

Decision No. 85409

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

Dinkelspiel, Pelavin, Steefel & Levitt, by
Lenard Weiss, Attorney at Law, and Charles
de Young Elkus, Jr., for California-American
Water Company.

Graham & James, by Boris H. Lakusta and David J.
Marchant, Attorneys at Law, Donald G. Hubbard,
Attorney at Law, John M. Lotz, and James Saunders,
for Standex International Corporation; Hebard R.
Olsen, for Ord Terrace Water Quality Committee;
Chickering & Gregory, by James E. Burns, Jr.,
and David R. Pigott, Attorneys at Law, for
Del Monte Properties Company; L. W. Mc Intyre,
for the City of Monterey; Allan D. LeFevre,
for Gallaway and Sons; John M. Moore, Attorney
at Law, for Carmel Valley Limited; Dave Stewart,
for Monterey Pacific, Inc.; John Kramer, Attorney
at Law, for Richard Meffley, Department of Water
Resources; John Crivello, for the City of Seaside;
Loren E. Smith and Edwin B. Lee, for themselves;
Hal C. Green and Nancy Strathmeyer, for Monterey
Board of Realtors and Carmel Board of Realtors;
and Ralph Games, Leo E. Thiltgen, Philip Nelson,
and Tom Scardina, for Monterey County Building
Trades Council and Monterey County Labor Council;
interested parties.

Cyril M. Saroyan, Attorney at Law, and Melvin Mezek,
for the Commission staff.

THIRD INTERIM ORDER

Background

In Decision No. 84527 dated June 10, 1975, 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.

On October 17, 1975, the Commission received the following letter:

OFFICE OF THE MAYOR
Monterey, California 93940

Peter J. Coniglio

October 16, 1975

Public Utilities Commission
California State Building
San Francisco, CA 94102

Re: Water Ban
Monterey Peninsula Area

Gentlemen:

The undersigned Mayors of the Monterey Peninsula, which is the area served by the California-American Water Company, are gravely concerned about the continuing and devastating effect which the present water ban is having and will have on this entire area.

We recognize the seriousness of the overall water problem and the necessity for the development of short-term and long-term solutions thereto. To that end, we have recently taken steps to create an agency or entity representative of all concerned and interested parties who can and will undertake a coordinated and united program for achieving effective solutions.

As the Mayors of this Peninsula, we pledge to the Public Utilities Commission the diligent pursuit of a realistic and feasible program to solve the water problem and all facets thereof. We must candidly report, however, that we do not feel that the continuation of the water ban is proper and would like to clearly indicate that unless this ban is lifted, there will be serious and irreversible harm done to the economy of our area. We cannot allow this to continue.

We, therefore, respectfully and urgently request the opportunity to meet with the Commission at any time and place which is convenient to the Commission in the immediate future for the purpose of lifting this ban. Please note that our request is to meet with the Commission itself, and not members of the staff.

We appreciate and are fully cognizant of the fact that this may be an extraordinary request, but frankly this is an extraordinary situation. It is our strong conviction that, as the elected heads of our respective cities and representing over 130,000 people who are affected, it is incumbent upon us to remove this ban. Thus, our request.

OFFICE OF THE MAYOR
Monterey, California 93940

Peter J. Coniglio

Public Utilities Commission
October 16, 1975

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Charged with the responsibility of the overall welfare of our cities, and their citizens, we must indicate that if we cannot achieve a mutually satisfactory solution to this vital and critical matter, we will request assistance from the Office of the Governor.

It is therefore respectfully requested that a convenient time be set for such a meeting and that you contact the City of Monterey (City Manager's Office - (408)372-8121, Ext. 201) to coordinate the time and place.

Thank you for your attention to this matter. We await your reply.

Sincerely,

/s/ BERNARD A. ANDERSON
Bernard A. Anderson, Mayor
City of Carmel-By-The-Sea

/s/ ROBERT A. QUINN
Robert A. Quinn, Mayor
City of Pacific Grove

/s/ CHARLES W. BENSON
Charles W. Benson, Mayor
City of Del Rey Oaks

/s/ PHILLIP H. CALABRESE
Phillip Calabrese, Mayor
City of Sand City

/s/ PETER J. CONIGLIO
Peter J. Coniglio, Mayor
City of Monterey

/s/ B. J. DOLAN, JR.
B. J. Dolan, Jr., Mayor
City of Seaside

cc: Office of the Governor
Mayors of the Monterey Peninsula
Assemblyman Murphy
Senator Grunsky
Monterey Co. Board of Supervisors

At the direction of the assigned Commissioner, David W. Holmes, who is also President of the Commission, the examiner replied to the mayors, advising them that Section 2708 of the Public Utilities Code and the general requirements of due process required that there be a hearing before the Commission could consider modifying its order. The mayors were informed that Commissioner Holmes would be present at the October 30, 1975 hearing in Seaside and the planned order of business scheduled for that date would be interrupted to permit the mayors to submit their proposal.

Mayors' Proposal

The mayors' proposal was presented, under oath, by the Honorable Robert A. Quinn, mayor of the city of Pacific Grove, at the October 30, 1975 hearing, before Commissioner Holmes and Examiner Boneystele. Mayor Quinn testified that the mayors agreed that there is a water problem facing the Monterey Peninsula, but their concern was with the effect of the connection ban, which was not acting in the manner in which the mayors would like to see. They suspected that California-American Water Company (Cal-Am) has not been forced to take any additional steps to alleviate the problem that is obviously facing the utility. The mayors were concerned with the impact that the ban will have in regard to employment in the real estate, architectural, construction, and related fields.

Mayor Quinn said that, in 1968, the cities and the nearby unincorporated areas were faced with a court order over the effect that their waste water management was having on Monterey Bay. At that time the cities and the county formed a joint powers agency which has taken great strides in solving the waste water management problems. The cities and county are now in the process of forming another joint powers agency which will be known as the Monterey Peninsula Water Management Agency. This new agency is being formed in recognition

of the fact that there is an immediate need for the parties to take an active part in the required planning, construction, operation, and maintenance of facilities for the development, appropriation, collection, control, storage, treatment, and transportation of water supplies within and for the Monterey Peninsula.

Mayor Quinn testified that the councils of five of the six peninsula cities (Carmel being the exception) had adopted resolutions urging the lifting of the connection ban for legal lots of record as of July 15, 1975.^{1/} He then read the resolution as adopted by the four cities of Pacific Grove, Monterey, Del Rey Oaks, and Sand City. Seaside also adopted the resolution, but with modifications to the resolved clause. The county board of supervisors had not acted at the time of his testimony. (To the best of our knowledge the board of supervisors has not yet acted.)

The resolution, as adopted by the four cities, was read into the record by Mayor Quinn as follows:

"WHEREAS, by order of the Public Utilities Commission a ban has been placed on additional water usage within the California-American Water Company service area on the Monterey Peninsula; and

"WHEREAS, as a result of studies there has been determined to be a short-term problem as well as a long-range problem; and

"WHEREAS, the California-American Water Company has pledged itself to proceed with a solution to the short-range water problem by construction of the Canada de la Segunda Pipeline and the Begonia Iron Removal facility; and

"WHEREAS, area cities and Monterey County are in the process of forming a Joint Powers Agency to coordinate the investigation for determining proper and feasible solutions to the long-range water problems; and

^{1/} Staff witness Barnes estimated that in 1972 there were 1,734 vacant lots in Cal-Am's service area. These vacant lots would, when built upon, require 714 acre-feet of water (Exhibit 2, paragraph 7).

"WHEREAS, the continuation of the ban on additional water usage and connections will create a devastating and detrimental economic impact on the Monterey Peninsula; and

"WHEREAS, area cities and the county pledge community leadership and responsibility to seek long-term solutions and also assume the responsibility for control of use of existing water resources including water conservation measures in concert with the Public Utilities Commission;

"NOW, THEREFORE, BE IT RESOLVED, that the city or county hereby requests and urges that the present ban on additional water usage within the California-American Water Company service district be lifted immediately for legal lots of record as of July 15th, 1975, subject to the exercise of the community responsibilities herein pledged together with the continuing exercise of the Public Utilities Commission regulatory powers."

The resolved clause of the Seaside resolution reads:

"NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Seaside hereby requests and urges that the present ban on additional water usage within the California-American Water Company, service district be lifted immediately for legal lots of record as of July 15, 1975, subject to: (1) the exercise of the community responsibilities herein pledged together with the continuing exercise of the Public Utility Commission regulatory powers; (2) written assurance of a firm timetable to be provided by Cal-Am prior to lifting of the ban -- timetable to be acceptable by all municipalities; and (3) a guarantee that present customers in Cal-Am service area will not be adversely affected, must be sought by all responsible agencies, municipalities and Cal-Am, with direct PUC monitorship."

The resolutions were not all adopted unanimously, there being one no vote in each of the councils of Del Rey Oaks, Monterey, and Seaside.

Mayor Quinn said that the cities were, in the resolution, pointing out that they were prepared to implement ordinances and regulations to limit the usage of water and were willing to accept the consequences of water rationing. They were cognizant of the responsibility that they were asking the Commission to allow them to undertake and had no reservations. They also recognized that they must continue to work toward a long range solution of the water supply and transportation problem and pledged that such a solution was their goal.

Mayor Quinn's position was strongly supported by Mayors Bernard J. Dolan, Jr., of Seaside and Phillip H. Calabrese of Sand City.

Other Parties' Comments and Positions

Roger W. Poyner, Supervisor of the Fourth District of Monterey County and the Chairman of the Monterey County Board of Supervisors, supported the resolution, but testified that he did not support the original letter of the mayors calling for a total lifting of the ban.

The executive officer of the Monterey Bay District of Carpenters, Russell Hansen, testified on behalf of the Monterey County Building Trades Council and Monterey County Labor Council. Mr. Hansen pointed out that, out of 24 voting councilmen, 21 voted for the resolution. He said that he was sure that the cities understood the needs of his people. According to Mr. Hansen, the state's Employment Development Department has stated that the Monterey Peninsula was the hardest hit area for unemployment in California. Mr. Hansen said that, in his opinion the peninsula

was the hardest hit area in the United States. He said that the 30 percent unemployment that was now being experienced would be full employment compared to what would be faced unless something is done about the connection freeze.

Mayor Quinn's position was also supported by testimony from representatives of the Monterey and Carmel Boards of Realtors and the Monterey Peninsula Chamber of Commerce.

Two city councilmen, Joe Cota of Seaside and Mike Brown of Carmel spoke against the mayors' proposal, and Seaside Councilman Oscar C. Lawson explained his concern about the mayors' model resolution and said that this concern was reflected in the modifications embodied in the resolution of the Seaside city council.

A spokesman for the Ventana Chapter of the Sierra Club, Roderick B. Holmgren, testified that the chapter had repeatedly urged, not only before the Commission, but before a variety of official bodies on the peninsula that steps be taken to conserve the limited water supplies. The chapter was astounded that, thirty months after the issuance of the Commission's order instituting investigation, there has been almost no discussion by official bodies of conservation. The chapter was impressed however, by the plight of individual property owners who owned lots of record before the initial ban was imposed on May 30, 1973, and who did not act to obtain building permits before the final deadline on new hookups on July 15, 1975.

The Ventana Chapter suggested that, before the Commission considers removal of the present ban on water connections, even temporarily, and even for a limited group of property owners, it require the community to meet two conditions. The first condition would be to reduce the current consumption of water by Cal-Am's customers by at least 1,500 acre-feet of water per year. The second

condition would be for Cal-Am, and whatever public bodies are concerned, to reach a legally binding agreement for a program acceptable to the Commission for conservation of an additional 1,500 acre-feet.

Mr. Holgren suggested use of reclaimed water for golf course irrigation, an inverted rate structure, night irrigation of lawns and gardens, and use of water saving devices as possible conservation measures.

Kenneth J. McGinnis, on behalf of the Carmel Area Coalition, supported the concept of water reclamation and William B. Brown, of the Carmel Valley Property Owners Association, reiterated that organization's concern over possible future effects of pumping from the Carmel Valley aquifer.

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. 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.

Since the issuance of Decision No. 84527, progress has been made towards the near term solution of the Monterey water supply problem. Cal-Am has filed a proposed water conservation plan which

is presently being evaluated by our staff. The utility has informed the Commission that the sea water intrusion observation well in the Seaside area west of the Playa wells will be completed by January 31, 1976. According to reports filed pursuant to Decision No. 84527, plans and specifications for the Canada de la Segunda Pipeline are essentially complete and environmental data statements for the Canada de la Segunda Pipeline and Begonia Iron Removal Plant will be completed by January 15, 1976. (Plans for the Begonia plant have been complete for some time.)

The formation of the Monterey Peninsula Water Management Agency and the intention of the mayors to secure, by ordinance, effective and mandatory water conservation programs are encouraging developments. It is to be hoped that, by augmentation of supply and reduction of consumption, the present water supply deficit can be reduced and perhaps eliminated. With the availability of the observation well to give early warning of possible sea water intrusion, the Commission will be in a position to consider some relaxation of the connection freeze. At present, however, the best that the mayors can offer, in exchange for a lifting of the freeze, is, in the words of Mayor Quinn:

"We are saying that we will exercise diligent pursuit of a realistic and feasible program.

"We don't have a program that we can hand you now and say, 'This is going to solve the water problem.'" ^{2/}

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."

The Commission shares the concern of the mayors and those whose livelihood depends on the construction and sale of residential and commercial buildings. The Commission also is aware that the retirement plans of many lot holders have been shattered by the connection freeze. In Decision No. 84527 the Commission expressed its intention to lift the freeze at the earliest prudent moment.

Without some positive assurance of additional supply or reduced consumption, or both, however, we cannot make the finding, as is required by Section 2708, that service to additional customers will not injuriously withdraw water in part from present customers. Based on the record to date, it would be neither prudent nor legal to modify the ban. When the observation well is completed, mandatory and effective water conservation plans are implemented, and construction contracts let for the Begonia Iron Removal Plant and the Canada de la Segunda Pipeline project, the Commission will re-examine the possibility of easing the ban. Until these events occur, however, the Commission, as the Constitutional agency charged by law with the responsibility for water service rendered by California public utilities, must regretfully deny the mayors' request. In the meantime we shall expect our staff to work with the local agencies and Cal-Am in the formulation of effective mandatory water conservation plans.

Finding

There is no indication that the extension of water service to additional consumers will not injuriously withdraw the supply in part from those who heretofore had been supplied by the Monterey District of Cal-Am.

Conclusion


The Commission concludes that the relief requested by the mayors' letter of October 16, 1975 and by the resolutions of the various cities should be denied.

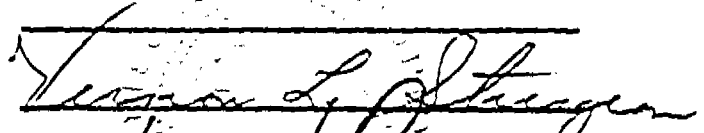


O R D E R

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 3rd
day of FEBRUARY, 1976.


President




Commissioners

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