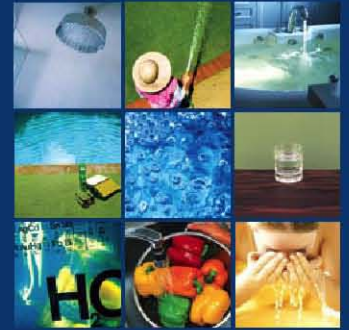


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# The Weekly Wrap



**April 27, 2012**

**No. 2012-17**

TO: CWA Member Companies  
FROM: Jack Hawks, Executive Director  
SUBJECT: Highlights for the Week Ending April 27, 2012

**CWA Gets a Nice Legislative Victory on SB 1364**—On Tuesday, April 27<sup>th</sup>, CWA got a nice victory in Sacramento when the Senate Energy, Utilities & Communications (EU&C) Committee unanimously adopted the amendments CWA proposed in its April 19<sup>th</sup> “Oppose Unless Amended” letter to EU&C Chair Alex Padilla (D-Van Nuys) on Senate Bill 1364 (Huff). As I’ve been writing in recent issues, SB 1364, as introduced, would have created serious problems and significant costs for investor-owned water utilities and their customers in the areas of customer notices, intervenor compensation, California Supreme Court review of California PUC (CPUC) decisions, and affiliate transactions (the latter of which would have required changes from the current water utility affiliate transactions rules).

At a (perhaps not) surprisingly docile committee hearing Tuesday evening, at which Senate Republican Leader Bob Huff presented CWA’s amendments as his changes to the bill, and CWA Legislative Advocate Meg Catzen-Brown, forcefully and magnanimously, testified why the amended bill was the superior legislative vehicle for the EU&C members to consider. She thanked the author for his cooperation and said CWA would remove its opposition. The unanimous vote followed brief statements from the bill’s sponsor and the CPUC. The bill has now been stripped down substantially, as follows:

- Sections 6, which would have removed direct Supreme Court review of California PUC water utility decisions, and allowed much more frequent and expensive lower appeals court review, was removed from the bill completely.
- The equally egregious Section 7, which would have defined local government agencies such as municipal water districts and utilities as “customers” for the purpose of being eligible for intervenor compensation in CPUC proceedings, also was removed from the bill.

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- Section 2, which originally required a second customer notice for all advice letter filings of projects approved in a general rate case (GRC), has been amended to remove this requirement. In its place is a provision limited only to Class A and B companies that will require the initial GRC public notice to “include estimated rate impacts on the various customer classes of the corporation.” Further, the amended language goes on to state (as CWA suggested as a compromise):

“The commission may (my emphasis) require the corporation to inform customers in a separate letter or through a bill insert, at the corporation’s discretion, within 60 days if the corporation operates on a 30-day billing cycle, or within 90 days if the corporation operates on a 60-day billing cycle, of the commission’s final decision, including the approved rates and the approved capital projects that will subsequently be executed by way of an advice letter.”

In other words, not much more than the Class A companies are doing now.

- Sections 1, 3, 4 and 5, dealing with affiliate transactions, will be amended to have the statute comport with the existing affiliate transactions rules for the Class A and B water utilities.

During the testimony, Jason Gonsalves, representing bill’s sponsors, the Cities of Claremont and Placentia, spoke only of the need for greater “public transparency” and then he expressed support for the amended bill. The representatives of the CPUC and the Division of Ratepayer Advocates also expressed support for the amendments, and the PUC removed its opposition, as well. It was clear that Senator Huff appreciated Meg’s testimony, and in fact, he came up to hear after the hearing and thanked her. Frankly, I think he was relieved, and I’m sure he appreciated that CWA had extricated him from the difficult position in which the cities placed him.

The bill now moves on to the Senate Appropriations Committee.

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Congratulations to CWA's Legislative Committee, Committee Chair Evan Jacobs and Meg, who did a great job orchestrating all the negotiations with the author and sponsors, and making sure the EU&C Committee consultant drafted the analysis, as presented at the hearing, with CWA's perspective. While it would have been nice to have killed this bill completely, I'm not confident we would have been successful, given that this was a Democratic bill offered by the Republican leader in the Senate. I am pleased, though, that we have made it into something the member companies can live with.

In other legislative action this week, CWA:

- Testified before the Senate EU&C Committee in opposition to **SB 981 (Yee)**, much to the delight of the energy and telecom utilities, explaining that any revolving door policy involving utility executives and CPUC commissioners or executive staff should include any entity that regularly participates in Commission proceedings). The bill squeaked by on a 7-6 vote.
- Testified in opposition to **SB 1165 (Wright)**, explaining there was no need to classify school districts as "customers" for the purpose of receiving intervenor compensation, that IOU water customers should not subsidize school districts, and that the Division of Ratepayer Advocates' statutory responsibilities can easily be expanded to include school districts.
- Sent an updated "Oppose Unless Amended" letter on **SB 981 (Yee)** to the Senate Appropriations Committee (the bill's next step), making the same points as in our oral testimony to the EU&C Committee. Hopefully, the 7-6 vote will get reversed in Appropriations.
- Sent a "Support" letter on **SB 1045 (Emmerson)** to the Senate Judiciary Committee, suggesting a minor but significant amendment that water meters be added to fire hydrants, manhole covers and backflow devices as items eligible for metal theft and damage protection.
- Sent a "Support" letter on **SB 1065 (Alquist)** to the Senate Appropriations Committee, endorsing the creation of a joint fire-water safety task force within the Alfred E. Alquist Seismic Safety Commission.

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### **CWA Files Comments Opposing Changes to PUC's Records Disclosure Policy—**

On behalf of CWA, Regulatory Counsel Marty Mattes sent a letter to the California PUC April 25<sup>th</sup> detailing the Association's concerns with Draft Resolution L-436, which would amend General Order 66-C and change Commission policy with respect to implementation of the California Public Records Act (CPRA). In a nutshell Resolution L-436 proposes to adopt a new General Order 66-D that would abandon the current practice of favoring confidentiality of information received from regulated utilities to a new policy that favors, in the first instance, disclosure of that same information.

Needless to say, CWA members have significant problems with this approach, which Marty spelled out, as follows:

- The Draft Resolution would affirm a new Commission intent to disclose records unless they are subject to an exemption specified in CPRA or other provision of law prohibiting or limiting disclosure. This would reverse the current CPUC presumption that favors confidentiality. The Draft Resolution and proposed GO 66-D carry this reversal to an extreme, which would deprive utilities of longstanding and important protections that have long guided their conduct in dealing with the Commission and its staff.
- The Draft Resolution and proposed GO 66-D fail to draw any meaningful distinction between information concerning or created by the Commission, and information provided by entities subject to the Commission's jurisdiction. The latter must share their proprietary information and records with the CPUC, and once such materials come into the CPUC's hands they are transformed into public records. The problem is that the regulated entity retains a proprietary interest in these documents, which merits consideration when public disclosure of sensitive information in such documents is proposed. In a litigation context, disclosure of such confidential records by the receiving party is limited by a non-disclosure agreement or a judge's protective order. The same is true for confidential documents produced to a third party in a formal Commission proceeding, and the same ***should*** be true for similarly confidential documents produced to the Commission or Commission staff.

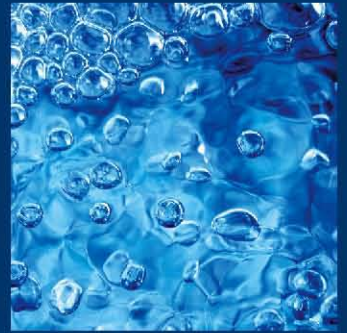
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- The original focus of the Draft Resolution was on information compiled in the course of safety investigations; however, it morphed into broad terms applicable to all types of information submitted to the CPUC. The Draft does not fully consider the adverse implications of the proposed GO on the treatment of documents related to commercial and financial aspects of public utility operations.
- Another problem with the proposed policy change is that past submissions of information to the CPUC have not been subject to such careful confidentiality review. For this reason, CWA's comments stated that it would be prejudicial and fundamentally unfair for the CPUC to apply the new GO 66-D retroactively to information submitted to it. Thus, confidential commercial or financial information should continue to be accorded confidential treatment.
- Parties seeking confidential treatment should not be required to attest to having reviewed an index or database of confidential treatment requests until CPUC staff has made such an index or database available and the CPUC has found it to be adequate.
- Documents submitted to DRA under a claim of confidentiality in the context of a formal CPUC proceeding should be treated as confidential absent a ruling to the contrary by the presiding officer or the Commission.
- The new GO should require CPUC staff to act within a specified reasonable timeframe on any request for confidential treatment and should be required to honor such requests until the internal review and appeal process has been completed.
- The proposed limits on the duration of confidentiality protection are ambiguous and absurdly short.

For all these reasons, Marty stated as a CWA recommendation that the CPUC apply the principles of the Draft Resolution and proposed GO 66-D to a more limited range of documents – those documents relevant to the Commission's pressing concerns about the safety of natural gas utility operations. Further, the Commission should institute either a rulemaking or a workshop process – or both – to solicit in-depth analysis and expression of views with regard to the prospective application of proposed GO 66-D to all energy, telecommunications, water, and transportation service providers that are subject to the Commission's jurisdiction.

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As a side note, CWA's comments fell in the middle of the spectrum: the telecom entities were much more critical of the Draft Resolution. Sempra's remarks were more in line with CWA's, while SoCal Edison and PG&E's comments were fairly soft. We'll see where this one goes.

**CWA Files Comments on Alco's Revised Proposed Decision**— You may recall that Alco Water Service got two Decisions from the California PUC involving its general rate case (GRC) for Test Year 2010. After initially prohibiting future commercial transactions between Alco and members of the Adcock Family, the CPUC, by D.11-03-005, as modified by D.11-09-040, instead mandated a Tier 3 advice letter process for pre-approval of such transactions. At Alco's request, the Commission is taking another look at this onerous requirement, and the result is a Revised Proposed Decision (RPD) from Administrative Law Judge Doug Long that would eliminate this advice letter requirement. Instead, the RPD would apply the Commission's existing Rules for Water and Sewer Utilities Regarding Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services (ATRs) to the Adcock Family, "deeming" the individual family members to be "affiliated companies."

Because the RPD is not clear that it is limiting this application of the ATRs to the specific facts and circumstances related to Alco and the Adcock family, there are policy concerns involving potential adverse industry-wide impacts. Accordingly, CWA filed comments April 26<sup>th</sup> on the RPG. CWA was accorded party status in this proceeding by ALJ Long in January 2011.

CWA expressed two concerns that it requested be reflected in a modified RPD:

1. The CPUC should make no change in the ATRs except as those rules are applied to Alco. Further, it should make clear that the differential application of the ATRs to Alco is based on the specific factual record developed in this Alco GRC regarding the governance of Alco as a family-owned and family-run business.

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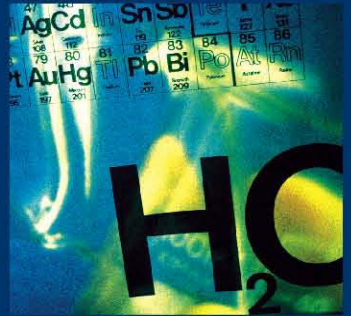
2. The RPD includes a statement implying that CPUC approval would be required for an Adcock Family member to give up an existing control interest in Alco. Because the applicable statute does not require Commission authorization to give up control over a public utility, this statement in the RPD should be revised.

Regarding the first point, CWA noted that the RPD expressly modifies D.11-03-005 and D.11-09-040, previously adopted in this proceeding, but it does not purport to modify D.10-10-019, or D.11-10-034, or D.12-01-042, the series of decisions the Commission issued in its Affiliated Transactions Rulemaking, R.09-04-012. In fact, CWA noted that the RPD does not discuss or even reference the ATR rulemaking or any of those ATR decisions. Yet, the implication in the RPD is that modifying the ATRS is, in part, what's being contemplated.

Rather than modifying the ATRs, CWA recommended that the Commission acknowledge that the ATRs and the definition of "Affiliate" should not be "contorted" to fit the Alco circumstance. Rather, the CPUC should recognize that this decision addresses a unique situation in which the Adcock Family members should be treated as if they were affiliates and that this decision does not set a precedent for any other privately owned water utility.

Regarding the second point, the RPD states that "any change in the control of Alco that would reduce an Adcock family member's ownership interest in Alco to less than 10% ... would be subject to the usual Commission review and approval process." CWA pointed out that is not a correct reading of Section 854(a) of the Public Utilities Code, which provides, in relevant part, as follows: "No person or corporation ... shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. ... Any merger, acquisition, or control without that prior authorization shall be void and of no effect." The Commission's authorization is required for any person to "acquire" or to "control" a public utility, but no authorization is required to reduce an ownership interest or to give up control, if such reduction or giving up of control does not entail acquisition of control by another person.

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Before filing these comments, CWA coordinated with Alco, and I was pleased to have been able to file comments on an industry-wide issue without harming any of Alco's particular interests. We'll see how ALJ Long reacts to these two points.

**Comr Sandoval Issues Alternate PD Involving San Clemente Dam Removal—**

At long last, the light may be at the end of tunnel for California American Water and its effort to get a workable decision from the California PUC on the San Clemente Dam removal. This decision has been in flux since CAW filed on September 10, 2010 for authorization to implement the Carmel River Reroute and San Clemente Dam Removal Project (Project) and to recover the costs associated with the Project over a 20-year period. You'll recall that the original proposed decision (PD) from Administrative Law Judge Christine Walwyn, mailed on Feb. 16, 2012, permitted recovery of CAW's \$49 million share of the \$83 million dam removal partnership with the California Coastal State Conservancy (CCSC) and the National Marine Fisheries Service (NMFS). However, the PD did not permit recovery of the \$26.8 million of costs incurred through November 2010 and expected to be incurred through December 2012.

CPUC President Mike Peevey was the Assigned Commissioner in the proceeding, but his office did not prepare an alternate PD concurrent with the original PD, pursuant to Commission rules. However, I am pleased to report that Commissioner Catherine Sandoval issued an alternate PD on April 23<sup>rd</sup> that refutes the significant negative conclusions of the original PD, makes numerous changes and clarifications, and authorizes recovery of the Project's costs, as follows:

- Approves CAW's request to implement the Project in partnership with the California State Coastal Conservancy and the National Marine Fisheries Service.
- Authorizes ratepayer recovery of CAW's historical costs accumulated in its San Clemente Dam Memorandum Account.
- Authorizes rate base treatment for San Clemente Dam Removal Project costs.
- Finds CAW's dam buttressing efforts to comply with seismic safety requirements to be prudent, reasonable and appropriate, while seeking to resolve the issue at the least cost to its ratepayers.



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- Finds the San Clemente Dam to be used and useful and an ongoing benefit to ratepayers.
- Authorizes Cal-Am to file a Tier 3 Advice Letter to request a change in its \$49 million Project cap should there be a need to change the cap.
- Excludes the transfer of a 77.6 acre land parcel being used for utility purposes and not part of the project from being donated to the project or designated open space.
- Finds no Rule 1.1 violation and no need to open an adjudicatory proceeding.
- Finds Planning Conservation League Foundation eligible for intervenor compensation.

This alternate PD vindicates CAW of the accusations made in the original PD, including the alleged Rule 1 violation that poisoned the original PD. I especially like the detail the alternate PD went into on CAW's efforts with the Dam buttressing, as well as the explanation as to why there was no violation. It is on the Commission's Open Meeting Agenda for May 24<sup>th</sup>. Congratulations to CAW for securing the alternate PD. Let's hope it gets a unanimous vote from the Commissioners.

**State Water Board Schedules Workshop on MS4 Permits**—The State Water Resources Control Board (State Board) announced on April 27<sup>th</sup> that it will receive written comments on revisions to the draft Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit (Second Revised Draft Tentative Order), and that it will hold a staff workshop on the Order on May 21<sup>st</sup> at 9:00 a.m. at the Cal EPA Building in Sacramento.

Here's a little background: Before July 1999, discharges of storm water and non-storm water from the Department of Transportation's MS4 permit were regulated by individual NPDES permits issued by the California Regional Water Quality Control Boards. On July 15, 1999, the State Water Board issued a statewide permit (Order No. 99-06-DWQ), which regulated all storm water and certain non-storm water discharges. This included all State highways, rights-of-way, facilities, and construction activities. If adopted by the State Board, the Order will supersede Order No. 99-06-DWQ.

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A public notice was circulated on January 7, 2011, advising that the Draft Tentative Order was available for public review and comment. Written comments on the Draft Tentative Order were due by 12 Noon on March 14, 2011. A public hearing on the Draft Tentative Order was held on July 19, 2011. A second notice and Revised Draft Tentative Order were circulated on August 18, 2011, and a public workshop was held on September 21, 2011 to consider the revisions made to the January 7, 2011 Draft Tentative Order.

Based upon comments received during the public comment period, the public hearing and the workshop, the Revised Draft Tentative Order has been substantially revised. The Second Revised Draft Tentative Order dated April 27, 2012 is the subject of this Notice. Interested parties can submit evidence (e.g. photographs, data, and testimony) and written comments by 12:00 noon, Tuesday, June 26, 2012 to Jeanine Townsend, Clerk to the State Water Resources Control Board at 1001 I Street, 24th Floor, Sacramento, CA 95814. Comment letters may be submitted by email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) (if less than 15 megabytes in total size) or by fax at (916) 341-5620. For email submittals, please indicate in the subject line: "Comment Letter – Caltrans MS4 Permit"

The Second Revised Draft Tentative Order, supporting documents, and written comments received are posted on the State Water Board's website at: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/caltrans\\_permits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/caltrans_permits.shtml).

**Make Your Plans for CWA's Spring Conference on June 7<sup>th</sup>**—We're working to finalize our program for the 2012 Spring Conference, the theme of which is "Water Suppliers in the Spotlight," which begins at 8:30 a.m. on Thursday, June 7<sup>th</sup> at the Citizen Hotel in Sacramento. We've invited Senator Jean Fuller (R-Bakersfield), who is Vice-Chair of the Senate Energy, Utilities & Communications Committee, to be our opening speaker. As you know, the Senate EU&C Committee has been the focal point on all the legislation concerning the California PUC this spring, and the major legislation affecting CWA members.

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Tony Quinn, Co-Editor of the California Target Book will be our luncheon speaker, and he will give us his take on the June 5<sup>th</sup> election results. Additionally, we have confirmed Jan Beecher, Director of the Institute of Public Utilities at Michigan State University, who will discuss her provocative AWWA Journal article criticizing water budgets. We have also invited consultant Tom Ash, formerly of Irvine Ranch Water District to speak on his article in the same issue in support of water budget billing. They will form a very topical discussion panel on “Reconciling Conservation and Conservation Rates.”

We are planning panels titled “Water, the Media and What to Expect” and “Addressing Local Water Supply Needs.” The former will consist of reporters who cover water utilities and rates, and at least one water agency manager who’s been through the media wringer. The supply panel will consist of presentations on storm water, recycled water and gray water. We’ve invited panelists from the LA County Dept. of Public Works, UC- Davis, and the San Francisco PUC.

We are pleased to have Division of Water & Audits Director Rami Kahlon and Division of Ratepayer Advocates Deputy Director Matthew Marcus, who will speak on how the California Public Utilities Commission is handling its own challenges with being in the media spotlight. And CWA Legislative Advocate Meg Catzen-Brown will close the conference with her traditional panel of state legislative committee consultants, which will cover all the major water and utility bills that are keeping us busy this spring.

Look for more announcements on the conference during the week of April 30<sup>th</sup>. CWA will have the registration details up on its website ([www.calwaterassn.com](http://www.calwaterassn.com)) next week. In the meantime, mark your calendars. The CWA Committee meetings will take place on Wednesday, June 6<sup>th</sup> at the Citizen Hotel, with the Regulatory Seminar from 1:00 to 3:00 p.m. and the Small Company Seminar from 3:00 to 5:00 p.m. Other committees will meet in the morning. Look for announcements on each of them.

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### Upcoming Industry Meetings/Conferences/Events:

- May 7, 2012 – Water for People Reception (6:30p-9:00p; California Academy of Sciences; 55 Music Concourse Drive, San Francisco 94118).
- May 8-11, 2012 – Association of California Water Agencies – Spring Conference (Portola and Marriott Hotels, Monterey, CA); J. Hawks will attend in part.
- May 10, 2012 – California PUC Open Meeting (9:00a – 12:00p; Fresno City Council, 2600 Fresno St., Room 2097, Fresno, CA 93721)
- May 13-18, 2012 – Center for Public Utilities Advanced Regulatory Training for Water and Wastewater Utilities (8:00a – 5:00p each day; Sheraton Uptown Hotel; 2600 Louisiana NE, Albuquerque, NM).
- May 15, 2012 – CWA Directors Meeting (9:30a-2:30p; Valencia Water; 24631 Avenue Rockefeller, Valencia, CA 91355); J. Hawks will attend.
- May 16, 2012 – California Urban Water Conservation Council Board of Directors Meeting (9:30a – 3:00p; Kennedy Jenks, 2775 Ventura Blvd., Suite 100, Oxnard, CA 93036; J. Hawks will attend.
- May 16, 2012 – CWA Utility Supplier Diversity Committee Meeting (10:00a – 2:00p; Park Water Co., 9750 Washburn Rd., Downey, CA 90241).
- May 24, 2012 – California PUC Open Meeting (9:00a – 12:00p; 505 Van Ness Ave., San Francisco 94102)
- May 30-31, 2012 – CUWCC NorCal Water Conservation Coordinator I/Water Use Efficiency I Workshop (9:00a–3:00p; San Francisco PUC; 1000 El Camino Real, Millbrae 94030); <http://www.cuwcc.org/WorkArea/showcontent.aspx?id=18714>.
- June 6-8, 2012 – CWA Annual Spring Conference/Regulatory, Small Company Seminar/Directors Meeting (1:00p on June 6; adjourns at 11:00a on June 8; Citizen Hotel; 926 J St., Sacramento 95814)
- June 11-13, 2012 – Western Conference of Public Service Commissioners Annual Meeting (8:00a – 5:00p; Sunriver Resort; 17600 Center Dr., Sunriver, OR 97707); J. Hawks will attend.

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- June 18, 2012 – National Association of Water Companies Government Relations Committee Meeting (9:30a – 3:30p; Hyatt Regency Capitol Hill; 400 New Jersey Ave., N.W. Washington, DC 20001).
- June 19-20, 2012 – National Association of Water Companies Annual Report to Congress/Two-Day Fly-In (9:00a – 5:00p; Hyatt Regency Capitol Hill; 400 New Jersey Ave., N.W. Washington, DC 20001).
- June 19, 2012 – California Urban Water Conservation Council Advanced Metering Infrastructure Symposium (8:30a – 4:30p; LA Dept. of Water & Power; 1350 S. Wall St., Los Angeles, CA 90021); J. Hawks may attend.
- June 20, 2012 – CUWCC Plenary Meeting (9:30a – 3:00p; LA Dept. of Water & Power; 1350 S. Wall St., Los Angeles, CA 90021); J. Hawks will attend.
- June 28, 2012 – California Water Association Annual Northern California Contractors-Vendors Meeting (7:30a – 11:30a; location TBD).

—CWA—