PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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April 9, 2018

TO PARTIES OF RECORD IN APPLICATION 15-07-019:

This proceeding was filed on July 14, 2015, and is assigned to Commissioner Liane M. Randolph and Administrative Law Judge (ALJ) Gary Weatherford. This is the decision of the Presiding Officer, ALJ Weatherford.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON
Anne E. Simon
Acting Chief Administrative Law Judge

AES:lil

Attachment

Decision **PRESIDING OFFICER'S DECISION OF ALJ WEATHERFORD**
(Mailed 4/9/2018)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U-210W) for Authorization to Modify Conservation and Rationing Rules, Rate Design, and Other Related Issues for the Monterey District.	Application 15-07-019

(See Attachment 2 for Appearances)

PRESIDING OFFICER'S DECISION ADOPTING PHASE 3B SETTLEMENT AGREEMENT

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PRESIDING OFFICER'S DECISION ADOPTING PHASE 3B SETTLEMENT AGREEMENT

Summary

This decision grants the February 24, 2017 motion for adoption of a Settlement Agreement with respect to the Phase 3B Settlement Agreement filed on March 8, 2017. This resolves all Phase 3B issues. Phase 3B is an adjudication of whether a penalty should be imposed upon California-American Water Company in connection with management of its Monterey District tariffs and, if so, how much. The Phase 3B Settlement Agreement includes a return of $500,000 to ratepayers, thereby resolving disputed issues and recognizing that some customers may have been affected by inaccurate allotments as part of California-American Water Company's tariff management. It also provides that California-American Water Company will take several actions to improve tariffs, enhance information regarding its tariffs, and expand upon its shared responsibilities with the Monterey Peninsula Water Management District. The proceeding remains open for resolution of Phase 3A.

1. Background

California–American Water Company (Cal-Am or Applicant) faces particularly challenging water supply, cost, rate, rate design, and conservation issues in its Monterey District. It also potentially faces a penalty for alleged unreasonable management of its tariffs, and in particular its residential tariff allotment system.

It is necessary to first review these and related items in order to understand this decision and place it in context. In particular, this includes a review of the supply constraints, the procedural history of this proceeding, and limited Public Utilities Code requirements and specific duties that relate to possible penalties. It includes a brief explanation of the allotment system, and summarizes the evidence and findings in our December 2016 decision relative to Applicant's management of the allotment system

(Decision (D.) 16-12-003). It states the scope of Phase 3B. After this background review we turn to the evidence in Phase 3B.

1.1. Supply Constraints and this Proceeding

Applicant has been, and is, subject to a series of orders from the State Water Resources Control Board (SWRCB) to cease unlawful diversions from the Carmel River.[1] For example, in 1995 the SWRCB ordered Applicant to cease unlawful diversions or be subject to fines. In 2009 the SWRCB issued a cease and desist order (CDO) that compelled Applicant to reduce its draws from the Carmel River by about 66% no later than December 31, 2016, or be subject to sanctions and penalties. In 2016 the SWRCB amended the CDO, deferring full compliance to December 31, 2021 and including specific milestone requirements each year beginning in 2016 with severe sanctions and penalties for noncompliance.

Cal-Am is also under a Monterey County Superior Court order to ramp-down its draws from the Seaside Groundwater Basin. That order requires a reduction by about 63% no later than December 31, 2021.[2]

Cal-Am seeks authorization in another proceeding before this Commission to provide the necessary replacement water. (*See* Application (A.) 12-04-019.) In this application, Cal-Am seeks authorization to modify its conservation and rationing plan, its rate design, and other related issues for the Monterey District.[3] Its proposals here,

[1] *See* SWRCB Orders WR 95-10 (July 6, 1995), WR 2009-0060 (October 20, 2009), and WR 2016-0016 (July 19, 2016).

[2] Applicant Opening Brief at 8, citing *California American Water Company v. City of Seaside*, Case No. M66343, Decision (Monterey Cnty. Sup. Ct. March 27, 2006). Applicant must reduce its takes by about 2,528 acre-feet per year (AFY), from 4,000 AFY to 1,472 AFY. (2,528/4,000 = 63.2%.)

[3] Applicant says all proposed changes will be applicable to what is known as its Monterey Main system, including those systems that can produce or receive water from the Seaside Basin and/or Carmel River (including Ryan Ranch, Bishop, and Hidden Hills). The proposals are not applicable to the sub-systems of Toro, Ambler, Chualar, Ralph Lane, or Garrapata.

according to Cal-Am, present a comprehensive approach to address supply, conservation, rationing, financial stability, and rate design issues.

1.2. Procedural History

The application was filed on July 14, 2015. A prehearing conference to determine parties, issues, schedule, and other matters was held on September 8, 2015. On November 4, 2015, the assigned Commissioner's Scoping Memo and Ruling was filed.

Two public participation hearings were held in Seaside on January 25, 2016. The two hearings were well attended, and statements were made on the record by 53 persons. The general consensus among public speakers was that rate levels are too high, there is rate inequity between customer classes and meter sizes, and customers have exceeded conservation mandates but are still facing increasing rates.[4]

The Scoping Memo scoped ten issues to be addressed in two phases. Phase 1 addressed the request for an expedited rate design change to eliminate summer outdoor watering allotments in the upper rate tiers. Those allotments were eliminated by a Commission decision adopted in March 2016. (*See* D.16-03-014.)

Phase 2 covered all remaining issues. Phase 2 issues were resolved by a Commission decision adopted in December 2016. (*See* D.16-12-003.) The proceeding was kept open, however, in a third phase to consider two issues: (a) an improved annual consumption true-up pilot program (if proposed) and (b) a possible penalty for failure by Applicant to reasonably administer its tariffs.

On December 22, 2016, the assigned Commissioner filed an Amended Scoping Memo and Ruling Regarding Phase 3 Issues and Extended Deadline. The Amended Scoping Memo established two phases: (a) Phase 3A to address the true-up mechanism and (b) Phase 3B to address a possible penalty. Phase 3A was categorized as ratesetting with eventual resolution by a Proposed Decision (PD). Phase 3B was categorized as

[4] *See* D.16-12-003 at 9–10 for more details.

adjudicatory with eventual resolution by a Presiding Officer's Decision (POD).[5] The original deadline for this proceeding was May 4, 2017. The Amended Scoping Memo extended the deadline to December 31, 2017.

On February 24, 2017, a motion for adoption of a Settlement Agreement (SA) regarding all Phase 3A and 3B issues was filed by four parties: Applicant, Monterey Peninsula Water Management District (MPWMD), Coalition of Peninsula Businesses (CPB), and the Commission's Office of Ratepayer Advocates (ORA), collectively "Settling Parties." The motion included a request to suspend the schedule and consider the SA using the record in Phases 1 and 2. On March 8, 2017, a compliance filing was made to separate the SA into the portion dealing with Phase 3A and the portion dealing with Phase 3B (thereby facilitating Commission consideration of SA elements that are in the ratesetting portion of the proceeding separately from those in the adjudicatory portion of the proceeding).

On March 27, 2017, Public Trust Alliance filed a timely response in opposition to the Phase 3B SA. Also on March 27, 2017, joint comments in support of the Phase 3B SA were filed timely by the Settling Parties.

On March 28, 2017, the motion to suspend the schedule was denied. The motion was denied because the SAs were not all-party settlements, issues were in dispute, and "there is insufficient information upon which to judge the SAs…"[6]

Eight days of evidentiary hearings were held between April 13 and November 29, 2017.[7] By Amended Scoping Memo and Ruling on November 21, 2017, the statutory deadline was extended to September 30, 2018.[8]

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[5] *See* Pub. Util. Code §§ 1701.1, 1701.2, and 1701.3 regarding the different procedures and timeframes for reaching a Commission decision in ratesetting compared to adjudicatory matters.

[6] *See* March 28, 2017 Ruling at 10.

[7] The eight days were: April 13, 14, and 17; August 17 and 18; September 12; November 27 and 29, 2017.

Opening briefs were filed on January 22, 2018 by five parties.[9] Reply Briefs were filed on February 12, 2018 by four parties.[10]

On February 12, 2018, PWN/RL moved for permission to file an updated Phase 3 Opening Brief. The motion was opposed by Applicant and CWA. On February 23, 2018, the motion was granted.[11]

The proceeding was submitted for decision on February 26, 2018, upon receipt of all briefs. This decision is the POD addressing Phase 3B issues. A separate PD was issued to address Phase 3A issues.

1.3. Public Utilities Code and Specific Duties

Specific portions of the Public Utilities Code are at issue here. In particular, all charges demanded or received by a public utility for any product or service must be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or service is unlawful. Every public utility must furnish and maintain just and reasonable service as necessary to promote the comfort and convenience of its patrons and the public. (Pub. Util. Code § 451.)

No public utility shall make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage, as to rates, charges, service, or in

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[8] The statutory deadline was extended in particular due to the amount of time required to complete discovery and the evidentiary portion of the proceeding. In short, the nature of the litigation plus the needs and availabilities of the parties and the Commission required hearings over the course of 2017, and a briefing schedule lasting into February 2018. (*See* November 21, 2017 Ruling to Extend Deadline at 7-8.) Non-settling parties were given every reasonable opportunity plus an abundant amount of time to engage in discovery, develop disputed issues, present all necessary evidence, testify, cross-examine opposing witnesses, and prepare briefs.

[9] The five parties are: Applicant, MPWMD, California Water Association (CWA), and jointly by Public Water Now and Regulatory Liaisons (PWN/RL).

[10] The four parties are: applicant, CWA, and jointly by PWN/RL.

[11] The motion was granted because the updates did not fundamentally change any of the substantive content. Rather, they updated the Table of Authorities, added footnotes, and corrected exhibit numbers within the text. References (e.g., page numbers) herein are to the original PWN/RL joint opening brief, not the updated joint opening brief.

any other respect. (Pub. Util. Code § 453(a).) In order to satisfy its obligation to maintain just and reasonable service to promote the comfort and convenience of its customers a public utility must at all times administer its tariffs in a manner to avoid unlawful inequities between customers, and avoid the award of an unlawful advantage to any customer. (Pub. Util. Code §§ 451 and 453(a).) Moreover, by Commission order specifically regarding Cal-Am, Applicant had a duty to administer its allotment system in such a way as to "take responsible efforts to identify mischaracterizations in its documentation for number of people, lot size and large animals" and those responsible efforts are accomplished only in part "through an annual survey."[12]

1.4. Residential Allotment System

A brief summary of Applicant's residential tariff will assist in understanding if it was or was not administered reasonably, and whether a penalty should be assessed. Applicant's residential tariff includes inclining-block ("tiered") rates. The amount of water in each block is fixed. Once the amount of water is consumed in that block, the customer moves to the next, higher-priced block. The residential rates are very steeply inclined with the top tier rate up to 10 times the first tier rate. (*See* D.16-12-003 at 16.)

Under the allotment system, the amount of water in each block was determined by the number of people residing in the household (full-time and part-time), the number of large animals, the lot size, and special medical or other exceptional needs. Customers provided Applicant with the necessary information to determine the allotment, and customers were responsible for providing updates when circumstances changed, but no less often the by an annual survey conducted by Applicant. Applicant relied on customers voluntarily providing the information and being honest. The allotment system was used from 2000 to 2016. Customers with many reported persons living in a

[12] D.16-12-003 at 89-90 citing D.09-07-021, Appendix A, Section IV.F.

household received more water at the least expensive rate compared to customers with fewer reported persons living in a household.

1.5. Phase 2 Evidence, D.16-12-003, and Scope of Phase 3B

The concern about Applicant's administration of the residential tariff allotment system was raised by Applicant's own Phase 2 testimony. In particular, Applicant testified "…it appears that the allotment process has encouraged an over-reporting of the number of individuals residing in Monterey." (Exhibit 9 (Cal-Am) at 11.) This was seemingly confirmed by Applicant's testimony that:

> "…the 2010 census data utilized to develop the Urban Water Management Plan for the Monterey District indicates a residential population of 100,000, while the population represented to California American Water through customer information is 125,624." (Exhibit 1 (Cal-Am) at 17.)

Applicant testified that allocations:

> "…are currently based on customer survey data that is not accurate" and "it becomes obvious that some customers are allocated more water at lower rates than intended under the rate design." (Exhibit 1 (Cal-Am) at 19 and 22.)

Further:

> "Data shows that the number of residents per household has likely been significantly over-reported, thus increasing the allotment at each tier and improperly reducing the water bill for those over-reported households. Assigning allotments using the survey data has therefore unfairly assigned too much water to some residential properties and reduced the amount of water available to others in the community." (Exhibit 1 (Cal-Am) at 23.)

Based on this and all the evidence, the Commission found that the:

> "…residential allotment system is vulnerable to abuse, Applicant did not audit customer surveys, Applicant did not take actions to ensure allotments were accurate, and Applicant knew there were problems." (D.16-12-003, Finding of Fact 43 at 97-98.)

The Commission concluded that the residential allotment system:

> "…produces inequities between customers when some customers misrepresent data upon which allotments are based and receive more water at lower rates than a similarly situated customer who honestly reports its data and pays a higher rate for the same amount of water." (D.16-12-003, Conclusion of Law 2 at 98-99.)

Despite the Phase 2 evidence, findings of fact, and conclusions of law, the Commission did not at that time assess a penalty upon Cal-Am. Rather, it determined that further inquiry was justified and "applicant should be provided a full opportunity to address its tariff administration and the appropriate penalty, if any." (D.16-12-003 at 90.) The Commission stated that it would consider existing evidence and legal argument "along with any new evidence and legal argument presented in Phase 3." (D.16-12-003 at 90.)

The December 22, 2016 Amended Scoping Memo scoped the Phase 3B issue (Issue 12) as:

> 12. Penalty: Should Applicant be penalized for failure to reasonably administer its tariffs and, if so, should this be by fine, adjustment to rates, or a disallowance?
>
> a. Is there any additional or new evidence to address whether Applicant did or did not reasonably administer its tariffs, in particular including its residential allotment system (during the entire time from the commencement to the termination of that allotment system)?
>
> b. If Applicant did not reasonably administer its tariffs, what should be the penalty? What are the desirability, feasibility, legality, and other relevant factors that must be considered in applying that penalty?
>
> c. If the penalty is a monetary fine, what should be the amount of the penalty, taking into account the factors used by the Commission (for example, see factors addressed in Decision 16-12-003 at pages 86-87)? What are the desirability, feasibility, legality, and other relevant factors that must be considered in returning a monetary penalty directly to ratepayers as a bill credit, an adjustment to rates, a disallowance in authorized revenues, or other technique?

2. Discussion

The Phase 2 record led the Commission to conclude it "is probable that Applicant failed to [reasonably administer its tariffs] by failing to audit customer allotments or take other appropriate actions to ensure the accuracy of allotments."[13] The record was kept open to hear additional evidence and legal argument in Phase 3 with Applicant "provided a full opportunity to address its tariff administration and the appropriate penalty, if any."[14]

Parties' positions vary on whether Applicant did or did not reasonably administer its tariffs, and should or should not be penalized. CWA asserts Applicant reasonably managed its tariffs and no penalty is warranted. At the other extreme, PWN/RL argue that Applicant should pay restitution, interest, and penalties into the hundreds of millions of dollars for tariff mismanagement from 2000 through 2016, including restitution and penalties with regard to two specific customers. Four parties recommend adoption of the SA to resolve all Phase 3B issues, including the question of tariff administration. Based on the Phase 3B record, we adopt the SA as a just and reasonable resolution of all Phase 3B issues.

2.1. Phase 3B Settlement Agreement

The Phase 3B SA is contained in Attachment 1. The key elements are:

a. Cal-Am agrees to waive cost recovery of $500,000 for its Monterey Main residential customers to recognize that some customers may have been affected by inaccurate allotments and to resolve all matters set forth in Phase 3B.

b. Cal-Am agrees to work with ORA to review its new residential tariffs and website information, and to propose changes if necessary.

c. Cal-Am agrees to establish a new webpage that provides information to help communicate, educate, and inform its Monterey District

[13] *See* D.16-12-003 at 81.

[14] *See* D.16-12-003 at 90.

customers of the new rate design and the Water Revenue Adjustment Mechanism (WRAM) surcharge, all conservation programs for those customers, and how to read a water bill and water meter. The webpage will be kept through 2017. Cal-Am agrees to review this information with ORA and MPWMD.

d. Cal-Am agrees to work with MPWMD to review its shared conservation and rationing-oriented responsibilities to ensure that any overlapping compliance and/or enforcement obligations are clearly delineated. Cal-Am will propose changes as necessary.

e. Cal-Am agrees to work in coordination with MPWMD to audit its Monterey District non-residential customers' compliance with the rate best management practices compliant standards during the 2019 general rate case (2021 test year), and will consider then current MPWMD water efficiency standards.

2.2. Tests to Approve Settlement

The Commission will not approve a settlement, whether contested or uncontested, unless the settlement meets three criteria: (a) is reasonable in light of the whole record, (b) consistent with law, and (c) in the public interest. (Rule 12.1(d) of the Commission's Rules of Practice and Procedure.) Settlements are generally favored by the Commission when they meet these tests.[15]

We look at each of the three criteria in turn. For the reasons stated below, we find the Phase 3B SA meets each of the tests and should be adopted.

3. Reasonable in Light of the Whole Record

The Phase 3B record contains a substantial amount of additional and new evidence to address whether Applicant did or did not reasonably administer its tariffs and residential allotment system. Based on this new evidence, we conclude that the Phase 3B SA meets the first test by being reasonable in light of the whole record.

As explained in detail in the sections that follow, the evidence shows that Cal-Am's administration and validation of the allotment system may not have been

[15] *See* D.88-12-032, D.07-03-044, and D.11-06-023.

perfect but were not unreasonable. The record includes a rational explanation of why population counts and allotment totals would not be expected to be the same. The record contains what some parties assert are examples of Applicant's tariff mismanagement but the examples fail to establish that mismanagement. The evidence shows the reasonableness of the $500,000 cost waiver for Monterey Main residential customers to resolve disputes and recognize that some customers may have been affected by inaccurate allotments. Finally, the record shows the reasonableness of other provisions regarding tariffs, the webpage, and working with ORA and MPWMD.

3.1. Allotment Administration and Validation

Understanding the reasons for the initial creation of the allotment system helps with the assessment of Cal-Am's allotment administration. In 1998 the Commission ordered Applicant to investigate per capita rate design in response to the 1995 SWRCB Order for Applicant to substantially reduce its takes from the Carmel River. (D.98-08-036.) In 1999 the MPWMD adopted Ordinance 92. That ordinance required Applicant to prepare a per-capita-based tariff that would employ a customer survey, and submit the proposed tariff to the Commission for consideration. (Exhibit 13 (Cal-Am) at 6-7.) Applicant did so. In 2000, we adopted the allotment-based tariff as an emergency measure to reduce water consumption if Applicant exceeded SWRCB water production limits. (D.00-03-053.) Applicant soon exceeded production limits, the emergency allotment-based tariff became effective, and the tariff became permanent on January 1, 2002. (D.01-10-014; Applicant Opening Brief at 7.)

3.1.1. Initial Survey, Annual Survey, and Customer Contacts

Beginning in 1999, Applicant surveyed customers to implement the allotment-based tariff, and conducted annual surveys for customers to report changes. (Exhibit 43 (Cal-Am) at 2.) The surveys expressly cautioned customers to record numbers accurately or be subject to prosecution by MPWMD. (Exhibit 31 (Cal-Am)

at 1.) The surveys relied on customers voluntarily providing the necessary information and being honest.

In addition to the annual survey, Applicant also reviewed survey and allotment information at the time of relevant customer contacts (e.g., new service, change of address, change of who paid the bill). (RT (Cal-Am) at 1462-1463.) Again, Applicant relied on customers providing the data voluntarily and honestly.

Applicant acknowledges that as "with any system that is based upon customer-supplied information, California American Water…[has] always understood that it was not a perfect system." (Cal-Am Opening Brief, Summary of Recommendations at Roman numeral page "x".) Applicant continues by saying that it "has been upfront and forthcoming throughout this proceeding with the recognition that the historical allotment-based tariffs did not and could not possibly achieve perfect accuracy." (Cal-Am Opening Brief at 33.) As explained more below, the system was not perfect, and Cal-Am's administration did not seek perfection and may not have been perfect, but its administration was not unreasonable.

3.1.2. Contemporaneous and Other Assessments

In 2005, Applicant proposed a rate design that would be "less customer specific and complex" by substantially eliminating the allotment system. (D.06-11-050 at 64.) The Commission noted that one party in particular supported the change since it "would make it harder for individual residential customers to cheat the system." (D.06-11-050 at 66.) Even if the allotment system was not perfect, however, the Commission retained the allotment-based tariff and found that "there is no evidence of significant cheating under the system." (D.06-11-050 at 66.)

In 2010, Applicant's water conservation personnel investigated Monterey District households using 10 gallons per capita per day.[16] This extremely low use could be the result of the customer listing a greater number of allotments (e.g., persons, animals, lot size) than those to which the customer was actually entitled, thereby decreasing the per capita usage. The investigation included phone calls to customers. According to Cal-Am, the results demonstrated that the instances of extremely low use were very rare and there was nothing to indicate any substantial or widespread allotment misreporting. (Exhibit 33; also Cal-Am Opening Brief at 23.) The study was limited but we agree that it does not show any significant misreporting for this group.

In 2013, Applicant's water conservation personnel also made verification phone calls to Monterey District customers claiming allotments of eight or more residents. Cal-Am says that the contacts did not result in any significant findings of misreporting. Rather, according to Cal-Am, the analysis revealed misreporting was essentially nonexistent, did not rise to a reasonable level of concern, and was so minimal that the costs of more vigorous verification would not be cost-effective but could very possibly be harmful to the utility's relationship with its customers. (Exhibit 43 (Cal-Am) at 5-6.) Again, the study was limited, but we agree that it shows no significant misreporting for this group.

For Phase 3, Applicant studied data over the period from 2010 to 2015. The results, according to Applicant, show no systemic problems with the allotment system for two reasons. (Exhibit 34.) First, single family residential allotments over the six years from 2010 to 2015 remained relatively constant from year to year.[17] That is, there is no

[16] For comparison, consumption in May 2015 (several years into the drought) averaged 59 gallons per capita per day. (Exhibit 42 at 23.)

[17] Each year about 60% of single family residences reported two or less full time occupants, about 70% reported three or less full time occupants, and about 90% reported four or less full time occupants. Less than 10% reported five or more full time occupants. The variations were less than a few percent between years.

indication that the number of full time occupants increased as rates increased over this period, as might be the case with over-reporting by dishonest customers. The data also show a very stable and small percentage (less than 10%) of customers with the highest (or maximum) allotments. Massive or widespread serious abuse would likely be revealed by a very high percentage of customers with the most allotments, and a growing percentage over time. This was not the case.

Second, about 90% of single family customers made no changes in their allotments over the five years from 2011 to 2015. About 10% of these customers changed their allotment information but allotment decreases and increases matched almost exactly. That is, the data does not show a skewed distribution, with more customers each year seeking allotment increases, as might be the case if there was systemic abuse. Moreover, it shows relative stability for the vast majority of customers.

We agree with Applicant that the data shows relative stability while not revealing systemic problems. Nonetheless, the data do not exclude the possibility that a few customers misrepresented their information, whether intentionally or unintentionally. For example, some of the approximately 10% of customers with the maximum allotments could have misrepresented their information to get the most water at the lowest rates. However, the problem, if any, did not grow over these six years. Thus, even if the allotment system and its administration were not perfect, we conclude--as we did in 2006--that there is no evidence of significant or substantial cheating.

PWN/RL assert that the allotment mismanagement must have occurred before 2010. To the contrary, PWN/RL present no credible evidence of mismanagement before 2010. In fact, the Commission in 2006 specifically found no evidence of significant cheating.

The record also shows that Cal-Am did not receive any complaints from MPWMD or others alleging customer misrepresentations of allotment data either before or after

2010. Widespread or systemic abuse, if it was occurring, would very likely have been identified and been brought to the attention of Cal-Am. [18] The record here has no such evidence. Thus, given an allotment system that was not perfect, and administration that did not seek perfect accuracy, some customers may have been adversely affected but the harm was neither widespread nor systemic.

3.1.3. Customer Relations

The water shortage situation in the Monterey District has been an ongoing emergency for many years. It has required remarkable community cooperation to handle the stress while at the same time maintaining relative order. Cal-Am states that it considered but declined to implement a more aggressive program to verify allotments. It declined to do so given that the data did not establish any significant misreporting or abuse of the allotment system. Applicant elected to rely on its customers being honest, and avoided audit programs or more intrusive verification measures that would undermine critical customer trust necessary for the success of its rate design and water conservation measures. Applicant testified that it avoided approaches that could have backfired and caused poor relationships with its customers. (RT (Cal-Am) at 1002 to 1004.)

PWN/RL assert Applicant could have done more to verify the accuracy of its allotment data. The Palmdale Water District (PWD), for example, had its water allocation based on four people. PWD required documentation to support a request for an increased water allocation based on more people in the household.[19] The form to

[18] For example, if not identified by Cal-Am itself, it might have been identified and brought to Cal-Am's attention by MPWMD or other responsible agencies; or as a result of local newspaper articles or letters to the editor; or pursuant to public sessions of local government of other similar meetings (e.g., City Councils, County Board of Supervisors, this Commission).

[19] Six forms of documentation were permissible: copy of last year's income tax form (first page only, listing dependents); valid California Driver's license; formal change of address form from the United States Postal Service; lease agreement; voided blank checks with pre-printed name and address; and/or a

Footnote continued on next page

request an increased allocation required a signature under penalty of perjury, stated that the information was subject to audit by PWD, and said that false information could lead to retroactive fees, charges, and a penalty.[20] By way of comparison, the Cal-Am customer allotment survey required documentation for increases based on medical use, but not for numbers of people. The Cal-Am form clearly stated that the number of residents must be reported accurately, with intentional misrepresentation a violation of MPWMD Rule 170 and subject to prosecution.

Cal-Am could have required more documentation, and may have been able to do this without causing customer upset. If so, this would have incrementally increased the accuracy of the data upon which allotments were based. Misreporting, however, whether accidental or intentional, was not identified as a significant problem (e.g., 2006 Commission finding no evidence of significant cheating, 2010 Cal-Am data, 2013 Cal-Am data, 2010 to 2015 stable allotment data, absence of contemporaneous complaints). The collection and processing of more documentation would have required incremental increases in administrative costs and potential jeopardy with customer relations. In this context, Cal-Am's administration may not have required perfect accuracy but was not unreasonable.

3.2. Residential Population Compared to Allotments

Applicant's own Phase 2 testimony was what primarily raised concerns with the allotment system. In particular, the Phase 2 evidence showed more allotments than Census-based residential population (i.e., 125,624 compared to 100,000). This suggested substantial over-reporting of persons living in a household for the likely purpose of obtaining additional water at the lowest price. The divergence between residential

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child's birth certificate, current year student identification card, or current year report card. (Exhibit 432 (PWN/RL.))

[20] Exhibit 432 (PWN/RL).

population and allotment totals was not explained in the Phase 2 record and raised serious concerns with the allotment system. The Phase 3 evidence, however, shows that this difference does not establish that the allotment numbers are inaccurate. Rather, the U.S. Census and Applicant's allotment system count two overlapping but different things.

The Census counts people in their primary residence on Census Day (April 1 every 10 years). It does not count persons where they are on Census Day if they are at school, in a second home, or on vacation. It entails complicated rules for where to count some persons (e.g., homeless, "snowbirds," children in shared custody arrangements, college students, live-in employees, military personnel, military members away on assignment, those in workers' dormitories). By contrast, Applicant's allotment system counted all people using Cal-Am supplied water at any time during the year, including not only full-time residents but also part-time residents, those at school, in a second home, in rentals or vacation homes, and migrant workers.[21] The goals and methods were different.

In particular, the Monterey area has a disproportionately high number of second homes and short-term vacation rentals. The Census should not count anyone in a short-term rental, vacation rental, second home, vacation home, or timeshare unless those facilities are the person's primary residence. Applicant's allotment system, however, sought to count persons in those facilities, whether used only part-time or over the full year. This difference in objectives would lead to a difference in numbers between allotments and the Census. [22]

Further, the Census is likely to undercount those in the country illegally. Monterey County has a relatively high population of non-citizens. They might not respond to the Census for fear of action by Immigration and Customs Enforcement. This

[21] Exhibit 39 (Cal-Am) at 3-5.

[22] Exhibit 39 (Cal-Am) at 4-6.

could lead to a Census undercount in Monterey compared to elsewhere, and a difference between the numbers for allotments and the Census.[23]

Moreover, the Census number was a report for Census Day 2010. The population in Monterey County increased between 2010 and 2016 by up to 20,000.[24] This also accounts for some of the difference between the number of allotments and the population.

Even if both the Census and the allotment system did their jobs perfectly they would not be expected to give the same results.[25] The differences in the dates of the data, target populations, methods, incentives, and characteristics of the Monterey District reasonably accounts for the divergence between allotments and the Census.

PNW/RL disagree. PWN/RL contend the 125,624 allotments are best understood as allotments for full-time plus part-time persons. (PWN/RL Joint Reply Brief at 20.) PWN/RL calculate full-time persons in the Monterey service area to be 98,550 compared to the Census persons reported as 100,000, and conclude they are "essentially the same." (PWN/RL Joint Reply Brief at 19.) PWN/RL dispute the remaining 25,624. PWN/RL claim the correct remainder for part-time persons should be 5,619.[26] According to PWN/RL, this demonstrates allocation mismanagement of 20,005.[27]

The PWN/RL estimate of 5,619 is not credible. It is based on PWN/RL Exhibit 420, which contains two of six extracts showing (a) full-time persons (single family and multifamily) along with (b) part-time persons (a calculation for single family and multifamily). Exhibit 420 reports full-time single family per capita (90,912), and multifamily (26,679) for a total of 117,591. Neither 90,912 nor 117,591, however, are reasonably close to the PNW/RL-accepted number of 100,000 full-time persons. That is,

[23] Exhibit 39 (Cal-Am) at 4-5.

[24] Exhibit 39 (Cal-Am) at 6.

[25] Exhibit 39 (Cal-Am) at 2.

[26] *See* Corrected Exhibit 421 at 1 (referring to Exhibit 420).

[27] 25,624 – 5,619 = 20,005.

the data for full-time persons are not sufficiently correlated to the accepted population total of 100,000 to rely on this extract. Nonetheless, PWN/RL sum part-time persons for single family (5,392) and multifamily residential (277) to develop their estimate of 5,619. We do not find this result credible given that we cannot rely on the result of this extract for full-time persons. Rather, for the reasons stated above (e.g., differences in the dates of the data, target populations, methods, and unique characteristics of Monterey) we find that the part-time total of 25,624 is not unreasonable and does not establish over-reporting.

3.3. Other Evidence

PWN/RL present other examples in support of their claim of Applicant's allotment mismanagement. These examples include a data "smoking gun," treatment of two customers, and experience with rates and rate design. For the reasons explained below, this evidence does not show tariff or allotment mismanagement.

3.3.1. Alleged "Smoking Gun"

PWN/RL Exhibit 376 is a summary and analysis of three sets of Cal-Am provided allotment data for 2013, 2014, and 2015. The data shows allotments varying from 123,322 to 176,714. PWN/RL allege that this "exhibit stands as the 'smoking gun.'" (PWN/RL Joint Opening Brief at 8.) According to PWN/RL it proves that the allotment data were bloated due to Cal-Am mismanagement. We are not convinced.

PWN/RL allege that allotment mismanagement is shown by the inconsistent allotment numbers between the responses and over the years that are summarized in Exhibit 376. We do not reach the same conclusion. For example, five of the eight data points[28] align closely with the 125,624 allotments cited in D.16-12-003. The difference between each of these five data points and 125,624 is less than 2%. Also, two of the

[28] Two of the three data responses included data for 2013, 2014, and 2015. The third data response included data only for 2013 and 2014. This produced eight data points representing total residential (single family and multifamily).

three data points for 2013 are identical, and the three data points in one data response shows a consistent and modest growth year over year from 2013 to 2015.

The other three data points likely contain anomalies, such as data showing the same residence several times. Cal-Am explains, for example, that if a customer with two allotments moves out and a second customer with four or more allotments moves in, there can be two entries for the same address. This can also occur with other events (e.g., births, deaths, college-age children moving away or returning).[29]

As noted above, other allotment data shows the allotments were relatively stable from 2010 through 2015.[30] We conclude that the three divergent data points do not establish a "smoking gun." Rather, they show the challenges of data collection and, if anything, further support our December 2016 decision to eliminate the allotment system.

3.3.2. Two Customers

PWN/RL assert allotment mismanagement is shown by Cal-Am's treatment of two particular customers. We are not persuaded.

3.3.2.1. Customer 1

An allotment for one person was initially applied to this account (a four-unit apartment with an absentee landlord). The allotment was based on the information provided when service began (the building was under renovation and no full time tenants were present). The customer was sent the annual customer allotment survey to report changes. About 20 months after opening the account the allocation was corrected when the customer complained of high bills.[31]

This is a case, if anything, of too few allotments being applied, not too many as was the underlying concern leading to Phase 3B. Nonetheless, this case shows that

[29] Exhibit 430 (PWN/RL) at 3.

[30] Exhibit 34 (Cal-Am).

[31] Exhibit 43 at 8, and Exhibit 429.

Cal-Am correctly applied its tariff and adjusted the allotment when presented with more information. Nothing here shows that this is more than an isolated case, or that Cal-Am mismanaged either its tariffs or its allotment system. Moreover, Cal-Am provided a refund of 69% of the disputed amount.[32]

3.3.2.2. Customer 2

PWN/RL present this customer as one with very high bills. (Exhibit 403.) Further examination shows that the account applied to a large parcel in Pebble Beach with about 1.2 acres of irrigated landscape, and that the customer had asked Cal-Am about a special irrigation meter and rates. (Exhibit 43 at 7, and Exhibit 369.) Other than an allotment relative to lot size (eliminated by D.16-12-003) and the special summer outdoor watering allotment for Tiers 3 and 4 (eliminated by D.16-03-014), irrigation factors were not part of Cal-Am's residential tariffs. There is no evidence to show that Cal-Am did anything other than administer its residential tariff consistent with its provisions.

PWN/RL then argue that the absence of an option for special irrigation meters and rates in residential tariffs shows tariff mismanagement. In particular, non-residential tariffs contain a provision for irrigation meters (Special Condition 8) but there is no such provision in residential tariffs. The evidence shows that this customer hosts several relatively large nonprofit events in the customer's home each year (e.g., concerts, charity, political events). (Exhibit 43 at 7, and Exhibit 369.) PWN/RL conclude that denying residential customers an irrigation meter when customers run home-based businesses or charitable events discriminates against those customers relative to non-residential customers. (PWN/RL Opening Brief at 9-10.) This is both incorrect and irrelevant.

All effective residential and non-residential tariffs implemented by a utility have been approved by the Commission. The approved residential tariff here does not

[32] The customer was refunded $6,100 on a claim of $8,800. (Exhibit 429.) 6,100 divided by 8,800 is 69.3%.

discriminate against residential customers by the absence of Special Condition 8. Rather, each tariff was determined by the Commission to be just and reasonable. PWN/RL is incorrect that this example establishes unlawful discrimination between customer classes. In addition, it is untimely to raise this issue now.[33]

Moreover, even if the tariffs contain an unjust discrimination between residential and non-residential customers with respect to irrigation service (which they do not), Cal-Am must administer its tariffs as approved by the Commission. Cal-Am did so. There is no indication that Cal-Am failed to properly administer its residential tariff with respect to this customer.

Finally, this example is irrelevant. This is because it has nothing to do with Cal-Am management of its approved tariffs or allotment system.

3.3.3. Rates and Rate Design

PWN/RL argue that allotment mismanagement led to rate increases for residential customers and caused unreasonable inequity between low and high use residential customers as the ratio of the highest tier to the first tier grew over time. (PWN/RL Joint Opening Brief at 9.) This is not the case.

Rate design seeks to satisfy many competing, and often conflicting, objectives.[34] Many factors led to the Commission's decisions to increase the top tier rate relative to the lowest tier. One of the most important was the urgent and increasing need to conserve limited water supplies (e.g., higher rates for use in the upper blocks) while providing a necessary minimum amount of water at reasonable rates to all customers (e.g., lower first tier rate for use in the first block). The evidence shows that the steeply tiered rates were

[33] For example, applications for rehearing must be brought within 30 days of the date of issuance of a Commission order. (Pub. Util. Code § 1731(b); Rule 16.1(a).)

[34] For example, rates are designed to recover costs, promote conservation, advance efficiency, maintain equity, facilitate reasonable revenue stability, moderate rate shock (from changes in rates), and provide reasonable assistance to low income customers, among other factors.

an important component in the tremendous success of Monterey District customers achieving among the lowest per capita water consumption amounts in the State.

All rate levels, rate designs, and differences in rates between customer groups have been approved by the Commission, explained in Commission decisions and resolutions, and determined by the Commission to be just and reasonable. The PWN/RL evidence and argument regarding rate levels and rate design recite one view of the history of rates and rate design, but do not establish either tariff or allotment mismanagement.

3.4. Waiver of $500,000

Without Cal-Am admitting to any mismanagement, the Phase 3B SA provides that Cal-Am will waive recovery of $500,000 in costs to recognize "the fact that some customers may have been affected by inaccurate allotments and to resolve the matters set forth in Phase 3." (Phase 3B SA at § 4.2.1.) For the reasons stated below, this provision is reasonable in light of the whole record.

3.4.1. PWN/RL Assertions

PWN/RL seek damages and penalties for allotment mismanagement of $224.5 million, plus additional amounts to be determined.[35] While the allotment system may have been imperfect, and Cal-Am's administration did not seek perfect accuracy in the underlying data, allotment mismanagement has not been established, and certainly not to the degree that might warrant a penalty, let alone one of that magnitude. Therefore, we need not assess the merits of PWN/RL's recommendation nor determine a penalty.[36]

[35] PWN/RL Joint Opening Brief at 16: damages for 2000-2009 of $12.7 million, 2010-2014 of $32.9 million, plus a penalty of $178.9 million for a total of $224.5 million. Damages for 2015-2016 are to be determined. PWN/RL calculate its recommended penalty of $178.9 million using the maximum penalty allowed by law. (Pub. Util. Code § 2107 allowed up to $20,000 per offense before January 1, 2012, and up to $50,000 per offense thereafter; see Reporter's Transcript Vol 8 at 1322-3.)

[36] PWN/RL also presented evidence of landscaping damages during the evidentiary hearing. The PWN/RL briefs, however, contain no further claim or argument regarding this issue, and we do not address it here. That is, we address and resolve disputes to the extent briefed by the parties at the

Footnote continued on next page

PWN/RL also recommend restitution and penalties relative to Customer 1 and Customer 2 related to allotment and/or tariff mismanagement. In particular, PWN/RL seek about $2,700 in restitution (and interest) for the balance owed to Customer 1, plus a fine of $9,000.[37] The evidence does not establish, however, that Cal-Am failed to implement its tariff reasonably. That is, the customer was assigned an allotment upon service being initiated based upon the information given to the utility at that time. The customer did not provide updated information in response to the annual survey. When the issue was raised with the utility, Cal-Am adjusted the allotment and repaid the majority of the contested charges to the customer. Moreover, this matter is outside the primary scope of Phase 3B. That is, Phase 3B is about alleged allotment mismanagement and, more generally, alleged tariff mismanagement. Nothing in the case of this customer shows allotment mismanagement within the scope of Phase 3B, nor more broadly about tariff mismanagement.[38]

For Customer 2, PWN/RL seek restitution (and interest) of an amount to be determined for lack of access to an irrigation meter and rates, plus a penalty (with interest) of $42,000.[39] That is, PNW/RL's challenge is essentially to the content of the tariff not to its implementation. The evidence shows, however, that the tariffs were authorized by the Commission, and that Cal-Am properly implemented its residential tariff with respect to Customer 2. Neither restitution nor a penalty is justified. Moreover, this matter is outside the primary scope of Phase 3B. That is, Phase 3B is about alleged allotment mismanagement and, more generally, alleged tariff mismanagement. Nothing

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conclusion of the proceeding. We do not identify and resolve each and every other dispute between the parties that occurred over the course of the matter.

[37] Exhibit 429. The customer requested a refund of $8,800, and Cal-Am refunded $6,100, for a difference of $2,700. (The exhibit notes the dollar amounts are approximate.) Also see PWN/RL Joint Opening Brief at 18.

[38] The procedure to address further refunds was for the customer to file an informal or formal complaint with the Commission.

in the case of this customer shows allotment mismanagement within the scope of Phase 3B, nor more broadly about tariff mismanagement.

3.4.2. Other Considerations

In their briefs, Cal-Am and MPWMD specifically seek approval of the Phase 3B SA.[40] CWA initially asserts the Phase 3B SA should not be adopted because the evidence shows Cal-Am reasonably managed it allotment system and no penalty is warranted. (CWA Reply Brief at 4.) CWA also recognizes that dispute resolution through negotiation and compromise is productive, and the Commission should honor the product of that negotiation where it meets the Commission's tests. (CWA Reply Brief at 4.) We find in this decision that the Phase 3B SA meets our tests for adoption, and we agree with CWA regarding our generally favorable treatment of negotiations and settlements. Thus, all active parties except PWN/RL recommend approval of the Phase 3B SA.

In Phase 2, Cal-Am's testimony was sufficiently convincing for the Commission to find that the:

> "…residential allotment system is vulnerable to abuse, Applicant did not audit customer surveys, Applicant did not take actions to ensure allotments were accurate, and Applicant knew there were problems." (D.16-12-003, Finding of Fact 43 at 97-98.)

And to conclude that the residential allotment system:

> "…produces inequities between customers when some customers misrepresent data upon which allotments are based and receive more water at lower rates than a similarly situated customer who honestly reports its data and pays a higher rate for the same amount of water." (Id., Conclusion of Law 2 at 98-99.)

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[39] PWN/RL Opening Brief at 19.

[40] ORA and CPB signed the Phase 3B SA and support its adoption but did not file briefs.

In Phase 3, Cal-Am acknowledges the allotment system was not perfect. (Cal-Am Opening Brief, Summary of Recommendations at Roman numeral page "x".) We find above that its administration did not require perfect accuracy in the underlying data and, in that sense, was itself not perfect. Nonetheless, Cal-Am's administration was not unreasonable, particularly given the unique circumstances in the Monterey District (e.g., urgent need to conserve water, various SWRCB CDOs, desire to maintain customer relations, lack of complaints brought by customers or identified by MPWMD or others). Thus, based on the whole record, the provision to waive recovery of $500,000 is reasonable to recognize some customers may have been affected by inaccurate allotments and to resolve disputes.

We note one item with respect to our adoption of this cost waiver. The Phase 3B SA provides this amount will be credited against the 2016 WRAM/MCBA (Modified Cost Balancing Account) balance. The WRAM/MCBA balance is ongoing and not related (nor limited) to one year. We apply the $500,000 to the current balance.

3.5. Other Tariff Provisions

The Phase 3B SA also contains several other provisions. These include requirements for Cal-Am to work with ORA on residential tariffs and website information, propose changes as necessary, establish a new webpage, and review the webpage information with ORA and MPWMD. They also include working with MPWMD on specific shared responsibilities and proposing changes as necessary, along with working with MPWMD to audit non-residential customer compliance with best management practices standards and consider current MPWMD water efficiency standards. There are no objections to any of these provisions. They are reasonable and consistent with the record.

We note one item with respect to our adoption of these tariff provisions. The Phase 3B SA describes a new webpage and information. The description is more fully

explained and developed in Cal-Am's Opening Brief.[41] Our adoption of the SA incorporates that more complete explanation and development. In particular, Cal-Am will (a) establish a new website with a new web page address or URL (to the extent this is different that establishing a new page on its existing website), (b) include information on MCBA as well as WRAM, (c) provide a "one-stop shop" experience for customers (to the extent different than as expressed in the Phase 3B SA), (d) provide an explanation of the principles that guided the rate design changes (to the extent different or more complete than as stated in the Phase 3B SA), and (e) keep the website active beyond 2017. Moreover, the website "will provide information to help communicate, educate and inform its Monterey District customers of the new rate design changes." (Phase 3B SA at § 4.3.3.) We understand this provision to be inclusive of all rate design changes. That is, it should include information on the annual true-up pilot program to the extent such program is adopted by the Commission in Phase 3A of this proceeding.

Cal-Am may seek authority in a future general rate case to deactivate this webpage, but the webpage should otherwise remain active.[42] While active, Cal-Am should review the content no less often than annually with ORA and MPWMD, and make changes at any time when necessary to keep the webpage accurate and current.

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[41] Cal-Am's January 22, 2018 Opening Brief (at 38-39) states this provision slightly differently that as stated in the Phase 3B SA by saying: "California American Water agrees to establish a new website, which in addition to providing information to help communicate, educate and inform its Monterey District customers of the new rate design changes, will provide customers with a 'one-stop shop' on all important information for customers to better understand all aspects of the Monterey rates. California American Water agrees to establish a special URL (www.californiaamwater.com/newrates) with a link from its existing website. The new website will contain, but is not limited to, frequently asked questions, principles that guided the rate design changes, guidance on how to read water bills and water meters, explanation of the WRAM/MCBA, and comprehensive information on all conservation programs for our Monterey District customers. California American Water agrees to review this information with ORA and MPWMD."

[42] We decline to authorize consideration of deactivating the webpage by advice letter. Rate levels and rate design are sufficiently complex and controversial in the Monterey District that consideration of deactivating the webpage should be done in the broader context of a general rate case, not the more limited and narrow consideration of issues that is typically the case in an advice letter.

3.6. Other Claims and Relief Sought by PWN/RL

PWN/RL make other claims that are based on flawed methodologies, are confusing and not credible, state assertions that are not in the record, and seek extraordinary relief that is not reasonable. The result is to substantially reduce the credibility and usefulness of their showing and their briefs. We cite a few examples here to briefly explain why these other claims and the relief sought by PWN/RL are not sufficiently credible to be given much, if any, weight as part of the "whole record" upon which we judge the Phase 3B SA.

3.6.1. Flawed Methodologies

We do not consider PWN/RL's monetary claims for the reasons explained above. Nonetheless, even if we did, we briefly explain that the methods used by PWN/RL to calculate the monetary claims are flawed and not credible.

3.6.1.1. Allotments

With respect to damages from allotment mismanagement, PWN/RL

> "computed the overcharges made by successive rate hikes by multiplying the total water sold to all residential customers each year times the difference between the upper tiers' Cal-Am annual average tariff pricing vs. pricing that we deem to be just and reasonable." (PWN/RL Joint Opening Brief at 13.)

This approach is faulty for two reasons. First, not all water is at issue. No evidence shows that Cal-Am's revenue requirement changed as a result of allotment management or mismanagement. As a result, the "damages," if any, that were experienced by some customers were a wealth transfer from "honest" customers to "dishonest" customers. This wealth transfer cannot be reasonably estimated based on all water. The damage, if any, for alleged allotment mismanagement might be based on a rate difference (i.e., the difference between the higher rate paid by "honest" customers compared to the rate they would have paid absent the alleged mismanagement) for the

water they consumed (or would have consumed if the rates were different). Damages cannot include the water consumed by "dishonest" customers.

PWN/RL allege tariff mismanagement applied to all residential customers because all customers (whether honest or dishonest, and advantaged or disadvantaged by the wealth transfer) deserved to have the tariff administered properly. In that sense, PWN/RL assert that the damage claim relates to all water. Even if true, the damage or harm component would not be based on a rate difference applied to all sales for that class. Harm suffered by one customer was offset by a benefit that accrued to another customer, and the harm cannot be calculated based on all water sold. Tariff mismanagement, if any, however, could be subject to a penalty as provided by law. (*See* Pub. Util. Code § 2107; for example, $500 per offense.) The approach used by PWN/RL to calculate damages is not reasonable, and confuses its separate assertion of a penalty in the maximum amount possible of $178.9 million.

Second, the rate difference used by PWN/RL to calculate damages per unit of water is based on averages and rates that PWN/RL "deem to be just and reasonable." The link between allotment mismanagement and rates has not been established, let alone a reasonable determination of what the rates were compared to what they would have been.

3.6.1.2. Landscape

Another example of a flawed methodology is that used by PNW/RL to calculate damages from lost landscape.[43] PWN/RL assume any landscape lost between 2012 and 2015 was because of higher rates due to allotment and tariff mismanagement, and residential customers were not able to afford the higher rates for irrigation. To the contrary, PWN/RL have not established that loss of landscape was caused by either

[43] PWN/RL did not include lost landscape damages in their briefs, and we do not consider the actual damage value, if any, here.

allotment or tariff mismanagement, nor has it shown any link to rates. PWN/RL does not account for reduced outdoor water use driven by increasingly aggressive conservation rates adopted by the Commission specifically for the purpose of stimulating exactly the conservation that resulted. They do not acknowledge customers' responding to the requests made by the Governor and others to reduce water use during the drought. The PWN/RL methodology is based on reviewing a sample of satellite images but no evidence is presented to explain the sampling criteria, nor are the results reproducible by others. The PWN/RL estimate is based on the assumption that each Cal-Am customer in the Monterey District has an eighth of an acre in watered landscape, but provide no support. PWN/RL assume lost landscaping of 20% but provide no evidence. The result is the estimate is not objective, replicable, or reliable.

3.6.2. Claims Not Credible and Statements Confusing

PWN/RL claim that Applicant is at fault for water shortages due to 45 years of inaction. PWN/RL say:

> "Cal-Am's history of water supply mismanagement drove the need to create a price elasticity-driven downward demand spiral that forced a plunge in water demand in order to meet the revised CDO's water supply reduction time table." (PWN/RL Opening Brief at 11.)

PWN/RL assert this water supply mismanagement continued into mismanagement of tariffs and the allotment system.

The record here does not establish that 45 years of water shortages are due to actions taken or not taken by Applicant, and certainly not that Applicant, if at all, was the only party involved. Applicant actually took many actions to address the water shortage including, but not limited to, applications to construct the Carmel River dam and reservoir (A.97-03-052), the Coastal Water Project (A.04-09-019), and the Monterey Peninsula Water Management Project (A.12-04-019). (Cal-Am Opening Brief at 6-9.) There are, in fact, many causes for today's water shortages not only in Monterey but in many other parts of the State. There are many parties that are involved in water

management decisions and actions. As explained above, rate design issues and concerns do not establish tariff and allotment mismanagement. Water shortages and adoption of the allotment system are related, but there is no credible evidence to show a link between shortages and mismanagement of tariffs or allotments.

PWN/RL assert that allotment mismanagement resulted in Cal-Am overcharging the highest consumption customers by $45 million from 2000-2014. (PWN/RL Opening Brief at 13.) PWN/RL do not show that Cal-Am earned $45 million in excess of its revenue requirement. Because rates are set to recover the utility's revenue requirement and Cal-Am did not earn over its revenue requirement, this would mean that Cal-Am undercharged the lowest consumption customers by $45 million. Rates are set by the Commission at just and reasonable levels, however, and there is no evidence to show the Commission set rates to under-collect $45 million from low use customers. PWN/RL's claim is not credible.

PWN/RL quote from Commission decisions in support of their assertions. For example, PWN/RL quote Ordering Paragraph 7 of D.16-12-003. (Joint Opening Brief at 18.) The quote also includes two other numbered paragraphs identified as 3 and 4. Paragraphs 3 and 4 are presented to appear as Ordering Paragraphs, but they are not correct partial or total quotes from Ordering Paragraphs 3 and 4 of D.16-12-003. Rather, they are PWN/RL statements indented and numbered as if somehow "official." This is confusing and misleading, and it reduces the credibility of PWN/RL's work.

PWN/RL similarly misquotes from Cal-Am's opening brief. In particular, at page 17 of the PWN/RL Joint Reply Brief, PWN/RL allege that page 34 of Cal-Am's opening brief says:

> "The Commission should not make a negative inference based upon the fact that California American Water was able to asks the Commission to ignore its Residential Allotment Neglect conduct audit activities for its non-residential customers."

The correct quote is:

> "The Commission should not make a negative inference based upon the fact that California American Water was able to conduct audit activities for its non-residential customers."

The misquote is confusing and misleading, and it reduces the credibility of PWN/RL's work.

PWN/RL also make several statements that are confusing. First, for example at page 24 of its joint reply brief, PWN/RL say:

> "Cal-Am's so-called evidence, as noted in its opening brief starting with (a) on pages 22-37 [footnote omitted] was clearly insufficient since all but [Cal-Am witness] Sosa submitted excuses without numeric evidence that prove beyond a shadow of doubt that its own allotment reporting was accurate [sic]."

Second, at page 30 of their joint reply brief, PWN/RL provide highlighted text which appears to be a title for the subsequent subsection. The title states: "There are 2,317 Economically Damaged Single Family Customers." On page 32 of their joint reply brief, PWN/RL provide highlighted text which appears to be a title for the subsequent subsection. The title states: "There are 2,317 Economically Damaged Multi Family Customers." There being the same number of economically damaged single family and multifamily customers is unlikely, and not supported by the text under the title on page 32.

These are two of several examples where PWN/RL's briefs are confusing and generally not helpful. In total, the misquotes and unclear statements are confusing, misleading, and reduce the credibility of PWN/RL's work.

In their briefs, PWN/RL also reargue various discovery disputes.[44] Discovery disputes have already been resolved by several rulings.[45] These ruling include one, for

[44] For example, see PWN/RL Opening Brief at 11-12.

[45] *See* for example Rulings dated January 11, 2016; May 6, 2016; March 30, 2017; July 18, 2017; July 21, 2017; July 25, 2017.

example, that not only resolved specific discovery disputes but also required that PWN/RL conduct all further discovery in writing or, when oral, include an Administrative Law Judge. (May 6, 2016 Ruling.) This unusual condition was required to address Applicant's legitimate concerns with RL's statements being inaccurate or insufficiently complete to cause unreasonable difficulty in working with PWN/RL. Others Rulings have resolved specific disputes, and all disputes brought to the Commission have been resolved. If concerns remained, PWN/RL should have pursued discovery matters and disputes during the course of the proceeding. We give no weight to PWN/RL's claims regarding discovery nor do we otherwise address discovery matters now. PWN/RL's inclusion of discovery timelines and events in the briefs is more confusing than helpful.

3.6.3. Claims Not in the Record

PWN/RL also rely in several instances on claims that are not in the record. For example, PWN/RL assert that Cal-Am cannot be trusted and that residential customers are "again collection [sic] signatures on petitions to place another initiative on this year's ballot to address the creation of a public water agency to replace and eject Cal-Am." (PWN/RL Joint Reply Brief at 14.) We do not know if this is or is not true but, even if true, it is not based on the record as developed by PWN/RL and the other parties here, and PWN/RL provide no citation to the record to establish otherwise.

Another example of extra-record material is PWN/RL citing unnamed water utilities in Pennsylvania "where water is so plentiful that its water utilities would be among the least expensive were it not for the former rust belt water pollution they must remove from Pennsylvania water." (PWN/RL Joint Reply Brief at 14.) The record in this proceeding contains no such information, and PWN/RL cite to no record evidence in support.

In another example of claims not in the record, PWN/RL cite American Water Works Company, Inc. (American Water) earnings after taxes from a Security and Exchange Commission (SEC) website. (PWN/RL Joint Reply Brief at 24.) PWN/RL do

not cite to an exhibit in this proceeding with that data received into the record, and did not ask for official notice of the SEC website information. PWN/RL then addresses what they claim is American Water's "annual income tax cut," the percentage of its operating income that will be paid as tax, and how that reduces the annual income tax bill from "$421M (last 4 quarters) to $251." (PWN/RL Joint Reply Brief at 24.) This evidence is not in the record and we disregard it.

3.6.4. Extraordinary Relief

PWN/RL seek extraordinary relief. For example, PWN/RL allege that Cal-Am entered into an agreement in 2011 with the CPB that two years later resulted in lower prices on high demand non-residential customers at the expense of residential customers, creating unlawful inequities among residential customers and between residential and non-residential customers. PWN/RL label the alleged agreement as "collusive." (PWN/RL Joint Opening Brief at 11 and Joint Reply Brief at 13.) PWN/RL request relief by way of the Commission bringing an action in Superior Court to "disgorge the ill-gotten overcharges from Cal-Am and perhaps the Monterey Businesses that were granted illegal advantages by Cal-Am…" (PWN/RL Opening Brief at 21.) This is an extraordinary request to the extent it seeks to bring Monterey businesses to court.

PWN/RL ask that the Commission order "the sale of or placing the Cal-Am Monterey District into Receivership to stop the continued damage and as a result of the continue failure to develop a new, reasonably priced water supply to replace the Carmel river diversions." (PWN/RL Joint Reply Brief at 37.) Appearing for the first time in the Joint Reply Brief, it is a late proposal that does not allow other parties to comment, nor for the Commission to have a full record on when and how a sale or receivership would reasonably occur. More to the point, however, it is truly extraordinary relief that would be taken only under extreme circumstances. PWN/RL has not established those circumstances here. To make the request in the last pleading is not reasonable.

PWN/RL propose a penalty of $178.9 million for allotment and tariff mismanagement. This is based on the maximum penalty allowed by law. The

Commission considers nine factors when considering a penalty.[46] PWN/RL fail to adequately and reasonably support a penalty, let alone the maximum penalty, and fail to present compelling evidence and argument addressing the nine criteria.

3.6.5. Result

The result is we give little to no weight to these PWN/RL assertions and claims in determining whether the Phase 3B SA is reasonable in light of the whole record. Moreover, we give little consideration to, and do not adopt, the extraordinary relief sought by PWN/RL.

3.7. Conclusion with Regard to Record

The record shows Cal-Am knew the allotment system was not perfect and did not administer the system in ways to achieve perfection in the underlying data. Applicant relied on customers providing the necessary information voluntarily, accurately, and honestly. Applicant considered but declined to implement audit programs or more intrusive verification measures.

The record shows Applicant conducted initial and annual surveys, and updated allotment information when customers made contact with Applicant. It shows Applicant assessed the accuracy of customer-reported allotments in 2010 and 2013 with regard to limited groups and, while each study was limited, neither study shows significant misreporting for that group. The data shows relative consistency over time in the distribution of allotments and a low percentage of high allotments. The data do not exclude the possibility that a few customers misrepresented their information (whether intentionally or unintentionally) to obtain more water at the lowest rates. Even if a few customers misrepresented their information, however, data show that the problem did not

[46] The nine factors are: the severity of the offense; the conduct of the utility; the financial resources of the utility; the totality of the circumstances; the role of precedent; the sophistication, experience and size of the utility; the number of victims; the economic benefit received from the unlawful acts; and the continuing nature of the offense. (See Pub. Util. Code § 2107 and D.98-12-075, D.98-12-076, D.15-04-008, D.16-01-025, D.16-12-003.)

grow over time and was neither widespread nor systemic. The record shows an absence of complaints by MPWMD or others regarding the allotment system or its administration. Nonetheless, given that the allotment system was not perfect and its administration was not implemented to ensure perfection in the underlying data, some customers may have been adversely affected.

The evidence shows that population counts and allotment totals would not reasonably be expected to be the same number. Other evidence regarding allotment data, specific customers, and rate design fails to establish allotment or tariff mismanagement.

The evidence shows the reasonableness of the $500,000 cost waiver. Finally, the record shows the reasonableness of other provisions regarding tariffs, the webpage, and working with ORA and MPWMD.

We conclude that the Phase 3B SA is reasonable in light of the whole record.

4. Consistent with Law

The Phase 3B SA is consistent with law. Settlements are permitted under the law. Settling Parties followed the Commission's Rules with respect to settlements (e.g., Rule 12.1 of the Commission's Rules of Practice and Procedure), and no party alleges otherwise. The issues resolved within the Phase 3B SA are within the scope of the proceeding.

No party makes a reasonably persuasive allegation that the Phase 3B SA conflicts with any law or Commission order, and we are aware of none. PWN/RL assert that the rates under the allotment system violated various laws regarding just and reasonable rates, and nondiscrimination among customers. As discussed above regarding the record, PWN/RL fail to establish that the allotment system or tariffs were mismanaged, or that any undue or unreasonable discrimination resulted. They fail to show that the Commission-authorized tariffs and rates were inconsistent with law. And they fail to show that the Phase 3B SA is not consistent with law.

5. In the Public Interest

The Phase 3B SA is in the public interest. The SA resolves disputed issues and provides regulatory certainty. There is no allegation that the negotiations were conducted unfairly to any party. Settling parties were adequately represented by experienced counsel. Public policy favors settlements.

The cost waiver reasonably recognizes the fact that some customers may have been adversely affected by inaccurate allotments and resolves matters in Phase 3B. The Commission specifically instructed parties to address whether a penalty, if any, could be returned directly to ratepayers.[47] The Phase 3B SA returns $500,000 to ratepayers. This provides a direct benefit to those affected rather that dispersing funds more generally to the State.

Moreover, it would be unreasonable to try to identify customers who were adversely affected by inaccurate allotments over the period 2000 to 2016 and provide those few customers with an adjustment. For example, identifying the "dishonest" customers, if any, who created the "harm" would require extraordinary outreach efforts to nearly all (if not all) customers, accumulation and assessment of documentation (some of which might not be available from as far back as 2000), determination or redetermination of allotments, and likely appeals by some customers determined to have been "dishonest." It would require estimating the "excess benefits" given to the "dishonest" customers, recouping that amount, and determining a just and reasonable way to distribute that amount to the "honest" customers.[48] On the other hand, returning $500,000 to affected customers as a group is reasonable and administratively efficient.

The SA also addresses the Commission's concern about harm to the "integrity of the regulatory process." (D.16-12-003 at 86.) The regulatory process is harmed when

[47] D.16-12-003, Ordering Paragraph 7. Penalties are typically paid to the State's general fund.

[48] It would be a difficult and unreasonable effort even if limited to going back only three years. (*See* Pub. Util. Code §§ 736 and 737; D.86-06-035 at 276.)

Commission orders are not followed by a utility, such as improper implementation and enforcement of its tariffs. This can cause inequities between customers and lead customers to not only question the utility, but the Commission, and government itself.

The evidence shows that Cal-Am's implementation of the allotment system did not seek perfect accuracy but was not unreasonable. The Phase 3B SA reasonably addresses potential inequities between customers by the return of costs. It also addresses commitment to tariff administration, and an agreement to work with both ORA and MPWMD. The Phase 3B SA promotes the public interest.

6. Conclusion

Applicant's Phase 2 testimony presented very compelling evidence in support of its request to end the allotment system. It was Applicant's own Phase 2 testimony, however, that led to the question of whether it had reasonably administered its tariffs and, in particular, the allotment system in its residential tariff. We now conclude that Applicant was perhaps over-zealous in its Phase 2 testimony but, upon careful review of the Phase 3 evidence, we find Applicant's management of its tariffs and allotment system may not have been perfect but it was not unreasonable.

For the reasons explained above, the Commission finds the Phase 3B SA is reasonable in light of the whole record, consistent with law, and in the public interest. The February 24, 2017 motion for adoption of the SA, with respect to the March 8, 2017 Phase 3B SA, should be granted.

7. Appeals of the Presiding Officer's Decision

The Presiding Officer's Decision in this matter was mailed to the parties in accordance with Pub. Util. Code §§ 311 and 1701.2, and appeals or requests for review by a Commissioner, and responses, were allowed under Rule 14.4 of the Commission's Rules of Practice and Procedure.

8. Assignment of Proceeding

Liane Randolph is the assigned Commissioner, and Gary Weatherford is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

Findings of Fact

1. Cal-Am is under SWRCB orders to cease unlawful diversions from the Carmel River by December 31, 2021; and a Monterey County Superior Court order to ramp-down its draws from the Seaside Groundwater Basin by December 31, 2021.

2. D.16-12-003 kept this proceeding open to address two issues, one being a possible penalty for failure by Applicant to reasonably administer its tariffs.

3. On February 24, 2017 four parties filed a motion for adoption of a Settlement Agreement; the portion of the SA dealing with Phase 3B was filed as a compliance filing on March 8, 2017.

4. Under Applicant's residential allotment system, the amount of water in each rate block was dependent upon the number of people (full-time and part-time) living in the household, among other factors.

5. The Commission concluded based on the Phase 2 evidence that it is probable Applicant failed to reasonably administer its tariffs but, rather than assess a penalty, kept the record open to hear additional evidence and argument.

6. The Phase 3B SA provides a cost recovery waiver of $500,000 along with several provisions for Applicant to work with ORA and MPWMD on tariffs and a webpage; and to work with MPWMD on shared conservation and rationing responsibilities plus, in coordination with MPWMD, audit non-residential customers' compliance with best practices and water efficiency standards.

7. Beginning in 1999, applicant surveyed customers to implement its allotment-based residential tariff and conducted annual surveys for customers to report changes; the annual survey expressly cautioned customers to record numbers accurately or face possible penalties.

8. Applicant reviewed survey and allotment information at the time of relevant customer contacts.

9. In 2006, the Commission retained the allotment-based tariff and found, even if the allotment system was not perfect, there was no evidence of significant cheating under the system.

10. Applicant's 2010 review of extremely low use customers was limited but shows no significant misreporting for the studied group.

11. Applicant's 2013 review of customers claiming allotments for eight or more residents was limited but shows no significant misreporting for the studied group.

12. The evidence from 2010 to 2015 shows the allotments were relatively stable and there were no systemic problems; while this does not exclude the possibility that a few customers misrepresented their information (whether intentionally or unintentionally), the problem of misreporting, if any, did not grow over these six years, and there is no evidence of significant or substantial cheating.

13. The record shows that Cal-Am did not receive complaints from MPWMD or others alleging customer misrepresentations of allotment data, or mismanagement of the allotment system.

14. Applicant's administration of the allotment system relied on customers providing the necessary information voluntarily, accurately, and honestly.

15. Applicant considered but declined to implement a more aggressive program to verify allotments given that the available data and information did not establish any significant misreporting or abuse of the allotment system, and Applicant did not want to jeopardize customer relations that might undermine critical customer trust necessary for the success of its rate design and water conservation measures.

16. The U.S. Census counts people in their primary residence on Census Day (April 1 every 10 years), and does not count persons where they are on that day if they are at school, in a second home, or on vacation.

17. Applicant's allotment system counted all people using Cal-Am supplied water at any time during the year, including not only full-time residents but also part-time residents, those at school, in a second home, in rentals or vacation homes, and migrant workers.

18. The U.S. Census and Applicant's allotment system count two overlapping but different things, and even if both did their jobs perfectly they would not be expected to produce the same results since there are differences in the dates of the data, methods and goals; incentives for accurate reporting; and unique characteristics of the Monterey District.

19. Exhibit 420 does not contain data for full-time persons that is sufficiently correlated with the PWN/RL-accepted number of 100,000 to permit reasonable reliance on the data therein for either full-time or part-time persons.

20. Five of the eight data points in Exhibit 376 align closely with the 125,624 allotments cited in D.16-12-003, and the other three likely contain anomalies, such as data showing the same residence several times.

21. Cal-Am correctly applied its residential tariff with respect to Customer 1 and adjusted the allotments when presented with more information; the example is not more than an isolated case and does not establish the Cal-Am mismanaged its allotment system.

22. There is no evidence that Cal-Am administered its residential tariffs with respect to Customer 2 in any way other than consistent with the provisions of the tariff.

23. The absence of an option for special irrigation meters and rates in residential tariffs that is available in non-residential tariffs does not establish tariff mismanagement.

24. Cal-Am's administration of its allotment system did not seek perfect accuracy, and some customers may have been negatively affected by inaccurate allotments, but unreasonable allotment management has not been established.

25. The WRAM/MCBA balance is ongoing and not related or limited to one specific year.

26. Other than the amount of the cost waiver, there are no objections to the other tariff provisions in the Phase 3B SA.

27. Cal-Am's Opening Brief more fully explains and develops the Phase 3B SA provisions with respect to the new webpage and information.

28. The Phase 3B SA is reasonable in light of the whole record.

29. Settling Parties followed the Commission's Rules with respect to settlements, the issues resolved within the Phase 3B SA are within the scope of the proceeding, no party makes a persuasive allegation that the Phase 3B SA conflicts with any law or Commission order, and public policy favors settlements.

30. The Phase 3B SA resolves disputed issues and provides regulatory certainty; there is no allegation that the negotiations were conducted unfairly to any party; and Settling Parties were adequately represented by experienced counsel.

31. The $500,000 cost waiver reasonably recognizes the fact that some customers may have been affected by inaccurate allotments, resolves matters in Phase 3B, and returns money to ratepayers (providing a direct benefit to ratepayers rather that dispersing funds more generally to the State).

32. Applicant considered good customer relationships when it assessed options for more vigorous tariff enforcement, and did not unreasonably or improperly implement or enforce its tariffs.

33. The Phase 3B SA is in the public interest.

Conclusions of Law

1. All charges demanded or received by a public utility must be just and reasonable, no public utility shall make or grant any preference or advantage to any person as to rates or service, a utility must at all times administer its tariffs in a manner to avoid unlawful inequities or advantages between and among customers, and Applicant had a specific duty to take responsible efforts to identify mischaracterizations in its documentation of number of persons, lot size and large animals with the effort accomplished only in part by

an annual survey. (Pub. Util. Code §§ 451, 453(a); and D.09-07-021, Appendix A, Section IV.F.)

2. Applicant's residential allotment system produced inequities to the extent some customers intentionally or unintentionally misrepresented data upon which allotments were based and received more water at lower rates than a similarly situated customer who honestly reported its data and paid a higher rate for the same amount of water. (Conclusion of Law 2 in D.16-12-003.)

3. The Phase 3B SA is consistent with law.

4. The Commission will not approve a settlement, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

5. The Phase 3B SA is consistent with law.

6. The motion for adoption of the SA should be granted with respect to the Phase 3B SA.

7. This decision should be effective today in order to resolve issues promptly; provide certainty; grant timely application of the cost waiver; and improve tariffs, enhance information to customers, and expand upon Cal-Am's shared responsibilities with MPWMD without delay.

O R D E R

IT IS ORDERED that:

1. The February 24, 2017 motion for adoption of the Settlement Agreement is granted with respect to the Phase 3B Settlement Agreement filed on March 8, 2017.

2. The $500,000 cost waiver in § 4.2.1 shall be applied to the current Water Revenue Adjustment Mechanism/Modified Cost Balancing Account balance.

3. The provisions in § 4.3.2 shall include, but not be limited to: (a) a new website with a new URL, (b) information on the Modified Cost Balancing Account as well as the Water Revenue Adjustment Mechanism, (c) a "one-stop

shop" experience for customers, (d) an explanation of the principles that guided the rate design changes, and (e) the website shall remain active beyond 2017. The information on the website shall communicate, educate and inform Monterey District customers regarding rates and rate design changes including, to the extent adopted by the Commission in Phase 3A, appropriate information on the annual consumption true-up pilot program. California American Water Company may seek authority in a future general rate case to deactivate this webpage but absent the grant of such request the webpage shall remain active. While active, California American Water Company shall review the content no less often than annually with the Commission's Office of Ratepayer Advocates and the Monterey Peninsula Water Management District, and shall make changes when necessary at any time to keep the webpage accurate and current.

This order is effective today.

Dated _____, at San Francisco, California.