

CALIFORNIA WATER SERVICE GROUP

Form S-8

December 14, 2018

As filed with the Securities and Exchange Commission on December 14, 2018.

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CALIFORNIA WATER SERVICE GROUP

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

77-0448994
(I.R.S. Employer
Identification Number)

1720 North First Street

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San Jose, CA 95112

(408) 367-8200

(Address of Principal Executive Offices)

CALIFORNIA WATER SERVICE GROUP 2018 EMPLOYEE STOCK PURCHASE PLAN

(Full Title of the Plan)

THOMAS F. SMEGAL, III

Vice President,

Chief Financial Officer and Treasurer

CALIFORNIA WATER SERVICE GROUP

1720 North First Street

San Jose, CA 95112

(408) 367-8200

(Name, address and telephone number including area code of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act.

| | | | |
|-------------------------|-------------------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| | | Emerging growth company | <input type="checkbox"/> |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

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| Title of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share(2) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee |
|---|-----------------------------|--|--|----------------------------|
| Common Stock, par value \$0.01 per share, reserved for future issuance under the California Water Service Group 2018 Employee Stock Purchase Plan | 1,500,000(3) \$ | 46.30 \$ | 69,450,000 \$ | 8,417.34 |

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), there is also being registered such additional shares of the common stock, par value \$0.01 per share (the Common Stock) of California Water Service Group that become available under the California Water Service Group 2018 Employee Stock Purchase Plan (the ESPP) in connection with changes in the number of outstanding Common Stock because of events such as recapitalizations, stock dividends, stock splits and reverse stock splits, and any other securities with respect to which the outstanding shares are converted or exchanged.

(2) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based upon the average of the high and low sales prices of the Registrant's Common Stock, as reported on the New York Stock Exchange on December 10, 2018.

(3) Pursuant to Rule 416(c) under the Securities Act, this Registration Statement also relates to an indeterminate number of options to acquire Common Stock, to be granted pursuant to the ESPP.

INTRODUCTION

This Registration Statement on Form S-8 is filed by California Water Service Group, a Delaware corporation (the **Company** or the **Registrant**), relating to up to 1,500,000 shares of the Company's Common Stock to be issued pursuant to the ESPP.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1). Such documents need not be filed with the Securities and Exchange Commission (the **Commission**) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have previously been filed by the Company with the Commission, are incorporated by reference into this Registration Statement and shall be deemed a part hereof, provided, however, that we are not incorporating by reference any information furnished (but not filed) under Item 2.02 or Item 7.01 of any Current Report on Form 8-K, except as specified below:

- (1) the Registrant's latest Annual Report on Form 10-K filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the **Exchange Act**) or latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed;
- (2) all other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant's latest Annual Report or prospectus referred to in (1) above; and

(3) the description of the Common Stock contained in the Registration Statement on Form 8-A, as filed with the Commission on February 13, 1998 pursuant to Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and made part hereof from their respective dates of filing (such documents, and the documents listed above, being hereinafter referred to as Incorporated Documents); provided, however, that the documents listed above or subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act in each year during which the offering made by this Registration Statement is in effect prior to the filing with the Commission of the Company's Annual Report on Form 10-K covering such year shall cease to be Incorporated Documents or be incorporated by reference in this Registration Statement from and after the filing of such Annual Reports.

Any statement contained herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed Incorporated Document modifies or supersedes such statement. Any statement contained in an Incorporated Document shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed Incorporated Document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of Delaware empowers a corporation to indemnify any person who was or is a part or is threatened to be made a part to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise. Depending on the character of the proceeding, a corporation may indemnify against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the person identified acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation and, with respect to any criminal action or proceeding, had no cause to believe his or her conduct was unlawful. In the case of an action by or in the right of the corporation, no indemnification may be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that a Court of Chancery or the court in which such action or suit was brought shall determine that despite the adjudication of liability such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. Section 145 further provides that to the extent that a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to above or in the defense of any claim, issue or matter herein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

The Certificate of Incorporation, as amended, requires the Company to indemnify its directors and officers to the fullest extent permitted by the General Corporation Law of the State of Delaware. In addition, the Company has entered into an agreement with each of its directors and officers indemnifying them to the extent permitted under each agreement. The Company has also purchased director and officer liability insurance.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit No. | Description |
|--------------------|---|
| 4.1* | <u>Certificate of Incorporation (Incorporated by reference to Exhibit 3.1 to Form 10-O filed on August 9, 2006).</u> |
| 4.2* | <u>Certificate of Amendment to Certificate of Incorporation (Incorporated by reference to Exhibit 3.1 to Form 8-K filed on June 10, 2011).</u> |
| 4.3* | <u>Amended and Restated Bylaws (as amended on October 28, 2015. Incorporated by reference to Exhibit 3 to Form 10-O filed on October 29, 2015).</u> |
| 4.4 | <u>California Water Service Group 2018 Employee Stock Purchase Plan.</u> |
| 5.1 | <u>Opinion of Gibson, Dunn & Crutcher LLP.</u> |
| 23.1 | <u>Consent of Deloitte & Touche LLP.</u> |
| 23.2 | <u>Consent of Gibson, Dunn & Crutcher LLP (contained in Exhibit 5.1).</u> |
| 24.1 | <u>Power of Attorney (included as part of signature page).</u> |

* Incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering; and

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California, on this fourteenth day of December, 2018.

CALIFORNIA WATER SERVICE GROUP

By: /s/ Thomas F. Smegal, III
Thomas F. Smegal, III
Vice President, Chief Financial Officer & Treasurer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Thomas F. Smegal, III such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might, or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or any substitute therefor, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|-------------------|
| /s/ Martin A. Kropelnicki Martin A. Kropelnicki | President and Chief Executive Officer, Director (Principal Executive Officer) | December 14, 2018 |
| /s/ Thomas F. Smegal, III Thomas F. Smegal, III | Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer) | December 14, 2018 |
| /s/ David B. Healey David B. Healey | Vice President, Corporate Controller and Assistant Treasurer (Principal Accounting Officer) | December 14, 2018 |
| /s/ Peter C. Nelson Peter C. Nelson | Chairman of the Board of Directors | December 14, 2018 |
| /s/ Gregory E. Aliff Gregory E. Aliff | Director | December 14, 2018 |
| /s/ Terry P. Bayer Terry P. Bayer | Director | December 14, 2018 |

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| | | |
|--|----------|-------------------|
| /s/ Shelly M. Esque Shelly M. Esque | Director | December 14, 2018 |
| /s/ Edwin A. Guiles Edwin A. Guiles | Director | December 14, 2018 |
| /s/ Thomas M. Krummel Thomas M. Krummel | Director | December 14, 2018 |
| /s/ Richard P. Magnuson Richard P. Magnuson | Director | December 14, 2018 |
| /s/ Carol M. Pottenger Carol M. Pottenger | Director | December 14, 2018 |
| /s/ Lester A. Snow Lester A. Snow | Director | December 14, 2018 |