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California Water Association

April 14, 2011

Hon. Michael R. Peevey, President
Hon. Timothy Alan Simon, Commissioner
Hon. Michel P. Florio, Commissioner
Hon. Katherine J.K. Sandoval, Commissioner
Hon. Mark Ferron, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214

Re: Concerns of California Water Association
About Version 6 of Draft Resolution L-411

Dear Commissioners:

On behalf of its water utility members, California Water Association ("CWA") has provided detailed comments on several prior versions of draft Resolution L-411 and participated actively in the recent all-party meeting with Commissioners Sandoval and Ferron addressing a prior version of the draft Resolution. New Version 6 of the draft resolution, available by a link to Agenda Item No. 49 for today's decision meeting, broadens the range of companies that will be exempt from the resolution but tightens the screws on those remaining subject to its terms. Those more restrictive terms will apply to most of the Class A and Class B water utilities subject to the Commission's jurisdiction.

With little explanation, Version 6 reverts to the "one-way" memorandum account approach that was widely criticized as an element of early versions of the resolution. Version 6 offers no more than speculation about what the revenue requirement impacts of the new tax law will be, and even admits that the revenue requirement impact in years in which bonus depreciation is taken may be a revenue requirement increase. Version 6, page 4.

In addition, Version 6 appears to presume an unprecedented mandate for water utilities to obtain Commission authorization before making investments in utility plant. There has never been such a requirement. Based on that false premise, Version 6 then creates an exemption from the unprecedented requirement for "allowable types of infrastructure replacement projects." But it is difficult to fathom the basis on which the Commission relies in favoring "infrastructure replacement projects" over sometimes more urgent and higher priority investments in water treatment facilities required to respond to increasingly stringent water quality standards or investments promoting water and energy conservation investments. To impose an unprecedented before-the-fact regulatory review and authorization process on the latter projects will seriously impair water utilities' ability to make critical incremental infrastructure investments that the new tax laws are meant to encourage.

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A further very serious problem with Version 6 is its numerous ambiguities. For example, for a utility that is required to establish a memorandum account to record direct revenue requirement effects of the New Tax Law and also to invest in replacement infrastructure without prior approval, it is unclear whether the utility will be allowed to record those investments in a memorandum account, either the one required to record direct effects of the new law or a separate one; and if a separate one, it is unclear whether establishing that separate memorandum account will be a discretionary or a ministerial matter. There is also ambiguity as to the extent of the new exemptions, which apply "to the extent that other cost of service utilities will be addressing the 2010 Tax Act in a 2011 or 2012 test year GRC," while the former, broader definition of "covered utilities" remains, and is applied in several later sections of the resolution.

The Commission should abandon Version 6 of draft Resolution L-411. Failing that, a second best solution, for the sake of the water utilities and their ratepayers, as well as for the community at large that will benefit from additional job creation, is to exempt all water utilities entirely from the scope of Resolution L-411.

Respectfully submitted,

John K. Hawks

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