

69381

Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VALLECITO WATER COMPANY, a Corporation for authority to deviate from its Main Extension Rule in order to serve water to subdivisions within the Company's certificated service area.

Application No. 46658
Petition for Modification of Decision No. 68077
(Filed November 4, 1964)

In the Matter of the Application of VALLECITO WATER COMPANY, a Corporation for authority to deviate from its Main Extension Rule in order to serve water to subdivisions within the Company's certificated service area.

Application No. 47052
(Filed October 20, 1964)

In the Matter of the Application of Vallecito Water Company, a Corporation for authority to deviate from its Main Extension Rule in order to serve water to approximately 235 acres within the Company's certificated service area.

Application No. 47111
(Filed November 12, 1964)

In the Matter of the Application of San Gabriel Valley Water Company for an Order Authorizing it to Acquire Preferred Stock of Vallecito Water Company.

Application No. 47112
(Filed November 13, 1964)

In the Matter of the Application of VALLECITO WATER COMPANY, a Corporation, for a certificate of public convenience and necessity to furnish water service at zone rates in territory adjacent to its present service area, and for authority to deviate from Main Extension Rule to serve water within a portion of such territory, all within the unincorporated area of Los Angeles County.

Application No. 47138
(Filed November 20, 1964)

APPEARANCES

William M. Lassleben, Jr., for petitioner and applicant.
Brobeck, Phleger & Harrison, by Robert N. Lowry, and John E. Skelton, for San Gabriel Valley Water Company, applicant and protestant in Application No. 47111.
W. I. Kennedy, for Union Pacific Railroad Company, interested party in Application No. 47111.
Raymond E. Heytens, Jerry J. Levander and Robert C. Durkin, for the Commission staff.

O P I N I O N

In the above-entitled matters, Vallecito Water Company:

1. In Application No. 46658, Petition for Modification, seeks removal of the requirement in Decision No. 68077, dated October 20, 1964, that it publish a notice of its financial inability to further extend its facilities and service under its filed main extension rule; the Commission having found in said decision that Vallecito should not be permitted thenceforth to continue to deviate from its rule, and having found that the limit of such permissible deviation had been reached by the granting of Application No. 46658. The record shows that said notice has not been published.
2. In Application No. 47052, seeks authority to deviate from the provisions of Section A.2 of its Main Extension Rule No. 15, Limitation of Expansion, and to enter into subdivider main extension agreements requiring the advance, subject to refund, of \$63,600 for water system installations to serve 212 lots in nine tracts, and \$16,800 to serve a 168 multiple-residential unit in a single tract. Said tracts are within Vallecito's certificated area. The authority is required because Vallecito's ratio of advances for construction is in excess of 50 per cent of its net utility plant.

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3. In Application No. 47111, seeks authority to deviate from its main extension rule and to enter into a subdivider main extension agreement of \$100,000 to serve 235 acres of Union Pacific Railroad (230 acres) and Lawrence S. Gray (5 acres) industrial properties within its certificated area. The authority is required for the same reason as in Application No. 47052 (supra).
4. In Application No. 47138, seeks authority to deviate from its main extension rule and to enter into subdivider main extension agreements requiring the advance, subject to refund, of \$88,596 covering the estimated cost of providing water service to Tract 29803, which is the first unit and is a portion of Tentative Tract 28052 comprising approximately 160 acres in unincorporated territory of Los Angeles County, containing 56 residential lots (the second unit of said tract, known as Tract 29942, containing 147 residential home sites and one public school site, is being subdivided and the grading and earth work required is in progress), a new reservoir site and necessary easements and title to an access road to the reservoir, at zone rates, outside of, but contiguous to, its certificated area on the south. The authority is required for the same reason as in Applications Nos. 47052 (supra) and 47111 (supra).

In Application No. 47112, San Gabriel Valley Water Company seeks authority to acquire Vallecito's preferred stock, only if the sale and issuance of such stock were authorized pursuant to Vallecito's Application No. 47094 (infra).

Public hearings on the instant petition and applications were held on January 11, 14, 18, and 22, 1965, before Examiner Warner at Los Angeles. The record was consolidated for hearing with Vallecito's Application No. 47094, and with San Gabriel Valley Water Company's Application No. 46987. At the outset of the hearings, the record shows that the parties were advised that,

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except for the request for the establishment of zone rates contained in Application No. 47138, the matters might be decided ex parte after a decision on Application No. 47094 had been issued. At the conclusion of the hearings, these matters were continued to a date to be set with that understanding. By Decision No. 69105 dated May 20, 1965, Application No. 47094 was denied.

In the first-named application, Vallecito alleged that it was besieged with communications from developers inquiring when water service would be furnished and available, and that the application contained, in itself, the necessary allegations to make out a prima facie case to grant the application because of the existing urgency and the desire of applicant to fulfill its responsibilities to the public within its service area.

In its petition and two last-named applications, Vallecito alleged, among other things, that it had adopted a program (constituting Application No. 47094) which would improve the financial condition of the company. Exhibit 3, attached to the petition, is a copy of a letter to the Commission dated November 3, 1964, outlining such program which contemplated the issuance of 10,000 shares of \$50 par value convertible preferred stock with an aggregate par value of \$500,000.

Vallecito's annual report to the Commission for the year 1964 contains its latest balance sheet. It shows that, as of December 31, 1964, advances for construction were \$1,085,558.74 and total utility plant, less reserves, was \$2,004,167.52, a ratio of 54.2 per cent (the 1963 ratio was 52.9 per cent). Said balance sheet does not show to what extent advances received during 1964, pursuant to four prior main extension rule deviations authorized by

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the Commission, were recorded, nor, of course, does it show the effect of Vallecito's instant applications on its ratio of advances to net plant. As of December 31, 1964, Vallecito's current assets were \$103,811.62 and current liabilities were \$332,896.45. ✓

The record shows that had Vallecito's Application No. 47094 been granted, its ratio of advances to net utility plant would have exceeded the 50 per cent limitation of the main extension rule. Vallecito alleged that with additional debt financing, if Application No. 47094 were granted, such ratio would be reduced below 50 per cent. No application by Vallecito for approval of any debt financing program has been filed.

By Decision No. 69106, dated May 20, 1965, San Gabriel Valley Water Company's Application No. 46987 to serve the 235 acres of Union Pacific Railroad and Lawrence S. Gray properties, covered by Vallecito's instant Application No. 47111, was granted.

We find that:

1. The granting of any one or all of the instant applications of Vallecito Water Company would cause applicant's advances for construction to further exceed a 50 per cent ratio to its net utility plant.
2. No satisfactory financial program to reduce Vallecito's ratio of advances to net utility plant to below 50 per cent is of record.
3. Vallecito's financial structure and operations would be impaired by the granting of any one of or all of its applications.
4. The granting of Vallecito's petition and its applications would be adverse to the public interest.
5. The basis of San Gabriel's application to purchase Vallecito's preferred stock has been removed by Decision No. 69105.

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We conclude that Vallecito's petition and its applica-
tions should be denied, and San Gabriel's application should be
dismissed.

O R D E R

IT IS ORDERED that:

1. The petition of Vallecito Water Company and its applica-
tions herein are denied.
2. The application of San Gabriel Valley Water Company
is dismissed.

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

Dated at San Francisco, California this 7th
day of JULY, 1965.

Frederick B. Hallock
President
George E. Grover
August
Commissioners

I will file a dissent.
Peter E. Mitchell

*My dissenting views will
be set forth separately.*
William R. Daniels

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COMMISSIONER PETER E. MITCHELL DISSENTING:

The basic purpose of regulation is to assure the furnishing of adequate service to all public utility patrons, without discrimination, and at the lowest reasonable rates consistent with the interests both of the public and the utilities.^{1/} There may be manifold approaches by the California Public Utilities Commission to achieve this purpose but there should be only one conclusion - success. Can the majority represent that its decision answers our duty as regulators?

The applications denied herein were filed with this Commission late in 1964. Since that time water facilities have been installed, and homes built, in certain of the subdivisions for which Vallecito Water Company asks authorization from this Commission to serve. The rejection of these applications by the majority without any proffer of assistance is an obstruction to the orderly development of the areas involved.

The decision recites that four days of hearings were held. Indeed they were but not on the instant applications. Testimony was taken on Application No. 47094 which was consolidated with the five applications herein. As the majority notes the parties were advised that these five applications might be decided ex parte - and they are.

It is my belief that further hearings should and must be held on these applications. We cannot disregard the exigencies of the affected parties. There are contractors ready to build, families waiting to settle, communities to be expanded.

The majority suggests that there has been no financial program of Vallecito which is satisfactory to reduce its ratio of advances to net utility plant below 50 percent. I disagree. Because

^{1/} Public Utility Regulation In California, Roderick B. Cassidy. West's Annotated California Codes.

of the ex parte nature of the decisions I will therefore adduce in my dissent observations on the financial structure and operations of Vallecito which more properly should have been ascertained at a public hearing. The annual report of Vallecito for 1964 summarized below shows a tolerable financial position.

The December 31, 1964, balance sheet included in the 1964 annual report filed with this Commission by Vallecito Water Company shows assets and liabilities as follows:

<u>Assets</u>		
Utility plant	\$2,408,369.75	
Less: Reserves for depreciation and amortization	<u>404,202.23</u>	\$2,004,167.52
Current assets		103,811.62
Deferred debits		<u>57,430.22</u>
Total Assets		<u><u>\$2,165,409.36</u></u>
<u>Liabilities</u>		
Common stock equity		
Common capital stock	\$383,320.00	
Capital surplus	42,530.37	
Earned surplus	<u>102,601.95</u>	\$28,452.32
Long term debt		45,000.00
Notes payable - short term		225,000.00
Other current liabilities		107,896.45
Advances for construction		1,085,558.74
Other deferred credits		39,510.82
Contributions in aid of construction		<u>133,991.03</u>
Total Liabilities		<u><u>\$2,165,409.36</u></u>

Excluding from consideration advances and contributions in aid of construction the utility had a capital structure consisting of the following:

Long term debt	\$ 45,000.00	5.6%
Notes payable - short term	225,000.00	28.2
Common equity	<u>528,452.32</u>	<u>66.2</u>
Total	\$798,452.32	100.0%

By itself the capital structure indicated above would be quite satisfactory from a financial point of view but the fact remains that \$1,219,549.77 of the investment in properties has been financed by

advances and contributions in aid of construction, an amount in excess of all other sources of capital funds. Advances in aid of construction alone approximated 54.17 percent of the investment in utility plant less applicable reserves for depreciation and amortization and thus constituted the largest source of funds utilized by the utility to finance its plant construction program.

Since the percentage relationship of advances in aid of construction to plant less depreciation reserve is in excess of 50 percent the utility is restricted from further extension of its distribution mains without first receiving specific approval from the Commission for authority to deviate from the provisions of the water main extension rule, a deviation which the majority of the Commission has not seen fit to authorize.

Under the conditions it now faces, with construction of homes proceeding or ready to proceed within its service area, Vallecito should take steps to alleviate the condition which now exists. It could

(1) Terminate existing main extension contracts in accordance with Section C.3.a. of the main extension rule, which provides that a contract may be purchased by the utility and terminated, after first obtaining the authorization of the Commission, after the number of customers receiving service from the extension equals 60 percent of the total number of customers for which the extension was designed. The payment may not exceed the present worth at 6 percent of the annual refunds payable. After sufficient contracts have been purchased to reduce the ratio of advances to less than 50 percent, the utility could then make further extension of its system.

(2) The utility, with the approval of the holders of main extension contracts, could request Commission authorization to make future payments of refunds by issuance of securities, usually common or preferred stock or in notes. This reduction in cash required for refunds might justify the lifting of the restriction against extension.

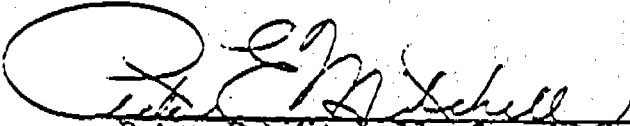
(3) The utility, with the agreement of the holders, or prospective holders of main extension agreements, could request Commission approval of main extension contracts providing that the holder would waive payment of refunds until such time as the utility's ratio of advances was reduced to less than 50 percent.

To the extent that Vallecito might require funds to refinance existing short-term indebtedness or to finance the purchase and termination of existing main extension contracts it could petition the Commission for authority to issue shares of its presently authorized common stock, prorata to existing shareholders, at a price at least equal to the present book value. This source of funds would further improve Vallecito's capital structure, enable it to retire existing short-term indebtedness, give it a base for possible future borrowings and provide it with cash funds to finance needed plant improvements other than in-tract facilities, to terminate refund contracts, and make refunds on such contracts.

While I have here commented on things Vallecito might do to reduce the amount of advances in aid of construction contracts outstanding it should be borne in mind that even under existing conditions Vallecito will probably generate sufficient cash funds from internal sources to meet the refund payments on advance contracts as they become due. For the year 1964 Vallecito had net income transferred to surplus of \$47,740.94 after deducting depreciation expense of

\$36,617.41. It thus had internally generated cash totaling \$84,358.35 as compared to refund payments on advance contracts of \$42,653.00 made during the same period.

In conclusion I am concerned that residential and industrial developers in the service area of Vallecito are unable to proceed with their construction plans because of inability to obtain the required water service. There appears to be no compelling reason why the requested deviations should be denied when the facts show that the balance of refund contracts outstanding is only slightly in excess of the 50 percent maximum stated in the water main extension rule and since the financial statements of Vallecito indicate that it will generate sufficient cash from internal sources to enable it to meet payments on the refund contracts as they become due.


Peter E. Mitchell, Commissioner

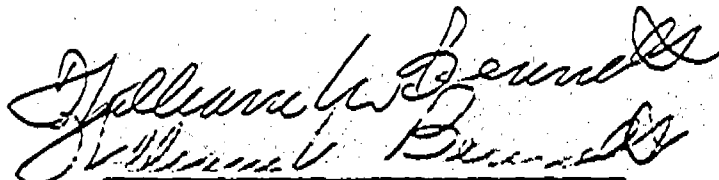
July 8, 1965
San Francisco, California

DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

The majority opinion ignores the reality present here of a public utility confronted with demands for water service. The dedication to a theoretical and ideal capital structure is small comfort to those members of the public who are demanding water service. The financial position of the Vallecitos Water Company as set forth in the dissenting opinion of Commissioner Mitchell demonstrates that it is quite feasible for Vallecitos to render service. The adherence of the majority to a precise application of the main extension limitation does not serve the public interest.

Accordingly, I dissent to the majority opinion and concur with the views of Commissioner Mitchell.


WILLIAM M. BENNETT
Commissioner

San Francisco, California

July 14, 1965