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Decision No. 86054

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of John S. Cavanaugh & Evelyn Cavanaugh dba Hillview #6 Water Co. (Declared a Public Utility by the Public Utilities Commission in Case #8967) for a Certificate of Convenience and Necessity to operate a Public Utility Water System and Establish Rates for service in that portion of the Rio del Mar Lodge Sites Subdivisions 1 & 2 purchased in 1960.	Application No. 53558 (Filed August 31, 1972)
Elizabeth A. Davis, Harold J. Meadowcroft, Fontaine W. Russ, Complainants, vs. Hillview #6 Water Co., John S. & Evelyn Cavanaugh, Santa Cruz Land & Title Co., John Doe, et al., Defendants.	Case No. 8967 (Filed September 22, 1969)

John S. Cavanaugh, for himself and his wife, Evelyn Cavanaugh, applicants in A.53558 and defendants in C.8967,
H. E. Davis and Fontaine W. Russ, for complainants in C.8967.
Melvin Mezek, for the Commission staff.

O P I N I O N

On October 3, 1975, complainants filed a petition requesting compliance with the provisions of Decision No. 80999 dated January 30, 1973 in Application No. 53558 and Case No. 8967 and the provisions of Decision No. 80469 dated August 31, 1972 in Application

No. 52887 and Case No. 9278. On December 4, 1975 John S. Cavanaugh and Evelyn Cavanaugh filed a petition requesting modification of Decision No. 80999 in Application No. 53558 by increasing the number of additional customers to 73 for a total of 110 service customers.

Public hearing was held before Examiner Daly at Santa Cruz on April 13 and 14, 1976, with the matter being submitted upon concurrent briefs.

Service Area

The certificated service area is located about 2¼ miles north of Aptos in Santa Cruz County and encompasses the entire Rio del Mar Lodge Sites, Subdivisions 1 and 2, as well as two adjacent lots. The area consists of 376 lots, but because the lots are small and the terrain rugged, it is estimated that only 125 building sites will be available.

From 1913 the community of Aptos was served by the Aptos Water Company and the Rio del Mar Lodge Sites was part of its dedicated service area. By 1937, the utility had extended service to a portion of Subdivision 1 of Rio del Mar Lodge Sites.

In 1960 the Cavanaughs acquired about 290 lots in the Rio del Mar Lodge Sites. Although the owners of the Monterey Bay Water Company did not deny their obligation to serve the subdivision, they claimed that they were financially unable to provide the necessary facilities. The Cavanaughs were therefore required to install a well, a tank, and a connecting distribution main in order to provide water to their lots. The Monterey Bay Water Company connected the new facilities to its then existing public utility system, but no written agreement was ever executed. By Decision No. 66712 dated January 28, 1964 in Application No. 46001, Monterey Bay Water Company sold its assets to Soquel Creek County Water District (SCCWD). The SCCWD operated the Rio del Mar Lodge Sites for a while, but title to that portion of the Monterey Bay Water Company's system was not passed to SCCWD. Subsequent efforts by the Cavanaughs to effect the transfer of

the Rio del Mar Lodge Sites system to SCCWD, at no cost, were unsuccessful. In fact, SCCWD physically removed a short section of its pipeline and separated the Rio del Mar Lodge Sites system from the rest of the SCCWD system.

During this time, several of the lots in the subdivision were resold and the purchasers built residences. With at least the tacit approval of the Cavanaughs, the homeowners connected pipes to the water system. During the year 1965 and until September 1966, the Cavanaughs charged the homeowners a flat rate of $2.50 per month for water service.

In 1966 the Cavanaughs discontinued collecting the monthly flat rate and the customers undertook maintenance and operation of the system, but the Cavanaughs continued to be responsible for the power bills on the well pump.

In 1969 three of the homeowners, petitioners herein, filed a complaint in Case No. 8967. During the course of that hearing the Cavanaughs stated their intention to continue to pay the power bills, pending determination of the responsibilities of SCCWD. The Cavanaughs intended at that time to institute legal action in the courts to force SCCWD to resume operation of the water service to the area, pursuant to a stipulation filed by SCCWD as a condition precedent to Commission authorization of the transfer of Monterey Bay Water Company's assets to the district:

> "District will be subject to all legal claims for water service which might have been enforced against...Monterey Bay, including such claims as may exist in territory outside of the boundaries of District."

Because of the stipulation and the fact that SCCWD had served the area before it severed the pipeline, it appeared unlikely in 1970 that SCCWD would continue to refuse service. By Decision No. 77059 in Case No. 8967 the Commission found that the Cavanaughs

were a public utility water corporation subject to the jurisdiction of this Commission and required them to continue operating on somewhat of a caretaker basis pending resumption of service by SCCWD or the establishment by the Cavanaughs of more conventional service arrangements and rates, after approval by this Commission. Service was restricted to the 17 parcels already being supplied.

The Cavanaughs did not have sufficient funds to carry out their intended legal action against SCCWD. Instead, they formed Rio del Mar Lodge Sites Mutual Water Company, Inc. and requested authority in Application No. 52887 to donate the water system, together with certain future improvements, to the mutual. After a hearing on the application, however, the Commission found, in Decision No. 80469 dated August 31, 1972, that, among other things, the mutual did not reflect the wishes of many of the existing customers, who opposed the transfer of the system to the mutual. The application which was denied also contained the following ordering paragraphs:

> "2. Within ninety days after the effective date hereof, John S. Cavanaugh and Evelyn Cavanaugh shall commence a program of either reconditioning the present system or replacing it so as to comply with the requirements of General Order No. 103.
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> "3. Within sixty days after the effective date hereof, John S. Cavanaugh and Evelyn Cavanaugh shall file with this Commission a written plan of the program required by Ordering Paragraph 2 hereof detailing the work to be performed and the expected time of completion.
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> "4. Upon the filing of the plan required by Ordering Paragraph 3 hereof, John S. Cavanaugh and Evelyn Cavanaugh shall every sixty days thereafter file with this Commission a written report on the work performed until all work has been completed.

"5. Unless otherwise ordered by this Commission the work required by Ordering Paragraph 2 hereof shall be completed within one year after the date hereof."

On August 31, 1972 the Cavanaughs filed Application No. 53558 requesting a certificate of public convenience and necessity and authority to establish rates for water service. By Decision No. 80999 dated January 30, 1973 the Commission authorized a $10 flat rate and granted a certificate subject to the following provisions:

"3. Until authorized by further order of this Commission, applicants shall not provide service to more than their present seventeen customers and twenty additional customers within their certificated area. The twenty additional customers shall be the first twenty applicants for service who have obtained a building permit for constructing a residence on property within the certificated area.

"4. The certificate granted herein is conditioned upon the following:

"a. Applicants shall obtain title to, or rights-of-way on, all land upon which are located their 63,000-gallon storage tank and pipelines connecting that tank with their well and with pipelines on Redwood Road.

"b. Applicants shall agree to establish a plant improvement and replacement fund from the proceeds of sales of lots which they own within the certificated area. The amount deposited in the fund shall be $200 for each unimproved lot sold and $500 for each lot with residence sold. The funds are to be deposited in an interest-bearing special account in a bank or savings and loan association, separate from applicants' other cash accounts. The fund, including

> earned interest, shall be used only for additions to or replacements of plant facilities. Withdrawals from the fund shall be made only after a letter approval signed by the Commission's Secretary. A report shall be filed in this proceeding by applicants by March 31 of each year, detailing additions to and expenditures from the fund during the preceding year and the year-end balance in the fund."

The authority to establish rates was made effective 20 days after signing, but the remaining provisions of the order were to be made effective by supplemental order of the Commission upon a filing of proof by the Cavanaughs that they had complied with requirements of Ordering Paragraph 4. To date no supplemental order has been issued because the required filing of proof had not been made; however, during the course of hearing on their petition to modify Decision No. 80999, the Cavanaughs introduced a copy of a grant deed covering the property on which their 63,000-gallon storage tank is located and a copy of a trust account with the Bank of America with a balance of $224.44 as of March 31, 1976.

According to Mr. Cavanaugh, a new well has been installed that is capable of producing 61 gallons of water per minute. He believes that with the new well and new storage tank the system is now capable of serving 110 hookups instead of the 37 hookups specified in Decision No. 80999.

Complainants contend that the Cavanaughs have failed to comply with the provisions of Decisions Nos. 80469 and 80999 and that no additional hookups beyond the original 20 should be authorized.

A staff engineer reviewed the annual reports filed by the utility, reviewed the filings recorded in the county of Santa Cruz Recorder's Office, met with personnel of county of Santa Cruz Department of Environmental Health, some of the complainants, customers of the utility, and with Mr. Cavanaugh. The results of the investigation were introduced as Exhibit 1-A and are as follows:

a. The Commission staff in a letter dated October 3, 1975, agreed to an arrangement whereby the utility would provide water service to a lot within the service area which would in turn provide service to one residence (Mr. Gentles) outside the service area in exchange for the title to the tank site and an easement for the pipeline right-of-way required by order of the Commission in Decision No. 80999.

b. The utility has informed the county of Santa Cruz Department of Environmental Health that the utility will provide water service to three lots within the certificated service area owned by Mr. Gentles. Mr. Gentles, as authorized by the Commission's letter of October 3, 1975, will pipe the water to a lot outside the certificated service area contiguous to the lot within the service area upon which he has built a residence. Mr. Gentles has advised the staff that he proposes to complete four additional residences, if the expansion requested by the Cavanaughs is approved.

c. On January 7, 1976 there was no transfer of title to the tank sites or right-of-way easements recorded in the office of the Santa Cruz County Recorder. On February 11, 1976 Mr. Gentles and Mr. Cavanaugh jointly provided the staff with a copy of an unrecorded grant deed for the tank site and easements, dated December 10, 1975, and assurances that it would be recorded. (Exhibit 9-A indicates that the deed was recorded on February 19, 1976.)

d. Staff engineer was unable to find any record of the reports on the status of the account to be established in Ordering Paragraph 4.b. of Decision No. 80999. (The trust account was established with Bank of America on March 31, 1976, Exhibit 10-A.)

e. The following transfers of real property have been recorded in the records of Santa Cruz County in which the Cavanaughs have been listed, either individually or both as grantors:

Date	Volume	Page	Number of Lots
1974			
July 9	2425	69	2
August 12	2433	654-5-7	1
October 18	2452	139-43	2 improved
1975			
March 20	2485	233	2
March 21	2485	548	1
April 4	2489	351	1
May 23	2504	517	15
May 28	2505	187	2
June 2	2506	637	15
June 5	2508	120	3
June 6	2508	509	15
August 27	2532	693	1
November 10	2558	52	1
November 10	2558	57	3
December 17	2568	664	1

f. The utility has completed a new well, installed a pump, and connected this installation to the distribution system. This new well and pump have been tested and are capable of delivering 61 gallons per minute.

g. The utility had reached a maximum of 37 service connections, as authorized by a prior order of this Commission.1/

The staff concluded from its investigation that:

a. The utility is serving, or is preparing to serve customers outside the area to which it is restricted by Ordering Paragraph 3 of Commission Decision No. 80999, by providing water service connections to lots within the service area, per staff interpretation of the order.

1/ Apparently the staff as well as the Cavanaughs were under the mistaken impression that the entire order in Decision No. 80999 became effective 20 days after the date of signing.

b. The utility had not recorded ownership of the tank sites or easements for pipeline on January 7, 1976, almost 3 years after issuance of the Commission order to do so.

c. The Commission has no record of the utility's reporting as to the status of the plant improvement fund ordered to be established.

d. The utility, according to Commission records, has complied with the ordering paragraphs of Decision No. 80469.

e. The utility has the service capacity to serve an additional 36 water customers.

The staff recommended that after showing compliance, applicants John S. and Evelyn Cavanaugh be authorized to file revised tariff sheets, including a tariff service area map, to provide for the application of their tariff schedules. The map filing should clearly state that only 73 services are to be added after January 1, 1973, and that priority for such services will be determined by the chronological order of issuance of building permits, to applicants for service, by the county of Santa Cruz.

In addition to cross-examining the staff witness and Mr. Cavanaugh, complainants introduced the testimony of the director of the Department of Environmental Health, Santa Cruz County, a captain in the Aptos Fire Protection District, three present users of the water service, and the testimony of Mrs. Elizabeth A. Davis, who is one of the complainants. Their testimony in brief is as follows:

1. L. Talley, Department of Environmental Health, Santa Cruz County. The department's files indicate a series of complaints with the Hillview Water Company dating back over a number of years. The principal complaints dealt with leaks. Since April of 1975 there have been only two complaints of leaks, one of which was massive in nature because it was difficult to locate. In 1974 the department refused to

issue sewerage permits for lots in the certificated area. In Santa Cruz County sewerage permits for septic tanks are issued prior to the issuance of building permits. When the Cavanaughs built the new well the department requested a 72-hour pumping test. Upon receipt of the report indicating 61 psi, the department removed the restriction and allowed 20 additional hookups in conformity with the provisions of Decision No. 80999.

2. Jack T. Sperrow, Captain, Aptos Fire Protection District. The certificated area is not within the Aptos Fire Protection District, but is within the area protected by the California Forestry Service. Pursuant to a mutual aid agreement with the Forestry Service, the Aptos District, because it is so close, responds first to any fire within the area. Its responsibility terminates upon the arrival of the Forestry Service. In the event the certificated area should be made a part of the Aptos District, the witness was of the opinion that the water system would have to be upgraded by increasing storage capacity to at least 250,000 gallons, installing a 6-inch main, and increasing water flow at the hydrant to at least 1,000 gallons per minute. In addition, roads would have to be surfaced and widened to accommodate fire vehicles.

3. Bob V. Boysol, property owner. Has owned two lots within certificated area since 1960. Desires to have water extended to his property. Has not yet made application for a building permit.

4. Tom Niles, resident of the area. Residence is at the 600-foot level. Was without water for 18 days in 1975 because of the massive system leak described by Mr. Talley. Has had no other problems except that occasionally the water is discolored. This may be the result of adding a new connection or of flushing. The water pressure has been adequate.

5. Bob Cathey, property owner. Purchased one lot in 1965 and another in 1973. Was without water for 21 days last year. Has a well on his property. Desires to be notified before water is shut off.

6. Elizabeth A. Davis, property owner and complainant. In the past year the system has been shut off on 10 or 12 occasions ranging in time from five minutes to five weeks. Mr. Cavanaugh gave prior notice on only one occasion and that was just recently. Because of the high pressure - 90 pounds - a reducer had to be installed. Water is always dirty after being shut off.

Complainants contend that because water will have to be pumped from the well site, which is at an elevation of approximately 470 feet, to the storage tank, which is at an elevation of approximately 650 feet, the actual gallons per minute pumped, they claim, would be 45 rather than 61. This is a problem that can be corrected by either a larger submersible pump or the use of a booster pump.

Complainants also contend that some of the existing distribution is not adequate because it is 1/8 inch less than standard.

Complainants introduced Exhibit 13-A, which indicates that since May of 1973, the Cavanaughs have 32 trust deeds. According to Mr. Cavanaugh these were granted to secure personal loans made to himself and his wife. He admitted, however, that some of the transactions may ultimately result in sales of property.

Complainants also introduced Exhibit 15-A, which is a copy of an order to desist and refrain from the sale of property issued against the Cavanaughs by the California Department of Real Estate on April 26, 1972. The order was issued because there was not presently available a source of domestic water capable of supplying the minimum domestic water requirements to all lots and parcels. If this order is still in effect, it is a matter that has to be considered by the Department of Real Estate.

Findings

1. The Cavanaughs have now complied with the provisions of Decisions Nos. 80999 and 80469. An adequate storage tank has been constructed on property which they own. The new well is sufficient to meet the needs of the system. A trust fund has been established.

2. The agreement with Mr. Gentles is acceptable, but in no event should similar agreements be entered into, nor should the present agreement be extended to property not now owned by Mr. Gentles.

3. Before shutting off service, either for repairs or for the purpose of adding a new connection, the Cavanaughs should give prior notice when possible.

4. Because of the apparent confusion with respect to the effective date of Decision No. 80999, an effective date should be established and the additional hookups made since the date of that order should be confirmed.

5. The Cavanaughs should be authorized to add 36 services making a total of 73 connections. The priority for such services should be determined by the chronological order of issuance of sewerage permits, or in a manner decided upon by the Commission staff and the director of the Department of Environmental Health, Santa Cruz County. If a different procedure is reached, it should be formalized and filed with the Commission within 10 days after execution. Notice of the procedure should be served upon complainants in Case No. 8967.

6. If after a period of one year it is demonstrated that the new facilities and existing mains can adequately provide service to the 73 connections, the Cavanaughs may apply for authority to make additional connections.

7. Within 60 days after the effective date of this order the Cavanaughs should file revised tariff sheets, including a tariff service area map, to provide for the application of their tariff schedules. The map filing should clearly state that only 73 services

are to be added after January 1, 1973, and that priority for such services will be determined by the chronological order of issuance of sewerage permits to applicants for service by the county of Santa Cruz.

The petition of the Cavanaughs should be granted to the extent hereinafter set forth.

O R D E R

IT IS ORDERED that:

1. Additional connections made since January 30, 1973, the date of Decision No. 80999 in Application No. 53558, are hereby authorized and the effective date of said decision for all provisions following Ordering Paragraph 1 thereof is twenty days after the date hereof.

2. After the effective date hereof the Cavanaughs, petitioners herein, may add thirty-six additional service connections for a total of seventy-three connections. The priority for such services shall be determined by the chronological order of issuance of sewerage permits, or in a manner decided upon by the Commission staff and the director of the Department of Environmental Health, Santa Cruz County. In the event a different procedure is decided upon it shall be reduced to writing and filed with the Commission within ten days after execution. Notice of the procedure adopted shall be served upon complainants in Case No. 8967.

3. Within sixty days after the effective date of this order the Cavanaughs shall file revised tariff sheets, including a tariff service area map, to provide for the application of their tariff schedules. The map filing shall clearly state that only seventy-three services are to be added after January 1, 1973, and that priority for such services will be determined by the chronological order of issuance of sewerage permits or in the manner decided upon by the staff and the county of Santa Cruz.

4. Before shutting off service, either for the purpose of repairs or for adding a new service, the Cavanaughs shall provide prior notice to all customers within the certificated area when possible.

5. The contractual agreement between the Cavanaughs and Mr. Gentles is approved. The Cavanaughs shall make no similar arrangement with anyone else, nor shall the present agreement be extended to property not now owned by Mr. Gentles. The service to Mr. Gentles' property, namely, Lots Nos. 55, 60, and 63, shall be metered.

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

Dated at San Francisco, California, this 7th day of MAY, 1976.

President

Commissioners