (issued June 6, 1997).

⁹ During the water year when Cal-Am violated the cutback requirement, it did so by over 1,500 acre feet.

"Cal-Am acknowledges that its proposed moratorium will have limited impact. It is, however, important to the credibility of Cal-Am's overall efforts to comply ... and to the public's perception of the necessity to reduce consumption. Commenters are naturally confused and angry when they are being asked to reduce their personal consumption while seeing new construction occur in their midst." (Cal-Am, Supplemental Comments Following PHC, page 4.)

Both the WMD and Cal-Am make good points. As we noted earlier, we do not have detailed knowledge regarding the allocation system, but we believe there may be ways to adjust that system to satisfy the various concerns. For example, to obtain a permit for new or expanded use, the permittee could be required to finance or perform conservation retrofits to save as much as more water than what would be consumed by the newly permitted use.

One set of comments received after the PHC describes what may be an analogous situation. According to the comments of the Pebble Beach Company, a developer has participated in a wastewater reclamation project that enables the use of reclaimed water (produced from sewage flow at tertiary treatment facilities) in lieu of potable water for irrigation at golf courses. In return for providing 800 acre feet of reclaimed water, the developer received an entitlement for 380 acre feet of potable water from the WMD. Thus, the impact of this "new" use was that diversions from the Carmel River were substantially reduced, compared to diversions that would have occurred had the reclamation project not been developed. By letter dated March 27, 1998, the Chief of the SWRCB's Water Rights Division confirmed that Order WR 95-10 does not preclude service by Cal-Am under the developer's entitlement granted by the WMD.

We do not suggest that all situations are as dramatic as that portrayed by the Pebble Beach Company's comments. We do think there may be

ways to structure a "moratorium" to address the public perception problem while allowing new or expanded uses, carefully conditioned, to become part of the solution and not part of the problem.

In this spirit, we invite Cal-Am and the WMD to take another look at the moratorium concept, both to temper its harshness and better accommodate the allocation system. Finally, as the WMD notes, a moratorium was in place on the Monterey Peninsula as recently as 1993. We should garner whatever lessons we can from this recent experience.

4.4. Long-Term Contingency Plan

As discussed earlier, Cal-Am's proposals to deal with near-term supply emergencies are timely, and Cal-Am's proposed long-term supply solution, i.e., the new Carmel River Dam, is already before us in A.97-03-052. What is missing is a contingency plan in case the dam does not come to fruition. Cal-Am should have a fallback to cover this possibility so that the Monterey Peninsula does not have to face rationing as a long-term solution, and the SWRCB has assurance that compliance with Order WR 95-10 does not depend solely on the dam.

Cal-Am believes designation of a fallback is premature and urges us to wait for the WMD's Environmental Impact Report (EIR), the certification of which is almost a year in the future under the latest schedule. We think the EIR is vital, but as we discuss below, the EIR is unlikely to answer the question we are now putting to Cal-Am.

First, the dam may become infeasible for reasons that cannot be foreseen in the EIR, not least of which is successful citizen opposition to the dam through the courts or at the polls. Second, the WMD may have its own opinion about the alternatives, but it is simply not in a position to say what Cal-Am's preferred second choice would be; only the company can say that. Third, the

failure of the dam without any fallback may cause the SWRCB to add to Order WR 95-10 a deadline by which Cal-Am must obtain a legal water supply.¹⁹

Fourth, and possibly most important from our perspective, having a contingency plan for the long-term is just as important as preparedness for near-term emergencies.

An incidental but considerable benefit to Cal-Am's designation of its preferred fallback is that both this Commission and the community may thereby better understand why the dam remains the company's first choice. In responding to our request, Cal-Am need not in any way qualify its support of its proposed dam; and in making the request, we are making no prejudgment of the dam or any alternative proposal. Our absolute commitment is to candor and transparency in the decisionmaking process. As the dam's proponent, it is appropriate that Cal-Am takes the lead in fully disclosing its preferences and how it formulated them. In due course, we will require equal clarity of Cal-Am's critics.

5. SB 960 Procedures

Pursuant to our procedures implementing Senate Bill 960 (SB 960), we categorized these applications as ratesetting and likely to go to hearing. See Resolution ALJ 176-2993 (May 21, 1998). Following the June 24 PHC, the assigned Commissioner and Administrative Law Judge jointly ruled on July 27 that the applications should be consolidated, that hearings were not needed, and that the application should be dismissed without prejudice. For reasons stated in

¹⁹ This possibility was suggested by the SWRCB's Chief of its Water Rights Division at the June 24 PHC. Such a deadline, while possibly necessary from the SWRCB's perspective, would further constrain planning choices and would perhaps increase the likelihood of having to resort to measures such as rationing if the deadline is missed.

Sections 4 - 4.4 of today's decision, the July 27 joint ruling is affirmed in all respects."

Findings of Fact

1. Cal-Am has had to develop and pursue both long-term and short-term strategies for improving the water supply situation for its Monterey Division.

2. Based on current projections of Cal-Am and the WMD, the danger of excess withdrawals during the water year ending September 30, 1998, has declined, and a new GRC application is due from Cal-Am in January 1999.

3. The WMD recognizes the desirability of having a rationing plan in place in case of need, and the WMD commits to adopting its own rationing plan before December 1, 1998.

4. The heavy rains this year hopefully will minimize the risk of overpumping in the near term. However, the risk still exists, for example, if this summer is unusually hot.

5. A memorandum account is not and cannot be a substitute for means, such as Cal-Am proposes, to manage water supply emergencies.

6. Except in unusual circumstances, the Commission's strong policy is not to tinker with rate design between GRCs. Cal-Am's GRC is less than six months away; in present circumstances, that GRC will provide a timely and convenient forum to deal with the many rate design and planning issues that Cal-Am is raising.

" In light of the complete disposition of the applications by today's decision, it is unnecessary to issue a separate order regarding the joint ruling's changes to the preliminary determination on need for hearing. See Rule 6.5(b) of the Commission's Rules of Practice and Procedure.

7. Since we are still years away from a long-term solution to the Monterey Peninsula's water supply problems, there is a significant likelihood of another drought occurring before that solution is fully in place.

8. Rationing and a moratorium are extreme measures with deep and disturbing ramifications for the people and communities of the Monterey Peninsula. Accordingly, we recognize the desirability of having such measures complement the WMD's planning and allocation activities.

9. There may be ways to structure a "moratorium" to address the public perception problem while allowing new or expanded uses, carefully conditioned, to become part of the solution and not part of the problem.

10. Cal-Am does not currently have a contingency plan in case the proposed new dam does not come to fruition. Cal-Am should have a fallback to cover this possibility so that the Monterey Peninsula does not have to face rationing as a long-term solution, and the SWRCB has assurance that compliance with Order WR 95-10 does not depend solely on the dam.

Conclusions of Law

1. Cal-Am should (1) have all appropriate means to comply with the cutback requirement, and (2) make reasonable use of the means available to it to achieve compliance.

2. It is not fair to Cal-Am's shareholders to expose them to fines that Cal-Am has only limited ability to avoid.

3. Cal-Am should record in a memorandum account any SWRCB fines imposed for overpumping in this or the succeeding water year.

4. There should not be an "automatic" pass-through to ratepayers of SWRCB fines, which pass-through would be unjust and unreasonable to ratepayers and would relieve Cal-Am management of its responsibility to run the system as best it can to avoid such fines.

5. To permit prompt coordination between Cal-Am and the WMD, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The California-American Water Company (Cal-Am) is authorized to establish a memorandum account that shall be used exclusively to record fines, if any, incurred for the water years ending September 30, 1998, or September 30, 1999, due to failure by Cal-Am to meet the requirements of Order WR 95-10 of the State Water Resources Control Board (SWRCB) relating to the annual limit on Cal-Am's diversions from the Carmel River. Recovery of any such fines may be allowed, subject to "just and reasonable" review of Cal-Am's management and operations. Whether to continue this memorandum account beyond the water year ending September 30, 1999, is an issue to be determined in Cal-Am's Test Year 2000 General Rate Case (GRC) for its Monterey Division.

2. The Joint Ruling of the assigned Commissioner and Administrative Law Judge issued July 27, 1998, is confirmed. All petitions for leave to intervene in Application (A.) 98-05-008, A.95-05-009, A.98-05-010, and A.98-05-011 are granted, these applications are consolidated and, except to the extent granted in Ordering Paragraph 1, they are hereby dismissed without prejudice and these proceedings are closed. In the GRC, Cal-Am shall renew its request for authority to implement its Phase IV mandatory conservation plan and associated balancing account, a rationing plan, and a moratorium, consistent with the discussion in Sections 4 - 4.3 of today's decision.

3. Cal-Am shall include, in its GRC application, both short-term and long-term contingency plans. The short-term contingency plan shall include the mandatory conservation, rationing, and moratorium components, as set forth in Ordering Paragraph 2, together with any other short-term measure Cal-Am may

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propose to conserve or add to water supply. The long-term contingency plan shall describe with reasonable specificity the program or combination of programs Cal-Am would pursue if for any reason the new Carmel River Dam does not go forward. The long-term contingency plan shall set forth the criteria Cal-Am used in deciding upon the program or combination of programs included in the plan.

This order is effective today.

Dated August 6, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I will file a concurring opinion.

/s/ JESSIE J. KNIGHT, JR.
Commissioner

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D.98-08-036

Commissioner Jessie J. Knight, Jr., Concurring:

California American Water Company (CalAm) is between a rock and a hard place. It is caught between the regulatory mission of two government agencies. On one hand, this Commission requires CalAm to serve its customers. On the other side, the Water Resources Control Board requires CalAm to abide by its pumping restrictions. As a result of trying to please these two entities, CalAm may incur fines levied by the Water Resources Control Board. The decision allows memorandum account treatment of the fines so that at a later date, these fines could be recovered from ratepayers, if the actions taken by CalAm that resulted in the fines was reasonable in light of their obligation to serve its customers. In this case, these fines may be a cost of doing business. However, I remain skeptical that activity that results in a fine is ever reasonable to agree to such a notion may have unintended and improper consequences and precedent.

I support this decision because these fines are only placed in a memorandum account. As I have noted before in other proceedings, memorandum account treatment does not imply that these dollars will automatically be flowed through to rates. In my mind, CalAm will have a significant burden to prove that actions that led to the fines were reasonable and that there was nothing the company could have done to avoid the fine, short of failing its obligation to serve customers. I am very reluctant to allow any fines to be recovered from ratepayers. First of all, ratepayers should not be required to pay for the actions of the company that led to the fines if said actions were in the control of the company. Second, I am concerned that flowing these fines through to ratepayers would thwart the proper efforts of our sister regulatory agency, the Water Resources Control Board. It is important that in determining whether the fines should be flowed through to ratepayers, the Commission must listen carefully to the views of the Water Resources Control Board.

Dated August 6, 1998 at San Francisco, California.

/s/ Jessie J. Knight, Jr.

Jessie J. Knight, Jr.
Commissioner

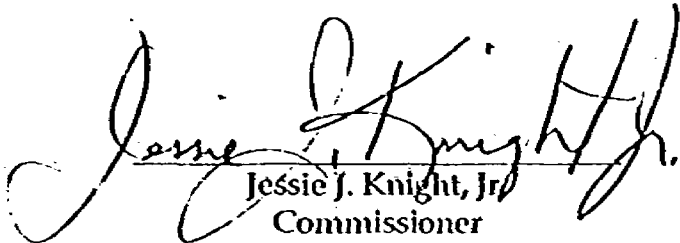
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Commissioner Jesse J. Knight, Jr., Concurring:

California American Water Company (CalAm) is between a rock and a hard place. It is caught between the regulatory mission of two government agencies. On one hand, this Commission requires CalAm to serve its customers. On the other side, the Water Resources Control Board requires CalAm to abide by its pumping restrictions. As a result of trying to please these two entities, CalAm may incur fines levied by the Water Resources Control Board. The decision allows memorandum account treatment of the fines so that at a later date, these fines could be recovered from ratepayers, if the actions taken by CalAm that resulted in the fines was reasonable in light of their obligation to serve its customers. In this case, these fines may be a cost of doing business. However, I remain skeptical that activity that results in a fine is ever reasonable to agree to such a notion may have unintended and improper consequences and precedent.

I support this decision because these fines are only placed in a memorandum account. As I have noted before in other proceedings, memorandum account treatment does not imply that these dollars will automatically be flowed through to rates. In my mind, CalAm will have a significant burden to prove that actions that led to the fines were reasonable and that there was nothing the company could have done to avoid the fine, short of failing its obligation to serve customers. I am very reluctant to allow any fines to be recovered from ratepayers. First of all, ratepayers should not be required to pay for the actions of the company that led to the fines if said actions were in the control of the company. Second, I am concerned that flowing these fines through to ratepayers would thwart the proper efforts of our sister regulatory agency, the Water Resources Control Board. It is important that in determining whether the fines should be flowed through to ratepayers, the Commission must listen carefully to the views of the Water Resources Control Board.

Dated August 6, 1998 at San Francisco, California.


Jesse J. Knight, Jr.
Commissioner