

ORIGINALDecision No. 64308

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Conservative Water Company, a corpo-
 ration, San Gabriel Valley Water Com-
 pany, a corporation, Southern Cali-
 fornia Water Company, a corporation,
 Suburban Water Systems, a corpora-
 tion, Southwest Water Company, a
 corporation, Junior Water Co., Inc.,
 a corporation, Dominguez Water Cor-
 poration, a corporation, Investment
 Water Corporation, Ltd., a corpora-
 tion, Park Water Company, a corpo-
 ration, each individually on behalf
 of itself, and the Central and West
 Basin Water Replenishment District,
 a public district on behalf of
 California Water Service Company, a
 corporation, Coast Water Company,
 a corporation, Pacific Water Com-
 pany, a corporation, Peerless Land
 and Water Company, a corporation,
 W. R. Quinney, dba Fairacres Water
 Co., Berlu Water Company, a corpo-
 ration, County Water Company, a
 corporation, Suburban Mutual Water
 Co., a corporation, Uehling Water
 Company, Inc., a corporation, and
 La Mirada Water Company, a corpora-
 tion, for authorization of Agree-
 ment with Respect to Restrictions
 on Pumping of Water from the Central
 Basin.

Application No. 44616
 Filed July 6, 1962

Bewley, Knoop, Lasseben & Whelan, by Edwin H. Vail, Jr., and
Martin E. Whelan, Jr., for Central and West Basin Water
 Replenishment District, applicant, on behalf of California
 Water Service Company, Coast Water Company, Pacific Water
 Company, Peerless Land and Water Company, W. R. Quinney,
 dba Fairacres Water Co., Berlu Water Company, County Water
 Company, Suburban Mutual Water Co., Uehling Water Company,
 Inc., and La Mirada Water Company.

O'Melveny & Myers, by Lauren M. Wright, for Southern California
 Water Company and Conservative Water Company; Gray & Maddox,
 by Edwin H. Vail, Jr., for Southwest Water Company and Sub-
 urban Water Systems; George C. Gillette, by Edwin H. Vail,
 Jr., for Junior Water Co., Inc.; Donald D. Stark and John
 Skelton, for San Gabriel Valley Water Company; Roe & Rellas,
 by Chris S. Rellas, for Park Water Company; Ralph B. Helm,
 for Dominguez Water Corporation; Flint & MacKay, by Roscoe C.
 Andrews, for Investment Water Corporation, applicants.
Verner R. Muth and James F. Haley, for the Commission staff.

INTERIM OPINION

By this application applicants seek an order of the Commission, under Section 851 of the Public Utilities Code, authorizing the public utility water companies named in the caption to enter into and carry out the terms of an interim agreement, the purpose of which is to bring into balance, pending final adjudication of litigation, the ground waters of the Central Basin by the temporary relinquishment of a portion of their pumping rights according to a specified program of ground water conservation. Applicants allege that, if the present overdraft of the Central Basin is not checked by curtailment of pumping, the use of the Basin for water supply will be seriously impaired or even lost. Applicants request that, because of the magnitude of the public interest in the preservation of the Central Basin, the Commission authorize applicants to enter into said agreement upon a finding that it is reasonable and prudent in the circumstances and not adverse to the public interest.

After due notice, in accordance with the Commission's procedural rules, public hearing was held before Commissioner Frederick B. Holoboff and Examiner Leonard S. Patterson, at Los Angeles, on July 25, 1962, on which date the matter was submitted. Subsequently the Commission determined that it would be desirable to receive additional evidence and by order dated September 13, 1962 submission was set aside and further hearing was held at Los Angeles on September 18, 1962, on which date the matter was submitted. There were no protests to the granting of the application.

Testimony was presented on behalf of applicants by a consulting engineer who has had extensive experience in connection with the water problems in Southern California, and by the general manager of the Central and West Basin Water Replenishment District. Additional testimony was presented on behalf of the Southern California Water Company by its executive engineer.

Central Basin Hydrologic Problem

The Central Basin is a hydrologic ground-water unit which lies in the coastal portion of Los Angeles County southwesterly of the Merced and Puente Hills. The area is bounded on the north by the Merced Hills, Whittier Narrows, and the Puente Hills, on the east by the County of Orange, and on the south and southwest by the Newport-Inglewood Uplift. The Central Basin is traversed by three major rivers, the Los Angeles and San Gabriel Rivers and the Rio Hondo, a tributary of the San Gabriel River. The Central Basin is one of a series of ground-water bodies along the San Gabriel River system. Upstream from the Whittier Narrows lies the Upper San Gabriel Valley, and downstream from the Central Basin southwest of the Newport-Inglewood Uplift lies the West Coast basin. The boundaries of the Central Basin, the West Coast Basin, and the Central and West Basin Water Replenishment District are delineated on a map designated Exhibit A attached to Exhibit No. 9.

The total area within the Central Basin is about 250 square miles. The principal source of local fresh water supply to the Central Basin comes from the San Gabriel River and the Rio Hondo through the Whittier Narrows. These supplies furnish about 80 to 90 percent of the local supplies available, and the deep percolation of rainfall and storm runoff in the Central Basin provide the balance of the local water supply. Replenishment of the ground water supplies by deep percolation is limited, due to the fact that only the northern portion of the Central Basin, comprising about 30 percent of the total area, is free ground-water area, i.e., a nonpressure area where water can percolate down from the surface to the underground basin. In the balance of the area, termed a pressure area, the ground waters are confined between relatively impervious strata and they are principally supplied

through aquifers from the aforementioned free ground-water area. Such supply, however, is restricted due to limited transmissibility of the aquifers leading from the nonpressure to the pressure area.

Evidence was presented that water requirements in the Central Basin have exceeded local supplies for a number of years; that resulting deficiencies have been made up by importing water and by drawing more heavily on the underground basin; that the increased use of imported water supplied by the Metropolitan Water District of Southern California has not kept pace with the increased demands; that, as a consequence, there has been a serious overdraft on the local water supplies in the Central Basin; that this is one of the most seriously overdrawn basins in California, the accumulated overdraft being in excess of 1,000,000 acre-feet; that the safe annual yield of the Central Basin, estimated as of 1957, is 135,800 acre-feet; that actual production of water from the Basin in the 1960-61 water year was 286,000 acre-feet, which is more than double the safe annual yield; that production has exceeded safe yield back to at least the 1934-35 water year.

Many factors which are alleged to have contributed to the water problem are detailed in Exhibit No. 7, which is a report prepared for the Central Basin Water Association entitled, "Control and Reduction of Ground Water Pumping in the Central Basin." It is there represented that the result of the continuing overdraft has been a decline in the water levels within the Central Basin so that at present such water levels are more than 100 feet below sea level in certain areas; that this condition has resulted in increased pumping costs throughout the Basin and in the intrusion of salt water from the ocean into the fresh water supplies in the coastal region.

The water problem which exists in the Central Basin has been recognized for a number of years and various studies and reports have been made by the State Department of Water Resources, the Los Angeles County Flood Control District, and other agencies, some of which studies have been entered as exhibits in this proceeding. The steps which have been taken toward a solution of the water problems in the Central Basin have closely paralleled those which have previously been taken in the West Coast Basin. In the latter situation, an interim agreement similar to the one being considered herein was presented to the Commission by the public utility water companies in the West Coast Basin area and authority for entering into such agreement was issued by Decision No. 51024, dated January 25, 1955, in Application No. 36207.

Through activities of the Central Basin Water Association and the West Basin Water Association and following enabling legislation, the Central and West Basin Water Replenishment District was formed in November, 1959, for the purposes of (1) repelling salt water intrusion, (2) recharging ground water basins, and (3) reduction of pumping therein to safe limits. Some work has been performed and is being continued in repelling salt water intrusion by formation of fresh water barriers in the coastal regions. Recharging of the ground water basin is accomplished principally by spreading imported water in the Montebello forebay, located in the nonpressure area of the Central Basin. This recharging operation supplements the recharging operations of the Los Angeles County Flood Control District Zone I which have been carried on since 1953.

To bring about reduction of ground-water pumping in the Central Basin to the extent accomplished by the 25 percent curtailment already in effect in the West Coast Basin, will require adjudication. Accordingly, on January 2, 1962, the Central and West Basin Water Replenishment District filed a complaint, No. 736656, in the Los Angeles Superior Court against all water users in the Central Basin, seeking an adjudication and determination of the rights of all such water users in said Basin. A copy of this complaint is entered as Exhibit 9 in this proceeding. The complaint not only asks the Court to determine the water rights of the producers, but also requests the Court to act to eliminate the adverse effects which exist in the area due to the alleged overdraft.

As a practical solution to the problem, and pending final adjudication, representatives of water users throughout the Central Basin, after extensive study and negotiations, have formulated a Stipulation and Interim Agreement and Petition for Order, Exhibit 10 herein, which will be submitted for execution by those water producers in the Central Basin listed in Exhibit A attached to Exhibit 10. It is this interim agreement for which authorization is being sought on behalf of the water utilities who are applicants herein. It will be presented to the Court in anticipation that the Court will adopt such agreement, or a similar agreement, as the basis for its injunctive decree.

The Interim Agreement

The interim agreement is based, first, upon acceptance of the rule adopted in Pasadena v. Alhambra¹ as to the determination of each water producer's entitlement - the so-called rule of mutual prescription. Under this theory, each water user gains a prescriptive right equal to his maximum annual continuous pumping in any

¹ 33 Cal. 2d 908

five-year period prior to the date of filing the suit in court, as to which there has been no cessation of pumping during any subsequent continuous five-year period prior to the date of filing the suit.

Secondly, in calculating a user's assumed relative right, the agreement incorporates a feature which allows a credit for imported water use since 1951.

Thirdly, the agreement includes an exchange pool arrangement so as to allocate the costs of imported water among water users in the Basin in accordance with their respective use of water in excess of their agreed allocation.

Specifically, the agreement provides, subject to certain exceptions, that no party thereto shall in any water year pump in its own right from the Central Basin any greater quantity of water than its agreed pumping allocation as contained in Exhibit A attached to the agreement. Such agreed pumping allocation is 80 percent of a producer's assumed relative right, which will be determined in accordance with the aforesaid principles of mutual prescription and credit for imported water. Producers who have connections for taking imported water will be required to further reduce their pumping and take in lieu thereof increased imported water, such increased imported water being considered as water offered to the exchange pool. Those producers not having connections for imported water may pump more than their agreed pumping allocation, such excess water being considered as water obtained from the exchange pool. The payments prescribed for exchange pool water are allegedly so designed that all parties will share equitably in the added cost of the imported water. Overall, it is anticipated that the effect of the interim agreement would be to reduce the 1960-61 level of pumping in the Central Basin by 25 percent.

By its terms the interim agreement will become effective only when it has been executed by parties having at least 75 percent of the aggregate of the assumed relative rights; when it has been approved by this Commission; when the Court has appointed a Watermaster and the Watermaster has consented to act as such and has created a Watermaster service area; and when the Court has made an order in substance requiring the parties to abide by the provisions of the agreement.

According to the record, the net effect of operation under the interim agreement, as well as the ultimate effect of the adjudication, will be to increase the total cost of water in the future to the signatories. Data presented in Exhibit 14 summarize for each of six water years starting with 1962-63 the estimated increased cost per connection which would result from operation under the agreement for each of the 11 water utilities included in Exhibit A attached to the agreement. These utilities, all applicants in this proceeding, are California Water Service Company, Conservative Water Company, Dominguez Water Corporation, Investment Water Corporation, Ltd., Junior Water Company, Inc., Park Water Company, Peerless Land and Water Company, Inc., San Gabriel Valley Water Company, Inc., Southern California Water Company, Southwest Water Company, and Suburban Water Systems. The estimated increased costs for the first year shown, 1962-63, range from \$0.32 to \$5.38 per year per connection dependent upon the utility involved. The estimated amounts are shown to increase year by year as more imported water is used, so that by the sixth year of operation, 1967-68, the increased cost per year per connection would range from \$0.56 to \$11.79. In general, the economic impact is shown to be less on those utilities whose operations already reflect a substantial use of the higher cost imported water. According to the

testimony the results presented in Exhibit 14 are intended to be illustrative only and there may be many factors associated with the individual utilities which might result in increases at variance with the estimates presented in the exhibit.

The record shows that, due to time limitations and the desire to concentrate on the larger producers so as to satisfy more easily the requirement of execution by parties having at least 75 percent of the total of the assumed relative rights, the determination of the water production of eight of the utilities appearing in the caption to this application had not been completed and therefore they were not included in Exhibit A attached to Exhibit 10 and consequently no estimated cost data were presented for them in Exhibit 14. These utilities are Coast Water Company, Pacific Water Company, W. R. Quinney, dba Fairacres Water Co., Berlu Water Company, County Water Company, Suburban Mutual Water Co., Uehling Water Company, Inc., and La Mirada Water Company.

The record shows that the water utilities seeking the order herein represent about 33 percent of the total assumed relative rights in the Central Basin, and the opinion was expressed by the witnesses that, unless these public utilities are authorized to participate, there will be no possibility of execution of the agreement and the entire plan will fail.

Applicants have made a plea of urgency on the basis that the availability of imported water for replenishment will decrease after 1965 and it is essential, therefore, to put the plan into operation at the earliest possible date, preferably the beginning of the water year October 1, 1962, so as to secure maximum utilization of the available water.

Although operation under the interim agreement will result in increased operating expenses for the utilities as indicated,

the record shows that if the overdraft in the Central Basin continues, use of the Basin as a reservoir for providing daily and seasonal peaking and fire protection requirements will be seriously impaired and the cost to the water producers of providing equivalent aboveground storage can reasonably be expected to exceed the cost increases involved in the proposed agreement.

It is clear from the record that the continuing overdraft in the Central Basin presents a problem of increasing economic significance.

The resolution of the issues herein requires consideration of public interest in a broader than usual sense. The public interest to be considered here goes beyond the interests of the consumers of individual utilities. It is in fact the interest involved in the preservation of the basin as a ground water source and therefore involves the public interest of the entire Central Basin.

Were it not for the fact that there is a clear need to institute a ground water management program requiring the participation of virtually all water producers in the Basin, there might be good reasons why a given utility should not commit itself to pay a higher price for water during the interim period. Isolated from the need for such a comprehensive program, the interests of an individual utility's ratepayers might not necessarily be best served by such a commitment. To the extent, however, that participation by applicants is essential in order to implement the program, the need to preserve the basin overrides such possibly detrimental effects. If there were a reasonable alternative to the proposed program (and none appears) the Commission would be concerned with weighing this proposal in the narrower aspect of the economic

effect of it upon each utility. The failure of this plan, however, resulting from the nonparticipation therein by applicant utilities would cause serious impairment of the Central Basin. Measured against such a prospect, the proposal herein appears reasonable since it is reasonably directed toward a solution which is in overall public interest, even though it might result in higher cost water.

Based upon the evidence and arguments herein, it is found that:

1. There is a need for a program of ground-water management directed toward arresting the continuing overdraft in the Central Basin.

2. The interim agreement appears to be a reasonable way of accomplishing the aforesaid objective.

3. The interim agreement insofar as it relates to the applicants named in the ensuing order is reasonable and prudent in the circumstances and not adverse to the public interest. Such applicants should be authorized to enter into and carry out the terms of the interim agreement.

4. Insofar as the interim agreement relates to applicants not herein authorized to enter into said agreement, such applicants should be afforded the opportunity to present such further evidence as may be required in order that the Commission can make a determination as to the reasonableness of their participation therein. Accordingly submission of this matter should be set aside and it should be reopened for further consideration.

INTERIM ORDER

Public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED that:

1. California Water Service Company, Conservative Water Company, Dominguez Water Corporation, Investment Water Corporation, Ltd., Junior Water Co., Inc., Park Water Company, Peerless Land and Water Company, San Gabriel Valley Water Company, Southern California Water Company, Southwest Water Company and Suburban Water Systems are hereby authorized to enter into and carry out the terms of the Interim Agreement in evidence herein as Exhibit 10.

2. Each applicant named in Paragraph 1 of this order shall within thirty days thereafter:

- a. Advise the Commission in writing as to the date of its execution of said Interim Agreement;
- b. Notify the Commission in writing of the date of termination of said Interim Agreement.

3. Submission is hereby set aside and this application will be further considered in such manner as may be deemed appropriate insofar as it relates to the applicants not herein authorized to enter into said Interim Agreement.

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

Dated at San Francisco, California, this 25th day of SEPTEMBER, 1962.

George H. Trover
 President

D. Lynn Fox

Frederick B. Halobloff

Commissioners