

ORIGINALDecision No. 59883

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the practices,)
 operations, contracts, rules,)
 facilities and service of the)
 DEL MAR UTILITIES, a corporation.)

Case No. 6240

John G. Driscoll, Jr., for the respondent.
Luther L. Leeger, for the City of Del Mar;
Lee E. Robbins, for the Del Mar Civic
 Association; and A. W. Dowden, Jr., in
 propria persona, interested parties.
Karl K. Roos, for the Commission staff.

SECOND INTERIM OPINIONProceedings to Date

On March 17, 1959, the Commission issued an order instituting an investigation on its own motion into the practices, operations, contracts, rules, facilities, and service of the Del Mar Utilities, a public utility water corporation. This investigation was instituted as the result of an announcement by the respondent that after April 1, 1959, it would no longer accept applications requesting water service to new customers. The investigation was instituted for the purpose of determining:

1. Whether the facilities owned or operated by the respondent are adequate to serve the needs of the public to which its facilities have been dedicated.
2. Whether the respondent has and in the future will have an adequate supply of water for furnishing service to present and future customers.
3. Whether the respondent should be ordered to acquire or obtain, by the exercise of its right of eminent domain, or otherwise,

any additional source or sources of water for the purpose of augmenting its present water supply.

4. Whether the respondent should be ordered to continue to furnish water service to its present consumers, and to extend its water service to any and all additional members of the public to which it has dedicated its service and facilities, pursuant to its tariff rules and regulations, until the further order of the Commission.

5. Whether any other order or orders should be made.

A public hearing was held on March 24, 1959 at Del Mar before Examiner William L. Cole. At this hearing it developed that the Commission staff was not, because of the lack of time involved, in a position to present evidence as to the respondent's situation relative to its sources of and requirements for water. It was stipulated among the various parties at this hearing that the respondent would accept applications for water service to new customers pending a further hearing and a further order of the Commission. On March 31, 1959, the Commission issued an interim decision whereby the respondent was ordered to accept applications for additional water service connections, pursuant to the rules and regulations set forth in its existing tariff on file with the Commission, until such time as further hearings on this matter have been concluded and a further order of the Commission has been issued.

A second public hearing was held at Del Mar on September 2, 1959 before Examiner Cole, at which time the matter was taken under submission, subject to the filing of late-filed exhibits. These exhibits have been filed. Evidence was introduced at this hearing concerning the respondent's water requirements and the availability of water to it. For the reasons hereinbelow set forth, the

Commission has decided to issue a second interim opinion and on its own motion to set aside the submission of this matter and reopen the matter for further hearings in the future.

The Respondent - City of Del Mar
22nd District Agricultural Association

As previously indicated, the respondent is a public utility water corporation serving primarily the residents of the City of Del Mar. The utility's service area comprises approximately 1,000 acres and its boundaries coincide approximately with the city boundaries.

The City of Del Mar, while having been an established community for some time, is a new municipality. It was incorporated as a city in 1959.

One of the principal consumers served by the respondent is the 22nd District Agricultural Association. The water requirements of this association include those of the Del Mar Race Track.

Water Requirements

Any discussion of the respondent's water requirements must, of course, be divided into the requirements of its present consumers and the requirements of its consumers in the future.

As of May 31, 1959, the respondent was serving approximately 1,040 customers. Based on the growth experience for the years 1951 through 1958, the average rate of increase in the number of customers served is 70 per year. Based upon the number of customers as of May 31, 1959, it is estimated that the maximum annual water requirements of the respondent would be 670 acre-feet. This estimate would have to be increased to include new customers served by the respondent since that date in order to arrive at the requirements of the company at the present time.

In addition to the respondent's requirement as to the total amount of water needed annually, there also must be taken into consideration the amount of water needed during the peak month. At the customer level as of the end of May 1959, this peak month requirement was estimated at a maximum of 100 acre-feet which is equivalent to 1.63 second-feet average continuous flow. Again this estimate would have to be raised to get the present day requirements because of new customers that are being supplied by the respondent.

The 22nd District Agricultural Association consumes by far the largest amount of water of any of the respondent's customers. Because of the fact that its requirements so far exceed those of other customers and because of a water reclamation project being considered by it and the Del Mar Turf Club, its requirements must be stated apart from the over-all requirements of the respondent. The total water consumption for this association was approximately 100 acre-feet during 1958. This association's water requirements are complicated by the fact that such requirements are needed primarily during the months from June through September.

Two estimates were put in evidence as to the water requirements of all consumers when all of the land in the respondent's present service area reaches its fullest development. The Commission staff estimated that when such a condition comes into existence, the maximum annual water requirement placed on the respondent will be 1,100 acre-feet per year. This estimate was premised upon the assumption that the present zoning in the service area would remain the same for the future. The respondent's president, on the other hand, estimated that the water requirement will be approximately 1,500 acre-feet per year when full development of the area is reached. This estimate was premised upon the assumption

that the present zoning laws would be changed to allow more multi-story apartments and motels with their higher use of water.

The Commission staff estimated that when full development of the area is reached, the peak month requirement will be a maximum of 155 acre-feet which is equivalent to 2.51 second-feet average continuous flow.

The Commission staff did not estimate when the full development of the area would be reached; however, the respondent's general manager estimated that this condition could be reached within 10 years.

Water Availability

Contract with City of San Diego. At the present time, the respondent's sole source of water is the water it purchases from the City of San Diego pursuant to a water contract entered into in 1925 and amended in 1955. Under the terms of this contract, the respondent, during years when normal water conditions prevail, is entitled to purchase up to 724 acre-feet of water during any one water year. Under the terms of the contract, a water year is the period of time commencing on November 1st of one year and extending to October 31st of the succeeding year.

Prior to its amendment in 1955, the contract provided that during periods of drought, the amount of water that the respondent can purchase during any water year would be reduced to an amount determined by total amount of water available. Under the terms of the contract, however, the amount could not be reduced below 543 acre-feet per water year.

Because of the terms of the 1955 amendment, a question has been raised as to whether this so-called drought provision is still part of the amended contract or whether the respondent is entitled to purchase up to 724 acre-feet per water year irrespective

of the prevailing water conditions. It is apparent from an examination of the present water requirements of the respondent that the outcome of this question is of prime importance to any solution of the respondent's problems. The proper interpretation of the contract in this regard is the subject of litigation in the Superior Court of the State of California for the County of San Diego. The case had not gone to trial at the time of the second hearing in this matter. At the time of the second hearing the respondent had already purchased 580 acre-feet for the 1958-1959 water year which, of course, exceeded the 543 acre-feet lower limit under the contract. The Superior Court, in the litigation referred to, reserved for determination at the trial the question of whether the amount of water purchased by the respondent in excess of 543 acre-feet during the 1958-1959 water year shall reduce the entitlement of the respondent for water during the 1959-1960 water year.

Apart from the provisions in the contract relating to the total amount of water the respondent can purchase during any one water year, the contract also limited the rate at which water could be purchased. This maximum rate of flow is 1.65 second-feet during the months from June through September and 1.0 second-feet during the other months. When it is considered that under present conditions, the respondent requires in excess of 1.63 second-feet continuous flow during its peak month, it is readily apparent that this limitation is equally important, if not more so, than the limitation on the annual amount of water to be purchased.

The contract does provide, however, that if the respondent were to receive the water it purchases at a second designated point of delivery, this maximum rate of flow limit would be raised to 2.0 second-feet. In order to be able to receive water at this

second point of delivery, it would be necessary to construct a pipeline from that point to the respondent's existing system. The evidence shows that the cost involved to construct such a pipeline was estimated by the respondent to be a substantial sum. If the respondent did take delivery at this second point, the contract provides that the price of the water purchased would be reduced by 25 per cent.

It is apparent from an examination of the respondent's present water requirements and the present amount of water available to it that if the litigation referred to results in an adverse ruling, it is imperative that the respondent have a supplemental supply of water. This supplemental supply may be needed irrespective of the ruling and certainly will be needed to meet the future needs of the respondent.

Other Sources of Local Water. The first supplemental source of water to be considered is local water produced from wells in the immediate or adjacent areas in the San Dieguito Basin. In considering this source two factors must be kept in mind. They are the quality of water for human consumption and the quantity of the water available.

With respect to the question of quality of water, the evidence indicates that there are perhaps two areas in the San Dieguito Basin that have water of sufficient quality such as to be considered at all as a second source of supply. These areas are the upper northeastern end of the San Dieguito Basin and an area called Gonzales Canyon.

With respect to the question of quantity, the evidence is not conclusive as to the amount of water that could be obtained from these areas whether at the present time or in the future. The

evidence shows that an over-draft condition exists in this basin and is increasing at the rate of 800 acre-feet per year. There was evidence to indicate both that there is adequate water to serve as a supplemental source in Gonzales Canyon and also that there is not adequate water there.

The respondent's general manager estimated that in order to obtain an additional 400 acre-feet per year from this source the initial cost would be \$656,000. He estimated that such a system would increase respondent's operating costs and investment return by \$90,000 per year. This estimate of the initial cost involved assumed that the respondent would be required to purchase 200 acres of land in order to be able to take 400 acre-feet of water per year. This is due to an adjudication in the Superior Court of the State of California for the County of San Diego involving land in this basin wherein the annual amount of water that may be pumped from wells on the land is limited to two acre-feet per acre of land owned. However, the evidence did not show whether the land in Gonzales Canyon or the northeastern portion of the basin were included in that adjudication. The Commission staff did not estimate the cost of establishing a supply of water from this source.

Generally, it was the conclusion of the respondent's management that it is not feasible to establish a supplemental source of water from this area. The Commission staff was of the opinion that the two areas warrant further study by respondent.

San Diego Water Authority. Members of the San Diego County Water Authority are entitled to receive water from the Colorado River. The respondent is not eligible to become a member of this Authority. The City of Del Mar is, however, eligible to become a member but has not as yet done so.

If the City of Del Mar were to become a member of the Authority the respondent would be able to purchase an estimated additional 500 acre-feet per year from the Authority and, perhaps, as much as an estimated additional 800 acre-feet. When a second aqueduct is completed, it is estimated that this entitlement would be extended to 1,700 acre-feet. It should be noted, however, that the 800 acre-feet and 1,700 acre-feet estimates are based on aqueduct capacities and not upon the Authority's preferential entitlement to Colorado River water.

It is apparent that if the respondent were in a position to purchase this additional water, the respondent could protect its present requirements. However, in order for the City of Del Mar to become a member of the County Water Authority and the Metropolitan Water District, the City would be required to pay all of the back taxes which have been levied by the Authority and the District. The record does not show what this cost would be to the City, but it is estimated that it will be quite substantial.

The decision whether or not to join the County Water Authority is, of course, a decision which must be made by the City and cannot be made by the respondent or by this Commission. While it is true that joining the Authority involves a substantial sum of money in order to meet the need for only a small additional supply of water at the present time, it appears from the evidence that at the present time, this source is the only assured source of additional water to the respondent. Furthermore, it would appear that the City, in making its decision, should give some thought to its future requirements.

Northern California Water. There is no evidence in the record as to what effect, if any, the future availability of Northern California water would have on the respondent's situation

or whether the City of Del Mar would have to be a member of the County Water Authority in order to be entitled to such water.

Purchases from Neighboring Water Supplies. There are two irrigation districts in the immediate vicinity of the respondent's service area. These districts are the Santa Fe Irrigation District and the San Dieguito Irrigation District. Both of these districts are members of the County Water Authority. The evidence shows that a surplus of water should become and remain available to these districts for a number of years. The evidence shows that the respondent contacted the office managers of these two districts for the purpose of determining whether these districts would sell water to the respondent. The evidence indicates that it is extremely questionable whether such sales can be made. However, the respondent has not made formal application with these districts for water.

Additional Purchases from City of San Diego. The evidence also indicates that a surplus of water should become and remain available to the City of San Diego for a number of years. The evidence indicates, however, that the City of San Diego takes the position that it cannot deliver water received from the Metropolitan Water District to any purchaser which is not a member of the Metropolitan Water District.

Reclaimed Water. While not a second source of supply, another facet of the problem must be discussed. This is the possibility of the use of sewage treatment plant effluent for watering the dirt and turf tracks at the Del Mar Race Track. A report was prepared in 1956 covering this possibility. Under the three alternatives set forth in this report, estimated first costs range from \$67,500 to \$92,000, excluding land values, and estimated operation costs, excluding depreciation, range from \$16.35 to \$16.85 per acre-foot of water produced. It is estimated that any of the plans

recommended in the report would furnish 40 of the 100 acre-feet used annually by the 22nd District Agricultural Association. This, in turn, would reduce by 40 acre-feet annually the requirements that the respondent must meet.

As of September 1959, neither the 22nd District Agricultural Association nor the Del Mar Turf Club had acted upon this 1956 report.

Water Served within City of San Diego.

The respondent serves about eight acre-feet of water to consumers within the City of San Diego. This is water that the respondent receives from the City of San Diego. The respondent was not sure whether this eight acre-feet was charged to its allotment under the water contract.

Conclusions

It is apparent from the evidence that a very serious, if not critical, condition exists as to the availability of water to the respondent in order for it to meet the present and future requirements of its consumers, particularly if the litigation presently pending relative to the interpretation of the water contract is decided adversely to the respondent. Under such a situation, the respondent's requirement for this present water year would far exceed its present supply. It is apparent that under the circumstances every effort must be made by the respondent to obtain a second adequate source of supply. It is also apparent that pending the outcome of the present litigation, or the assurance of another adequate source of supply, the respondent should not be burdened with additional new consumers. In this regard, the respondent will be ordered not to accept applications for new service 30 days after the effective date of this interim decision, pending further order of the Commission. In order to insure that only bona

vide applications are presented during that time, the respondent will be ordered to reject all applications filed where construction will not have been commenced within 30 days after the effective date of this interim decision. The respondent will also be ordered to notify the City of Del Mar of these restrictions so that the City will be in position to advise applicants for construction permits that water service will not be available except as provided herein.

The respondent will be ordered to report to this Commission, on the effective date of this decision and on the first of every month thereafter, the status of the present litigation pending in the Superior Court of the State of California for the County of San Diego relative to the interpretation of its water contract with the City of San Diego.

The respondent will be ordered to prepare and file with the Commission, within 30 days after the effective date of this interim decision, a detailed and comprehensive plan for restricted water service, if required, during the balance of the current water year. Domestic needs for water shall receive priority over commercial needs in the preparation of this plan.

The respondent will be ordered to request a written guarantee from the City of San Diego, to replace the present oral understanding, that all water delivered by the respondent to customers within the City of San Diego will not be charged as a part of the water purchased by the respondent under its contract with the City. The respondent will be ordered to file a copy of any such written guarantee with the Commission.

The Commission is aware, as pointed out above, that the respondent has contacted the Santa Fe and San Dieguito Irrigation Districts. However, the respondent will be ordered to contact, within 30 days after the effective date of this decision, these two

districts again and also the City of San Diego to determine on what basis, if any, any surplus water they have may be obtained by the respondent in suitable quantities.

The respondent will be ordered to determine whether or not the City of San Diego will increase the contractual maximum delivery rate of 1.65 second-feet from the Lockwood Mesa - Torrey Pines Pipeline and, if so, on what basis.

The respondent will be ordered to determine, within 90 days after the effective date of this decision, the feasibility, including all necessary cost estimates, of constructing a pipeline to the San Dieguito Reservoir, the second designated point of delivery in the water contract, to give effect to the provisions in the basic contract under which a delivery rate of not in excess of two second-feet can be used and water purchased at a 25 per cent lower price.

The respondent will be ordered to determine whether or not suitable arrangements can be made for the 22nd District Agricultural Association to be served by the City of San Diego or the Santa Fe Irrigation District.

It is the conclusion of the Commission that the evidence is not sufficient to determine the feasibility of obtaining a supplemental source of water from the San Dieguito Basin. For this reason the respondent will be ordered to undertake a study to determine such feasibility. Such a study shall include cost estimates for suitable well sites, water extraction rights and necessary easements and all physical facilities. This study is to be completed and a copy thereof filed with the Commission within 90 days after the effective date of this decision.

The respondent will also be ordered to file with the Commission, within 30 days after the effective date of this decision,

an estimate of the cost, including necessary physical plant, of obtaining imported water for the Del Mar area through the San Diego County Water Authority with Del Mar as a member area.

The evidence indicates that the respondent should be ordered to comply with certain of the Commission's requirements relating to depreciation reserves and the filing of maps and contracts. The following order includes these matters.

It is obvious that no final solution can be reached at this time. There are too many future contingencies that could radically alter the existing situation. The outcome of the litigation over the water contract; a decision by the City of Del Mar to join the County Water Authority; a decision by the City of San Diego to enter into negotiations with the City of Del Mar and the respondent for the sale of surplus water; a decision by the two irrigation districts to enter into negotiations with the respondent for the sale of supplemental water; the outcome of the respondent's study as to the feasibility of the San Dieguito Basin as a supplemental source of supply; or even a decision by the 22nd District Agricultural Association to embark upon a water reclamation project would change the situation presently confronting the respondent. Most of these contingencies are matters over which the Commission has no control. For these reasons, this decision shall be an interim decision only and the matter will be reopened in order that the Commission will be in a position to set further hearings in this matter when it appears from the reports of the respondent that the situation has been sufficiently altered so as to warrant the rendering of a final decision.

It appears to the Commission that a solution could well be reached if the various parties, who should be vitally interested in this problem, such as the two cities involved, the irrigation

districts, the agricultural association and the respondent, would get together in an earnest attempt to reach such a solution.

SECOND INTERIM ORDER

A hearing having been held, the matter having been taken under submission and the Commission being fully informed, now therefore,

IT IS ORDERED:

1. That thirty days after the effective date of this interim order, the respondent shall not accept applications for new water service connections to any premises not previously served, pending further order of this Commission. Further, the respondent shall reject any application filed within thirty days after such effective date where it appears to the respondent that construction of the facilities for which the new service is desired will not have been commenced prior to the end of the thirty-day period. The respondent shall forthwith notify the City of Del Mar, in writing, of the restrictions against new water service connections as provided by this paragraph and shall advise the Commission, in writing, of such notification within ten days thereafter.

2. That the respondent shall file with the Commission on the effective date of this interim order and on the first of every month thereafter until further order of the Commission, a report on the pending litigation involving the interpretation of its water contract with the City of San Diego.

3. That the respondent shall prepare and file with the Commission, within thirty days after the effective date of this interim order, a detailed and comprehensive plan for restricted water service, if required, to all consumers during the balance of

the current water year. This plan is to be prepared giving priority to domestic needs.

4. That the respondent shall forthwith request a written guarantee from the City of San Diego, to replace the present oral understanding, that all water delivered by the respondent to customers within the City of San Diego will not be charged as a part of the water purchased by the respondent under its contract with the City. The respondent shall file a copy of any such written guarantee with the Commission within forty-five days after the effective date of this order.

5. That within thirty days after the effective date of this interim order, the respondent shall contact the City of San Diego, the Santa Fe Irrigation District, and the San Dieguito Irrigation District to determine on what basis, if any, surplus water of these bodies may be purchased by the respondent. The respondent shall report, in writing, to the Commission the results of this action within forty-five days after the effective date of this interim decision.

6. That within thirty days after the effective date of this interim order the respondent shall contact the City of San Diego to determine whether or not that City will increase the contractual maximum delivery rate of 1.65 second-feet from the Lockwood Mesa - Torrey Pines Pipeline and, if so, on what basis. The respondent shall report, in writing, to the Commission within forty-five days after the effective date of this interim order the results of this action.

7. That within ninety days after the effective date of this interim order, the respondent shall determine the feasibility, including all necessary cost estimates, of constructing a pipeline

to the San Dieguito Reservoir to give effect to the provisions in its contract with the City of San Diego for an increased delivery rate to two second-feet. Within such ninety-day period, the respondent shall file with the Commission the results of its study in this regard.

8. That within thirty days after the effective date of this interim decision, the respondent shall determine whether or not suitable arrangements can be made for the 22nd District Agricultural Association to be served by the City of San Diego or the Santa Fe Irrigation District. The respondent shall report the results of this action, in writing, to the Commission within forty-five days after the effective date of this interim order.

9. That the respondent shall, within ninety days after the effective date of this interim order, undertake and complete a study to determine the feasibility of obtaining a supplemental source of water from the San Dieguito Basin. Such a study shall include cost estimates for suitable well sites, water extraction rights and necessary easements and all physical facilities. A copy of this completed study shall be filed with the Commission within this ninety-day period.

10. That within thirty days after the effective date of this interim decision, the respondent shall prepare an estimate of the cost, including necessary physical plant, of obtaining imported water for its service area through the San Diego County Water Authority with Del Mar as a member area. The respondent shall file a copy of this estimate with the Commission within such thirty-day period.

11. That the respondent shall file four copies of an up-to-date comprehensive map drawn to an indicated scale not smaller than

600 feet to the inch, delineating by appropriate markings the various tracts of land and territory served, the principal water storage and distribution facilities, and the location of the various properties of the utility.

12. That the respondent shall determine accruals for depreciation by dividing the original cost of the utility plant less estimated net salvage less depreciation reserve by the estimated remaining life of the plant. The respondent shall review the accruals as of January 1, 1960 and thereafter when major changes in utility plant composition occur for each plant account and at intervals of not more than five years. The results of these reviews shall be submitted to the Commission.

13. That the respondent shall file in accordance with General Order No. 96 sample copies of its standard form or forms of main extension contract.

14. That the submission of this matter is set aside and the matter is reopened for further hearings to be set in the future.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Del Mar Utilities and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 5th day of April, 1960.

Everett B. Leach
President
W. E. D. Smith
W. E. D. Smith
E. J. D. Smith
Theodore D. D. Smith
Commissioners