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Decision No. 85260

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Peter H. Klaussen,  
Complainant,  
vs.  
California-American Water Co.,  
a corporation,  
Defendant.

Case No. 9962  
(Filed August 28, 1975)

Peter H. Klaussen, for himself, complainant.  
Lenard G. Weiss, Attorney at Law, for California-  
American Water Co., defendant.  
Eugene M. Lill, for the Commission staff.

O P I N I O N

Preliminary

This is a complaint by Peter H. Klaussen against California-American Water Company (Cal-Am). By the complaint Mr. Klaussen requests an order requiring Cal-Am to provide water service to his property, Lot 31 in the Rancho Rio Vista Subdivision, located in Cal-Am's Monterey District, in the unincorporated territory east of the city of Carmel-by-the Sea, Monterey County.

Cal-Am, in compliance with Ordering Paragraph 4 of this Commission's Decision No. 84527 dated June 10, 1975 in Application No. 53653 and Case No. 9530, has refused to extend service to Mr. Klaussen's property.

In Decision No. 84527, the Commission found, among other things, that:

"Cal-Am's Monterey District has reached the limit of its capacity to supply water and, except as provided in the order that follows, no further consumers can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have heretofore been supplied by the corporation."

and in Ordering Paragraph 4, pursuant to Section 2708 of the Public Utilities Code, ordered:

"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."

The opinion in Decision No. 84527 contains a description of the events and conditions that caused the Commission to impose the service restriction.

#### Hearing

A public hearing in this complaint was held before Examiner Boneysteele at San Francisco on November 7, 1975. Testimony was taken from Mr. Klaussen and from Eugene M. Lill, a senior utilities engineer of the Commission's Hydraulic Branch. Cal-Am's attorney, Lenard G. Weiss, presented the utility's position by statement of counsel.

#### Background and Klaussen's Testimony

There was no dispute over the facts received in evidence. According to Mr. Klaussen, in mid-June of 1975 he became aware of the restriction imposed by Decision No. 84527 and travelled from his present home in Olympic Valley<sup>1/</sup> to Monterey and applied for water service from Cal-Am on June 20, 1975. He was informed that a building permit might be required. He returned home and his architect completed building plans which were submitted with an application for a Monterey County building permit by a Carmel Valley contractor.

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<sup>1/</sup> Located near Tahoe City, Placer County, and commonly known as Squaw Valley.

The contractor gave the building department both his and Mr. Klaussen's phone number for reference.

The plans were checked by early July, and the building department attempted to contact the contractor, who had left the state on a three-week vacation, for minor corrections. The building department apparently made no attempt to contact either Mr. Klaussen or his architect.

After a petition for rehearing which stayed the order in Decision No. 84527 the order was made effective with a minor modification on July 15, 1975 by Decision No. 84683. On July 29, 1975, Cal-Am addressed a letter to Mr. Klaussen in which it notified him that, by not having a valid building permit on July 15, 1975, he did not qualify to receive water service. This was the first notice that he had received of the effective date of the service restriction.

Mr. Klaussen then appealed informally to the Commission staff and was informed by a supervising engineer of the Hydraulic Branch that, because of the mitigating circumstances, if Mr. Klaussen would obtain a building permit the staff would request Cal-Am to provide water service to the Klaussen property. Mr. Klaussen returned to Monterey County and obtained a building permit on August 20, 1975. He then so informed Mr. Lill of the Hydraulic Branch.

On the next day, August 21, 1975, Mr. Lill called Mr. Klaussen to report that Cal-Am had rejected the staff recommendation, saying that it would "open a Pandora's box" of problems. After further consultation with the staff, Mr. Klaussen filed the subject formal complaint. He said that he now owes his architect \$3,500 for building plans and has a lot on which he cannot build and which he cannot sell at a fair value. He argues that he tried, in good faith, to satisfy the order, and his not receiving a building permit by July 15 was out of his control.

Other Evidence

The testimony of Mr. Lill and the statement of Mr. Weiss generally corroborated Mr. Klaussen's testimony. Mr. Weiss said that the refusal of Cal-Am to supply service, despite the staff's recommendation, was based on its interpretation of Ordering Paragraph 4 of the Commission's order in Decision No. 84527 and on Cal-Am's guidelines for interpreting and applying Ordering Paragraph 4.<sup>2/</sup> Mr. Weiss contended that, according to Ordering Paragraph 4, Cal-Am was obligated to refuse service to Mr. Klaussen's property.

Discussion

As noted earlier, the Commission, in Decision No. 84527 found that Cal-Am's Monterey District has reached the limit of its capacity to supply water and that, with the exception of service connections in redevelopment and urban renewal projects, no further customers can be supplied from the system of the utility without injuriously withdrawing the supply wholly or in part from present customers.

The last sentence of Section 2708 of the Public Utilities Code reads:

"The commission, after hearing upon its own motion or upon complaint, may also require any such water company to allow additional consumers to be served when it appears that service to additional consumers will not injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility."

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<sup>2/</sup> The guidelines were received as Exhibit 1 and a letter from the Commission's Secretary approving the guidelines was received as Exhibit 2.

In Decision No. 84527 the Commission concluded that there is a present deficit of 1,000 acre-feet in the available water supply of the Monterey District, and that this deficit is being met by overdrafting the Seaside aquifers. The Commission also noted that there is a real and frightening possibility that salt water may intrude into the Seaside aquifers and make them unavailable for use for many years.

Although the record in Case No. 9530 would have supported the order in Decision No. 84527 being made effective on the date of its issuance, June 10, 1975, the Commission allowed the customary 20-day grace period, and, through the process of a timely filing of a petition for rehearing, the order did not finally become effective until July 15, 1975. Unfortunately, through inadvertence on the part of others than Mr. Klaussen, he did not secure a valid building permit during this five-week period. The order is now in effect, however, and, even though service to a single additional customer would have an insignificant effect on the overall water supply situation, before the Commission may allow service to Mr. Klaussen's property it must, according to Section 2708, find that service to this additional customer would not injuriously withdraw the supply from present water customers.

No new facts have come to our attention, either formally or informally, that would lead us, at this time, to modify our findings and conclusions as set forth in Decision No. 84527. In light of our expressed concern that the Seaside aquifers may be damaged at present rates of consumption, through salt water intrusion, we cannot make the finding required by Section 2708. The Commission staff, Cal-Am, and the Monterey Peninsula communities are, in Case No. 9530, formulating programs to reduce water consumption and increase supply.

The successful implementation of these programs would enable the Commission to make the finding that is required by Section 2708. Until some such events happen, however, the Commission will be in no position to grant an exemption to the requirements of Decision No. 84527.

Finding

There is no indication that the extension of water service to complainant's property would not injuriously withdraw the water supply in part from those who theretofore had been supplied by the Monterey District of Cal-Am.

Conclusion

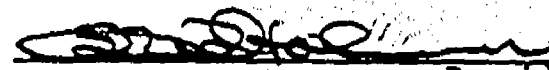
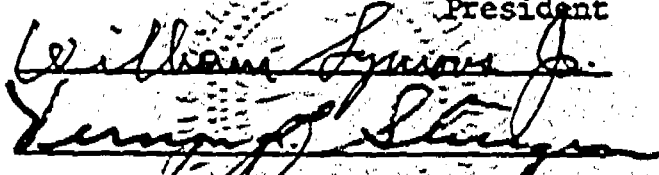

The Commission concludes that the relief requested in the complaint should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 35th day of DECEMBER, 1975.

  
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President  
  
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Commissioners

*I dissent  
Robert Bateman  
Commissioner*