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ORIGINAL

Decision No. _____

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

FOURTH INTERIM OPINION

The above-entitled Investigation on the Commission's Own Motion was instituted on March 17, 1959.

By Decision No. 59883, dated April 5, 1960, in a second interim opinion and second interim order, the respondent was ordered, among other things, not to accept applications thirty days after the effective date of the order for new water service connections to any premises not previously served, pending further order of the Commission. Further, the respondent was ordered to reject any application filed within thirty days after the effective date of said decision where it appeared to the respondent that construction of the facilities for which the new service was desired would not have been commenced prior to the end of the thirty-day period.

Following a further hearing before Commissioner C. Lyn Fox and Examiner Stewart C. Warner on January 26, 1961, at Del Mar, Decision No. 61653, dated March 14, 1961, a third interim opinion and third interim order, ensued which authorized the respondent to accept an application for water service from Wreford G. Chapple and Mary C. Chapple for their property on which a 19-unit apartment building was planned to be constructed; from Kent B. Hoopes for his

property; and from Martha G. Smith for her properties. In all other respects, Decision No. 59883 was ordered to remain in full force and effect.

Further public hearings were held before Commissioner Fox and Examiner Warner on March 29, 30, and 31, 1961, at Del Mar, and the matter was continued to a date to be set subject to the receipt of certain late-filed exhibits; the receipt of a statement by respondent's counsel re Item B due April 7, 1961, which said statement has been received; and subject to the receipt of briefs by counsel on the legal question of the issuance of water rights in the San Dieguito Basin, due June 1, 1961. Substantial evidence was adduced at said hearings not only by the respondent, but by the City of Del Mar, by the City of San Diego, and by other property owners in Del Mar seeking a lifting of the water service restrictions imposed by Decision No. 59883 as to their properties. Much of the evidence adduced related to the availability and non-availability and to the possible development and cost of such development of sources of ground water supply in the San Dieguito Basin and of other possible sources of supply, and the costs thereof. Substantial other evidence was adduced regarding the availability to the respondent of Metropolitan Water District water through said District's aqueducts serving the City of San Diego. The operating and legal aspects of all of such sources of water supply possibilities were explored through direct evidence and were tested on cross-examination. Final determination of these aspects is pending, and will not be made herein.

The record as it stands contains, as Exhibit No. 3 received in evidence on March 24, 1959, copies of an agreement dated

November 1, 1925, between San Dieguito Water Company, a private corporation, and Del Mar Water, Light and Power Company, a predecessor of the respondent, pursuant to which said agreement the first party, San Dieguito, agreed to supply the respondent, the second party, 724 acre feet of water annually never to be reduced to less than 543 acre feet of water. A further provision set forth the terms under which the said minimum amount of delivery of 543 acre feet of water would be accomplished. Exhibit No. 3 also contains a copy of an agreement dated December 30, 1955, between the City of San Diego, as the successor in interest to San Dieguito Water Company, thereby becoming the first party, and the respondent, the second party, which said latter agreement, in effect, assumed the obligations of the first-mentioned agreement. Since that date, the City of San Diego has provided the respondent with a water supply through the City's connection to the facilities of the Metropolitan Water District.

Page 5 of Exhibit No. 51 sets forth the monthly and annual water consumptions in acre feet for primary components of the respondent for the years 1955 through 1960. Said components are segregated on a monthly and total annual basis between consumption of the 22nd Agricultural District and the rest of the respondent's system. Exhibit No. 51 shows that the total annual water consumptions never exceeded 643.4 acre feet, which said consumptions occurred in 1959; that the minimum consumptions occurred in the year 1955 and amounted to 406.2 acre feet; and that in the year 1960 consumptions amounted to 603.4 acre feet.

Action No. 237247 was commenced on September 4, 1959, by the City of Del Mar, a municipal corporation, against the City of

San Diego, a municipal corporation, in the Superior Court of the State of California, in and for the County of San Diego. Exhibit No. 12, received in evidence on September 21, 1959, is a copy of a Complaint in Intervention in said action by the respondent herein, dated September 9, 1959. Exhibit No. 13, received in evidence on September 21, 1959, is a copy of a Preliminary Injunction, dated September 10, 1959, issued by the Superior Court in said action restraining and enjoining the City of San Diego from discontinuing the supply of water to the respondent during the water year commencing November 1, 1958, and ending October 31, 1959; provided, however, that nothing contained in said Preliminary Injunction should be deemed to require the defendant in said action, the City of San Diego, to furnish the intervener, the respondent herein, in excess of a total of 724 acre feet during said period. The Superior Court further ordered that there be reserved for determination upon the trial of the action the question of whether the supply of water furnished to the intervener, pursuant to the terms of the preliminary injunction, should or should not reduce the entitlement of said intervener for water from the City of San Diego during the water year commencing November 1, 1959, and ending October 31, 1960.

Exhibit No. 43 is a copy of a Stipulation, dated June 14, 1960, in Action No. 237247 entered into by all the parties to the action. Among other provisions of said Stipulation, it was agreed that the preliminary injunction issued by the Superior Court on September 10, 1959, might be vacated and it was agreed that, in lieu thereof, an amended preliminary injunction could be entered by the Superior Court. Exhibit No. 44 is a copy of such amended preliminary

injunction and order postponing trial entered by the Superior Court, dated June 14, 1960, pursuant to the stipulation, Exhibit No. 43.

Exhibit No. 44 provides, among other things, that the City of San Diego be restrained and enjoined for a period of three years from the date of the order from discontinuing the supply of such quantities of water as the respondent might require to service its consumers in its service area up to a maximum of 724 acre feet in each twelve-month period commencing on November 1st of each year; that the preliminary injunction was issued without prejudice to the contention of the City of San Diego that it was not obligated to supply the quantity of water specified therein; that the rate of flow of water specified in the 1955 contract between the City of San Diego and the respondent herein be continued to be furnished at such specified rate or such other rate of flow as might thereafter be agreed upon by the City of San Diego and the respondent; that the plaintiff in the action, the City of Del Mar, should proceed with all dispatch and with reasonable diligence during the three-year period to obtain a permanent supplemental water supply from the San Diego County Water Authority or the Metropolitan Water District of Southern California, or any other available source, and should report to the Superior Court at the end of each six-month period thereafter stating the steps taken, those planned and the estimated time of completion of the necessary procedures; that in the event an adequate permanent supplemental supply of water was obtained by the City of Del Mar within said three-year period, the City of San Diego should thereafter be obligated to continue to supply to the respondent herein such quantities of water as the respondent

herein might require to service its consumers in its service area up to a maximum of 724 acre feet during each twelve-month period commencing November 1st of each year; that during the three-year period the cause of action should be removed from the trial calendar and no further proceedings therein should be taken by any party thereto; that in the event that within the three-year period a permanent supplemental supply of water were not obtained, the case should be restored to the trial calendar upon motion of any party thereto, and that, thereafter, the action should be set for trial on its merits.

Findings and Conclusions

From a review of the record, the Commission finds as a fact and concludes that the sources of water supply bound to the respondent herein by the orders of the Superior Court, as set forth in the exhibits heretofore referred to, from the City of San Diego in the maximum annual amount of 724 acre feet, are adequate to service the said respondent's water service consumers for the time being and, at least, for a period covering the six months after the date of the order which follows herein.

The Commission further finds and concludes that the public interest requires that the restrictions imposed by Decision No. 59883 should be lifted for a period of six months; that the order in said decision should be modified to so provide; that the respondent herein be permitted to accept applications for new water service connections to any premises not previously served; provided that it shall appear to the respondent that construction of the facilities for which any new service was desired had been commenced prior to the end of the six-month period.

FOURTH INTERIM ORDER

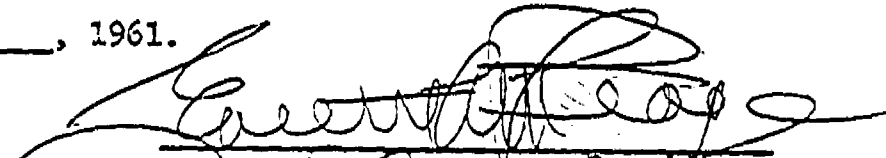
An investigation on the Commission's own motion having been instituted, public hearings having been held, Decisions Nos. 58216, 59383, and 61653 having been issued, further hearings having been held and further evidence having been adduced therein, and based on the findings and conclusions hereinbefore set forth,

IT IS HEREBY ORDERED as follows:

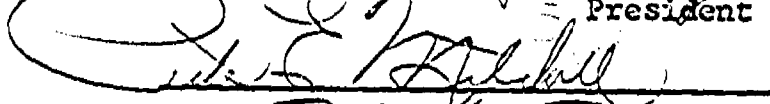
1. (a) That Decision No. 59383, dated April 5, 1960, be, and it is, modified as to the ordering paragraph 1 thereof, and that the respondent be, and it is, authorized to accept applications for water service for the period of six months after the effective date hereof; provided that it shall appear to the respondent that construction of the facilities for which any new water service was desired had been commenced prior to the end of the six-month period.
- (b) That in all respects, Decision No. 59883 shall remain in full force and effect.

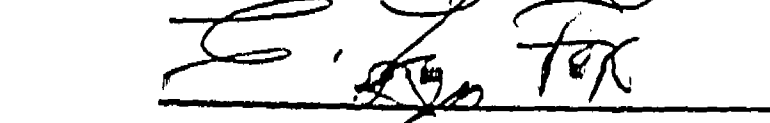
The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 16th
day of MAY, 1961.



President





Commissioners