

Decision No. 85934

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAVE SAN LORENZO RIVER
ASSOCIATION,)

Complainant,)

vs.)

BIG BASIN WATER COMPANY,
a partnership,)

Defendant.)

Case No. 9995
(Filed October 20, 1975)

John T. Stanley, for Save San Lorenzo River
Association, complainant.
Robert E. Bosso, Attorney at Law, for Big
Basin Water Company, defendant.
Mary E. Hammer, for herself; Graham Maloney,
Attorney at Law, for Galleon Properties;
and David Bockman, for Sierra Club
(Santa Cruz Regional Group); intervenors.
Eugene M. Lill, for the Commission staff.

O P I N I O N

Complainant Save San Lorenzo River Association requests that the Commission deny authority to Big Basin Water Company (Big Basin), a partnership composed of Kermit J. McGranahan, his wife Mary, Dr. Mahlon McPherson and his wife Blanche, to expand its service area to serve Galleon Heights Subdivision Unit 1 (Galleon Heights) located near Boulder Creek, county of Santa Cruz, until such time as Big Basin's application for a license to appropriate surface water now being used by Big Basin to serve its present customers is approved by the State Water Resources Control Board. A hearing was held on the matter at Santa Cruz on February 17, 1976.

Big Basin currently serves water to approximately 340 domestic connections in the Boulder Creek area. Its supply of water for many years has been appropriated from sources for which a license from the State Water Resources Control Board is required before water may be lawfully appropriated therefrom.^{1/} No licenses have been obtained; however, Big Basin currently has applications on file to obtain the licenses. The granting of licenses is being protested in part by complainant.

On September 10, 1975 the Commission received an amendment to Big Basin's tariff in the form of a revised service area map which added the contiguous area of Galleon Heights to Big Basin's service area.^{2/} At the same time Big Basin amended its tariff with the filing of a contract, signed September 9, 1975, between Galleon Properties, Inc. (Galleon) (the developer of Galleon Heights) and Big Basin covering the conveyance to Big Basin of a water system

^{1/} Section 1225 et seq. of the California Water Code.

^{2/} Section 1001 of the Public Utilities Code reads in part as follows:

"1001. No...water corporation...shall begin the construction of a...plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

"This article shall not be construed to require any such corporation to secure such certificate for an extension...contiguous to its...plant, or system, and not theretofore served by a public utility of like character...

"The commission, as a basis for granting any certificate pursuant to the provisions of this section, shall give consideration to the following factors:

- (a) Community values.
- (b) Recreational and park areas.
- (c) Historical and aesthetic values.
- (d) Influence on environment."

for serving Galleon Heights. Complainant filed a written objection dated September 22, 1975 to the enlargement of Big Basin's service area because of potential water supply problems in the area. The Commission's staff witness testified that upon investigation the staff determined that both the Big Basin and the Galleon Heights system each had adequate water available to service the areas and as a matter of course both the revised service area map and the Galleon-Big Basin contract became effective tariff changes.

Under the Galleon-Big Basin contract Galleon has conveyed and transferred to Big Basin for \$1 a complete water system including rights-of-way and two producing wells to serve Galleon Heights. The contract gives Galleon, its successors or assigns, the option to repurchase for \$10 the system and wells in the event and "only in the event that (1) there is a final decision of a court or administrative agency having jurisdiction determining that Big Basin may not use and ordering Big Basin not to use water for domestic water service purposes from its Jamieson springs and reservoir or from any other source, other than the 'Water System' (being conveyed), and (2) the effect of such final decision and/or order is to deprive Big Basin of all water supply sources, other than the wells and water tank(s) provided by Galleon to Big Basin, to serve the other then existing domestic water users of Big Basin." The term of the option is 59 years. Big Basin intends to connect the Galleon system to Big Basin's previous system, but the witness for Big Basin stated that it does not intend nor is it authorized by the county of Santa Cruz to make additional connections in its previous system based on the two wells it received from Galleon. The two wells deliver in the aggregate approximately 42 gallons per minute. The witness for Galleon estimated that it will take approximately 10 years before the subdivision will be fully developed with between 32 to 36 homes at

which time a full draw of 30 gallons per minute will be required. The witness testified that Galleon spent \$350,000 to develop the water system. The larger of the two wells, which delivers 35 gallons per minute, is situated in the watershed of Boulder Creek and is located in the vicinity of three springs from which Big Basin draws water to serve its customers in its old system, the closest spring being within 1,000 feet of the well. When one of the wells was first drilled the water was found contaminated with total coliform (not fecal coliform) due to the Revert drilling compound used, but the well has been disinfected. Galleon has currently let contracts for the construction of two homes costing a total of \$150,000. If its building permit issued by the Department of Real Estate is canceled because it could not get water from the Galleon Heights facilities, it would be in default to its prime construction lenders in the amount of \$764,000.

The witness for complainant stated that although the additional water necessary for the expansion of the service area to Galleon Heights is to be drawn from wells, there is reason to believe that this action could adversely affect both the flow of Boulder Creek, tributary to the San Lorenzo River, and the yield from the nearby domestic springs and that recent research conducted by United States Geological Survey scientists at Menlo Park has demonstrated that the drawdown of underground water levels by the pumping of wells can reduce the flow of surface streams and springs. The witness stated that if the pumping of the Galleon well near Big Basin's springs to serve additional customers lowers the yield from this and adjacent springs or diminishes the movement of underground water into Boulder Creek or causes an acceleration in the percolation of water from the streambed, then Boulder Creek and the San Lorenzo River

might be adversely affected and that if the flow from the springs were to be diminished, then the existing customers of Big Basin would also be adversely affected. The witness for complainant contended that the potential environmental impacts associated with the expansion of Big Basin into Galleon Heights necessitated the preparation of an Environmental Impact Report (EIR) and since no EIR has been prepared, the Commission should not permit the expansion.

Additionally, the witness stated that he felt that the State Water Resources Control Board is a more appropriate agency to decide these environmental concerns as the Commission's approval of an expanded service area at this time could jeopardize the public welfare by reducing the ability of the following agencies and programs from carrying out their responsibilities for protecting the state's resources as mandated by the state legislature and local governments: The State Water Resources Control Board environmental review process; The State Department of Fish and Game Protected Waterways program--the San Lorenzo River is one of the state's protected waterways for which a management plan is currently being prepared--The Regional Water Quality Control Board Water Quality Control Plan--Central Coastal Basin, Basin Plan; the AMBAG Area-Wide Wastewater Management Program, 208 Program; and the County of Santa Cruz Watershed Management Program. Complainant also contends that granting a water service area extension in connection with the Galleon-Big Basin conveyance of a water system will create a dangerous precedent for future dealing between developers and other water companies in a similar situation with respect to securing rights to surface waters.

A member of the Planning Commission of Santa Cruz County appeared on her own behalf and spoke against allowing Big Basin to extend into Galleon Heights, at least until the State Division of

Water Rights either grants, modifies, or denies Big Basin's request for a license to appropriate water. The witness stated that she feared that the water produced by the Galleon facilities in excess of that required to service the connections in Galleon Heights will be used by Big Basin to serve additional customers to be connected to Big Basin's old system, and that if Big Basin's request for a license to appropriate water now used to service its present customers is denied and Galleon takes back the Galleon facilities, then those additional customers would be without water. The witness reiterated the many objections given by the witness for complainant to the extension. She pointed out that Big Basin is not alone in not having received a water appropriation license and that most water companies operating in the county have not received appropriation licenses. Finally, the witness questions the manner in which the Galleon-Big Basin contract was allowed to become part of Big Basin's tariff contending that the contract is a deviation from the line extension rule and should have been approved by the Commission prior to its being allowed to become effective.

A spokesman for the Santa Cruz Regional Group of the Sierra Club appeared and testified against the extension on the ground that the Galleon-Big Basin contract may set a dangerous precedent which could affect the water quality and fish and wildlife resources in other river systems of the state. The spokesman stated that Santa Cruz County is preparing a watershed management plan for the San Lorenzo River and its tributaries, and the Coastal Conservation Commission has proposed legislation establishing certain policies relating to coastal streams and watershed management. Before the Commission takes any action on allowing water companies to expand, the Commission should wait for the implementation of these plans or require an environmental impact report.

Discussion

Rule 17.1(a) of the Commission's Rules of Practice and Procedure states that "CEQA requires the Commission to prepare, or cause to be prepared by contract, and to certify the completion of an Environmental Impact Report (EIR) for any non-ministerial project which concerns activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use for which the Commission has the principal responsibility for approving and which may have a significant effect on the environment." Since Section 1001 of the Public Utilities Code, supra, does not require a water corporation to obtain a certificate or other entitlement from the Commission to expand its system into a contiguous area, it follows that the subject expansion is not a project within the definition of that word and requires no EIR as a prerequisite to the undertaking. While the complaint is maintainable under Section 2708 of the Public Utilities Code, no probative evidence was adduced upon which a finding could be based that showed or tended to show that the operation of the Galleon Heights system would have any adverse effect on the water supply of Big Basin used to serve its customers outside of Galleon Heights. However, since there is a chance that Galleon may have to take back its system in the event Big Basin does not secure the required licenses, we will restrict Big Basin from using any water produced by the two wells serving the Galleon system to service additional customers outside of Galleon Heights until such time as Big Basin secures the necessary licenses to appropriate water it is serving its present customers outside of Galleon Heights.

The Galleon-Big Basin contract is no more than a contract for temporary service since continued water service is conditioned, albeit at the option of Galleon, on the obtaining of licenses by Big Basin. Being that the service is temporary in nature, Big Basin's tariff main extension rule, Rule No. 15, of which we take official notice, flags out temporary service from the operation of the rule. Instead, Rule No. 13 of Big Basin's tariff governs the establishment of temporary service, of which we also take official notice. Rule No. 13 reads in part as follows:

"Rule No. 13

TEMPORARY SERVICE

A. Establishment of Temporary Service.

1. The utility will, if no undue hardship to its existing customers would result therefrom, furnish temporary service when the applicant has requested service on this basis or the utility reasonably expects the service to be temporary and the applicant, therefore, has
 - a. Advanced to the utility the estimated cost of installing and removing the facilities necessary to furnish the service;"

Instead of Galleon advancing the estimated cost to establish the water service, Galleon has constructed the system itself and given it over to Big Basin, which is the same as advancing the cost of the system. Therefore, the contract is not a deviation from the main extension rule, which would need Commission approval. The contract is strictly in line with the provisions of Big Basin's temporary service rule and requires no Commission approval.

Findings

1. Prior to September 10, 1975 Big Basin was a water corporation as defined in Section 241 of the Public Utilities Code and served approximately 340 customers.

2. Water to serve the 340 customers was appropriated from sources which required Big Basin to have licenses from the State Water Resources Control Board to appropriate water therefrom, but Big Basin did not and still does not possess such licenses.

3. Big Basin has applied to the State Water Resources Board for licenses to appropriate water to serve more than the 340 customers it served on September 10, 1975, and complainant is challenging the application.

4. On September 10, 1975 Big Basin amended its tariff on file with the Commission by filing a revised service area map showing an extension of its service area to serve the contiguous area of Galleon Heights and by filing a contract between Big Basin and Galleon whereby Galleon for \$1 conveyed to Big Basin the water system and two wells necessary to serve Galleon Heights, which amendments were allowed by the Commission to become effective over the objections of complainant.

5. The conveyance described in Finding 4 contained a condition that in the event Big Basin failed to obtain the necessary licenses from the State Water Resources Control Board as set out in Finding 3 and the result of such failure would be to deprive Big Basin of all water supply sources to serve its then existing customers then, at the option of Galleon, Galleon could repurchase for \$10 the system and sources conveyed under the contract.

6. The conveyance described in Findings 4 and 5 is a contract for temporary service which meets the conditions of Big Basin's tariff Rule No. 13.

7. Contracts for temporary service are within the purview of Big Basin's tariff Rule No. 13, not Rule No. 15, and need no approval from the Commission.

8. Sufficient water exists in the wells conveyed by Galleon to Big Basin to adequately serve the proposed connections in Galleon Heights.

9. Complainant failed to show that drawing water from the two wells proposed to be used to serve Galleon Heights would have any appreciable effect on any of Big Basin's water sources used to serve Big Basin's original 340 customers.

10. No certificate or other entitlement from the Commission is required by a water corporation to lawfully expand its service into a contiguous area and none was required by Big Basin to make the subject expansion.

11. The expansion of a water corporation into a contiguous area is not a project, so far as the Commission is concerned, requiring an EIR as a prerequisite to such expansion.

12. Big Basin should be prohibited from using any water from the two wells conveyed to Big Basin by Galleon to augment its present or future service to connections outside of Galleon Heights until such time as Big Basin's present applications for licenses from the State Water Resources Control Board to appropriate water are granted.

Conclusions

1. Big Basin should be prohibited from using water from the two wells conveyed to it by Galleon as set out in Finding 12.

2. The relief requested in all other respects should be denied.

O R D E R

IT IS ORDERED that:

1. Big Basin Water Company is prohibited from using any water from the two wells conveyed by Galleon Properties, Inc. to

Big Basin Water Company to augment Big Basin Water Company's present or future service to connections outside of Galleon Heights subdivision Unit 1 until such time as the present applications for licenses to appropriate water filed by Big Basin Water Company with the State Water Resources Control Board are granted.

2. The relief requested in all other respects is denied.

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

Dated at San Francisco, California, this 18th day of JUNE, 1976.

William J. Synovis President
Vernon L. Sturgeon
Leonard Hon
Robert B. Friedman Commissioners