

ORIGINAL

Decision No. 69106

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
SAN GABRIEL VALLEY WATER COMPANY)
for a certificate of public conven-)
ience and necessity to furnish water)
service in territory partly within)
the City of Industry, and partly in)
unincorporated territory in Los)
Angeles County.)

Application No. 46987

(Filed September 21, 1964;
amended November 5, 1964)

Brobeck, Phleger & Harrison, by Robert N. Lowry, and John E. Skelton, for applicant.
William M. Lassleben, Jr., for Vallecito Water Company, protestant.
W. I. Kennedy, for Union Pacific Railroad Company, interested party.
Raymond E. Heytens, Jerry J. Levander, and Robert C. Durkin, for the Commission staff.

O P I N I O N

San Gabriel Valley Water Company (San Gabriel) herein seeks a certificate of public convenience and necessity to extend its public utility water system and to construct and operate a water system in 230 acres of industrial property owned by Las Vegas Land and Water Company, a wholly owned subsidiary of Union Pacific Railroad Company (Union Pacific), and five acres adjacent thereto owned by Lawrence S. Gray and others in the areas crosshatched in pink and white, as shown on Exhibit A attached to the application. The proposed areas are within the area certificated to Vallecito Water Company (Vallecito) by Decision No. 54523, dated February 11, 1957. Exhibit No. 1 is a map showing in pink San Gabriel's

presently certificated area in its El Monte Division as it is related to the proposed area, shown in blue.

Public hearing was held before Examiner Warner on November 5, 1964, at Los Angeles. Union Pacific supported, and Vallecito protested the application. The application was amended at the hearing to comply with Rules Nos. 18(e), and (f) of the Commission's Rules of Procedure. Vallecito filed a Petition to Set Aside Submission and for Consolidation on November 12, 1964. Said Petition was granted on January 8, 1965. Further hearings were held before Examiner Warner on January 11, 14, 18, and 22, 1965, at Los Angeles. The matter was consolidated for hearing with Vallecito's Application No. 47094 to issue 10,000 shares of \$50 par value Series A preferred stock; Vallecito's Applications Nos. 47052, 47111 and 47138 to deviate from its main extension rule to serve nine tracts and a development, the Union Pacific industrial properties, and 160 acres outside its certificated area, respectively; Vallecito's Petition for Modification of Decision No. 68077 in its Application No. 46658; and San Gabriel's Application No. 47112 to purchase Vallecito's preferred stock. The instant matter and Application No. 47094 were submitted for decision; the other matters were continued to a date to be set.

Union Pacific's manager of properties testified that on June 16, 1964, he had applied in writing to Vallecito for water service and that his communication had not been answered. Thereafter conversations between Vallecito's manager and Union Pacific's

industrial agent (a subordinate of its manager of properties) ensued. Such conversations did not lead to the execution of a water main extension agreement. Union Pacific then applied for service from San Gabriel and will execute an agreement requiring a subdivider's advance of approximately \$130,000 of the total estimated cost of \$188,500 for the necessary water-system installations. Exhibit No. 7 shows the locations, outlined in green, of two industrial sites on which Union Pacific has granted options to purchase to Peirce Carpet Mills and Westwood Ceramics Supply Company, respectively. Construction of lead-in and spur tracks to serve both industrial sites and others in the proposed area, as shown in yellow on Exhibit No. 7, is in progress. The only condition to be met before sale agreements are executed is the ability of Union Pacific to assure the purchasers and prospective purchasers and lessees of other properties of an adequate water supply. Exhibits Nos. 2, 3 and 4 are copies of correspondence between San Gabriel and Union Pacific regarding the availability and terms of such water supply.

Exhibit No. 5 is a copy of a letter from Lawrence S. Gray, Jr., one of the owners of the five-acre adjacent property known as Lot 8 of Block 5 of Tract No. 1343, supporting the application. The record shows that water service could be provided to the Gray properties without the necessity of executing a main extension agreement requiring an advance by the subdivider.

Exhibit No. 6 is a schedule showing San Gabriel's sources of water supply in its El Monte Division. It shows

adequate capacity for San Gabriel's present El Monte service area, and that proposed herein.

By Decision No. 68077 (supra), dated October 20, 1964, the Commission found that not only had Vallecito's advances for construction exceeded the 50 percent ratio to its net utility plant permitted by Rule No. 15, Section A.2, Limitation of Expansion, but that if the application were granted they would further exceed it. The application, because of the public demand for water service, was granted, but it was found that the limit of permissible deviation was reached by the granting of that application and it was decided that Vallecito should not be permitted thenceforth to continue to deviate from its rule. Vallecito was ordered to publish a notice of its financial inability to further extend its facilities and service under its filed main extension rule. Exhibit No. 10, and testimony of Vallecito's manager, and statement of its counsel, show that Vallecito's ratio of advances for construction to net utility plant exceeds the 50 percent ratio limitation of its Rule No. 15.

On November 4, 1964, Vallecito filed Application No. 47094 (supra) seeking approval of a financial plan which, it alleged, would remedy its financial problems. Said application was denied by Decision No. 69105, dated MAY 20 1965.

Exhibit No. 8 is a copy of San Gabriel's balance sheet as of September 30, 1964, and comparative statement of income and earnings for the 12 months ending September 30, 1963 and 1964, the months of September 1963 and 1964, and the first nine months of 1963 and 1964. San Gabriel's vice president and treasurer testified that the water-system construction costs, involved in the instant application, required to be financed by San Gabriel would be financed with cash on hand and in banks, which amounted to \$118,681 on September 30, 1964.

By its Petition to Set Aside Submission and for Consolidation (supra) Vallecito alleged that San Gabriel's plans to serve the Union Pacific industrial site would not comply with City of Industry and Los Angeles County ordinances regarding fire flows. The County Division Fire Chief for Research and Planning has recommended that 5,000 gpm of fire flow be available. San Gabriel would be expected to comply with all ordinances and requirements of proper authorities.

The Commission finds that:

1. Vallecito Water Company although, by Decision No. 54523, dated February 11, 1957, it was granted a certificate of public convenience and necessity to construct and operate a public utility water system covering, among other areas, that portion of Tract No. 1343 comprising 230 acres owned by Las Vegas Land and Water Company, a wholly owned subsidiary of Union Pacific Railroad Company, and Lot No. 8 of Block 5 of Tract No. 1343 adjacent to the Union Pacific property comprising five acres and owned by

Lawrence S. Gray and others, is prohibited from executing main extension agreements to serve said properties by the limitation imposed under Section A.2 of its Rule No. 15 and by Decision No. 68077, dated October 20, 1964.

2. Union Pacific Railroad Company has requested immediate water service from San Gabriel Valley Water Company with water system installations through and adjacent to the Union Pacific properties described in the application herein and Union Pacific could and would complete and execute sales agreements at once with at least two industries except for the lack of water service thereto.

3. San Gabriel's water supply is adequate.

4. Public convenience and necessity require that San Gabriel Valley Water Company be granted a certificate of public convenience and necessity covering the area sought by San Gabriel in this application.

5. San Gabriel's request for authority to apply its El Monte Division tariffs to the area certificated to it hereinafter is reasonable.

The application should be granted.

The certificate hereinafter granted shall be subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED that:

1. San Gabriel Valley Water Company is granted a certificate of public convenience and necessity to extend its public utility water system to and construct and operate a public utility water system in the area described in the application herein.

2. San Gabriel Valley Water Company is authorized to apply its presently filed El Monte tariffs to the area certificated herein and shall, within thirty days after the effective date hereof, revise said tariffs accordingly.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 20th day of May, 1965.

Frederick B. Hallock
 President

George J. Hoover

Angela

 Commissioners

*I will file a dissent,
 Peter E. Hutchill*

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COMMISSIONER PETER E. MITCHELL DISSENTING:

The majority opinion generates a plain and very simple maxim in its theme. It perhaps can best be delineated sententiously as: Rely not on the right received from the Commission but on the right of the Commission to change its mind.

I agree with the majority -- such a concept is indeed the most advanced and pragmatic approach yet to utility regulation. I only disagree that it is the proper approach.

The Vallecito Water Company, in February, 1957, was granted a certificate of public convenience and necessity by this Commission to furnish water to the 235 acres of industrial property now at issue. ^{1/} This certificate has never been revoked by the Commission nor does the majority opinion do so. I will not expand on the legal rights and obligations which the Commission creates by the issuance of a certificate for it may be the courts will exercise their independent judgment in this regard.

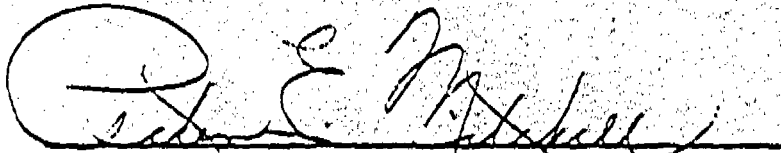
True enough, along the way, Vallecito Water Company has encountered some financing problems. But then -- is there any major water utility in this State that can claim otherwise? Harken to the comments of the utility and finance divisions of this Commission

^{1/} Decision No. 54523, dated February 11, 1957. Note: In that decision, both San Gabriel and Vallecito filed similar applications to serve the area. The Commission rejected San Gabriel's application and granted Vallecito a certificate. As President of the Commission in 1957, I participated in and signed the decision.

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which state in part: ".... it appears that the proposed issue of preferred stock (Application No. 47094) will definitely strengthen Vallecito's financial position and that it would therefore be able to obtain up to \$600,000 of cash funds through short- or long-term debt financing to finance construction or to pay refunds on advance contracts."^{2/} I endorse these remarks but hasten to add that these are not my words that are not accepted; these are the words of the best qualified and best informed experts in their fields in the State of California.

The effect of the majority action is quite serious. It is an invasion of certificated territory of a public utility to award the said territory to an applicant unsuccessful in 1957. It further creates an atmosphere which must be reflected by the parties and in the attitude of the staff in subsequent affiliated matters before this Commission.^{3/}


Peter E. Mitchell, Commissioner

^{2/} Memorandum dated May 10, 1965.

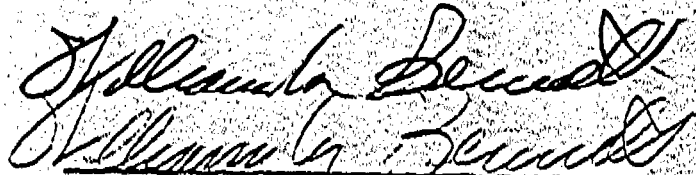
^{3/} Case No. 8086, dated December 15, 1964 (see my dissent, Decision No. 63217, dated November 10, 1964, requesting an investigation). Case No. 8086 has not even been set for hearing.

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DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

It is a serious thing for all the reasons that a basic knowledge of public regulation would indicate to permit one utility to serve in territory already granted to another public utility. Absent the most unusual circumstances, it is neither permitted by law nor is it justified. Accordingly I would grant the authority as requested by Vallecitos Water Company herein.



WILLIAM M. BENNETT
Commissioner

San Francisco, California

May 21, 1965