

IT

**ORIGINAL**

Decision No. 84683

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY, a corporation, for a Certificate of Public Convenience and Necessity and for authority to carry out the terms of certain contracts relating to the construction of facilities required to render water service in the proposed certificated area.

Application No. 53653  
(Filed October 20, 1972)

Investigation on the Commission's own motion into the operations, practices, service, equipment, facilities, rules, regulations, contracts, and water supply of the MONTEREY PENINSULA DISTRICT OF CALIFORNIA-AMERICAN WATER COMPANY, a corporation.

Case No. 9530  
(Filed April 3, 1973)

ORDER DENYING REHEARING AND  
MODIFYING DECISION NO. 84527

On June 19, 1975 Del Monte Properties Company (Del Monte) filed a petition for rehearing of Decision No. 84527, issued June 10, 1975. On June 20, 1975 Gallaway and Sons, Inc. (Gallaway) also filed a petition for rehearing of Decision No. 84527. Since both petitions were filed ten days or more before the effective date of Decision No. 84527, the decision was stayed. (Public Utilities Code, Section 1733(a).)

The Commission, after considering each and every allegation of both petitions, is of the opinion that good cause for rehearing of Decision No. 84527 has not been shown. However, the Commission thinks it necessary that Decision No. 84527 be modified so as to exempt from Decision No. 84527 those parties granted a variance in Decision No. 81987 from the restrictions set forth in Decision No. 81443.

Contrary to the claims of both petitioners, the weight of the evidence in the record supports the findings and conclusions in Decision No. 84527 that due to the lack of adequate facilities the water supply of California-American Water Company (Cal-Am) in the Monterey Peninsula District (Monterey District) is insufficient to meet the demands of its present customers. Based on these findings and conclusions, the Commission was acting within its statutory authority in denying Del Monte's requests and motions that Cal-Am be ordered to extend service to the Deer Flats and Old Capitol Tract areas in the Monterey District. (Public Utilities Code, Section 2708.)

Del Monte's claims that additional supplies of water can be made to the Monterey District "with minimal effort", "with minimal capital expenditures" and "with a relatively minor amount of facility expansion" are totally unsupported by the evidence in the record. The discussion at pages 44 through 63 of Decision No. 84527 shows emphatically that additional water supplies will require a great deal of facility expansion, costing huge amounts of capital, and that Cal-Am's precarious financial condition will make it difficult to raise sufficient amounts of capital to construct these necessary facilities. Also, construction of any of these facilities can commence only after compliance with Section 762.1 of the Public Utilities Code and Sections 25000, *et seq.*, of the Public Resources Code (the California Environmental Quality Act) is assured. The above-described factors make it apparent that the completion of additional facilities in the Monterey District will not be accomplished for a relatively long period of time.

In denying Del Monte's motions the Commission stated its full cognizance that its actions would distort the normal pattern of real estate values in the Monterey District (Decision No. 84527, mimeo, p. 43). However, in the exercise of its police powers the Commission considered that allowing additional service connections, beyond those allowed in Decision Nos. 81443, 81987 and 84527, would

injuriously withdraw the supply of water to Cal-Am's existing customers in the Monterey District. The Commission's interest in protecting Cal-Am's existing customers outweighed the probable distortion of real estate values in the Monterey District and outweighed Del Monte's investments in the Deer Flats and Old Capitol Tract areas made in reliance on previous agreements between Cal-Am and Del Monte with respect to these parcels of property. Though these agreements were approved by the Commission in Decision No. 60908 (A.42556) and Decision No. 67551 (A.46256), these agreements contained the following provision:

"This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction."

When these agreements were approved the water supply situation in the Monterey District was not the same as the supply situation that presently exists. In the subject proceedings the Commission exercised its jurisdiction to protect the interests of Cal-Am's existing customers in the Monterey District.

The Gallaway matter is distinguishable from the Del Monte case. Unlike Del Monte, Gallaway was granted in Decision No. 81987 a variance from the restrictions set forth in Decision No. 81443, and the Commission allowed Cal-Am to extend water mains to the fourth subdivision unit (Carmel Views No. 4) owned by Gallaway. In reliance on the grant of said variance Gallaway claims it expended approximately \$600,000 on Carmel Views No. 4 and sold 31 of the 71 lots in said subdivision to purchasers who also relied on Decision No. 81987 to the extent that they could expect water service for their property. Del Monte, on the other hand, was not granted a variance from Decision No. 81443 and did not make any improvements to its property in reliance on any variance.

To allow Cal-Am to extend its mains to Gallaway's subdivision and twenty months later refuse to allow the service connections for such subdivision without any prior warning to Gallaway

that such action would be taken would be inequitable both to Gallaway and the 31 purchasers of lots within Carmel Views No. 4.

Based on the foregoing, the Commission will modify Decision No. 84527 so as to allow the two parties granted a variance from Decision No. 81443 by Decision No. 81987 to obtain service connections to their property.<sup>1/</sup>

THEREFORE, IT IS ORDERED that:

1. Rehearing of Decision No. 84527 is hereby denied.
2. Finding No. 7 of Decision No. 84527 is hereby modified to read as follows:

"The water supply situation is such that there is no justification for rescinding or liberalizing our interim order of May 30, 1973. However, the variances from Decision No. 81443 granted in Decision No. 81987 should be reaffirmed, and water service connections should be allowed with respect to the properties described in Decision No. 81987."

3. Conclusion No. 4 of Decision No. 84527 is hereby modified to read as follows:

"Ordering Paragraph 1 of Decision No. 81443 should be reaffirmed and continued in effect. The Ordering Paragraph of Decision No. 81987 should also be reaffirmed and continued in effect."

4. Conclusion No. 5 of Decision No. 84527 is hereby modified to read as follows:

"Until otherwise permitted by further order of this Commission, Cal-Am should not provide water to new service connections, other than those in municipally sponsored redevelopment or renewal projects, unless a valid building permit has been issued prior to the effective date of this order. However, this prohibition should not apply to those parcels of property granted a variance from Decision No. 81443 by Decision No. 81987."

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<sup>1/</sup> In addition to Gallaway, Decision No. 81987 allowed Cal-Am to extend water mains to two lots owned by one Adeline DiLorenzo. These were the only variances allowed by the Commission from Decision No. 81443.

5. Ordering Paragraph No. 3 of Decision No. 84527 is hereby modified to read as follows:

"Ordering Paragraph 1 of Decision No. 81443 is reaffirmed and continued effective as of May 30, 1973. The Ordering Paragraph of Decision No. 81987 is reaffirmed and continued effective as of October 10, 1973."

6. Ordering Paragraph No. 4 of Decision No. 84527 is hereby modified to read as follows:

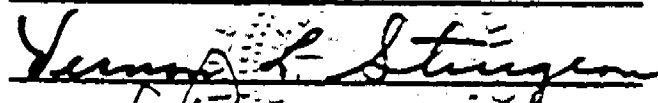
"Until otherwise permitted by further order of this Commission, California-American Water Company shall not provide water to new service connections within its Monterey Peninsula District, other than those in municipally sponsored redevelopment or renewal projects, unless, prior to the effective date of this order, a valid building permit has been issued. However, this prohibition shall not apply to those parcels of property granted a variance from Decision No. 81443 by Decision No. 81987."

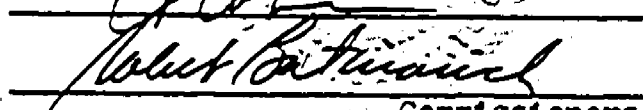
In all other respects the provisions of Decision No. 84527 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15<sup>th</sup> day of JULY, 1975.

  
President

  
Commissioners

  
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.