

Decision 84 02 062

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
James H. Kitchen, dba Wesmilton Water)
Company, to borrow funds under the)
Safe Drinking Water Bond Act, and to)
add a surcharge to water rates to)
repay the principal and interest on)
such loan.)

Application 83-01-49
(Filed January 24, 1983;
amended March 14, 1983)

James H. Kitchen, for Wesmilton Water Company,
applicant.
Theodore N. Andrews and Kenneth L. Phillips, for
State Department/Health Services, Sanitap
Engineering Branch; Kenneth Okawara, for
Department of Water Resources; and Vic White,
for Hacienda Heights Steering Committee;
interested parties.
Mary McKenzie, Attorney at Law, and Harry P.
Aubright III, for the Commission staff.

INTERIM OPINION

By this application, James H. Kitchen, dba Wesmilton Water Company (Wesmilton or applicant), seeks authority to enter into a California Safe Drinking Water Bond Act of 1976 (SDWEA) loan contract with the California Department of Water Resources (DWR). The loan would not exceed \$329,000 and would be payable over a 35-year period at approximately 8½% per annum. Applicant also requests authority to add a surcharge to existing water rates to collect the amount needed to repay the loan principal and interest. Applicant proposes to use the loan funds to drill two new production wells and install 6,000 feet of 10-inch and 1,500 feet of 6-inch water mains.

The application states that the State Department of Health Services (DHS) has determined that all three of Wesmilton's existing wells are contaminated with dibromochloropane (DBCP) and should be replaced with new deep noncontaminated wells.

The SDWBA loans are intended to provide a source of low-cost financing for public and privately owned water companies unable to obtain other financing. The funds are to be used to improve the systems thereby enabling the utility to meet DHS's water quality and quantity standards. DHS recommends the water system improvements and rehabilitation necessary for the utility to provide pure, wholesome, and potable water in adequate quantity and with sufficient pressure for health, cleanliness, and other domestic purposes. DHS must approve the SDWBA project plans and issue a water permit¹ prior to DWR's entering into a contract with the utility. DWR assesses financial need and acts as the lending agency and fiscal administrator of the loan. Those companies that show a need for plant improvements to meet minimum water quality and quantity standards, who have demonstrated an inability to obtain financing from conventional sources, and have met DWR's other financial requirements are issued loan authorizations. Actual loans are made to investor-owned utilities after (1) this Commission has authorized the utility to enter into a loan contract with DWR and authorized a rate increase to service the loan and (2) DHS has approved the final SDWBA project plans and specifications. Funds are released by DWR to the utility after all bids and estimates on the construction project are received and approved.

Applicant's proposal was reviewed by DWR and applicant was advised by letter dated July 30, 1982 that it was eligible for a \$320,000² loan under SDWBA.

¹ Applicant was issued Water Permit No. 81-016 on April 13, 1981.

² The actual principal due would be \$329,600 when the 3% administrative fee is added to the loan amount.

Construction items and estimated costs for the improvements to the system are as follows:

1. Well Construction	\$67,000	
Test Holes (2)	23,120	
Well developing	6,400	
Fence to Enclose Well Sites	<u>3,000</u>	
Subtotal		\$ 99,520
2. Hydrologist	8,810	
Transformer Pads (2)	1,600	
Switchboard Panels	740	
Painting of Tanks and Lines	600	
PG&E Connection Fees	1,000	
Pumps Installed to Tanks	72,400	
Tanks	26,100	
Crane to Set Tanks	<u>1,000</u>	
Subtotal		112,250
3. 6,000' of 10" water line	72,000	
1,000' of 6" water line	12,000	
Service Connection (20)	<u>4,500</u>	
Subtotal		88,500
10" Meters (2)	2,600	
Engineering	15,000	
Department of Water Resources Administrative Fee	<u>9,600</u>	
Subtotal		<u>27,200</u>
		327,470
Contingencies		<u>2,130</u>
Total Loan Authorization		329,600

Public Meeting

Harry Aubright of the Commission staff conducted a public meeting with applicant's customers in Selma on February 17, 1983. There were approximately 150 people in attendance. The staff explained the SDWEA loan program and its purpose. Those in attendance expressed concern about every concept of the SDWBA loan

proposal and requested an evidentiary hearing to explore possible alternatives.

A duly noticed hearing on the application was held July 7, 1983 at Selma.

Public Witness Testimony

Approximately 75 members of the community attended the public witness portion of the hearing. A representative of the DHS gave a presentation of quantity and quality problems confronting Wesmilton. The DWR representative explained how the SDWBA program was administered. A representative of the Commission staff explained Wesmilton's proposal from an economic view and why the staff supported it. Seventeen persons made statements.

The Hacienda Heights Steering Committee (Committee), a local homeowners group was represented by Vic White. White stated the Committee believed Wesmilton customers were being asked to pay for new wells and mains to get safe drinking water while still paying for an old system. He stated they were entitled to safe potable water without an additional surcharge and that it was unfair to add still another surcharge when Wesmilton was recently granted a rate increase and an additional offset for increased electric rates.³ White requested that a decision on the application be held in abeyance for one year to enable the Committee to examine available alternatives. All members of the public in attendance supported the Committee spokesman adding that the community was made up of low-income families who could not absorb such a "hefty" surcharge. They also expressed concern over the improvement of the system while still paying for the old.

White agreed that DBCP should be eliminated and that the SDWBA loan was probably a reasonable way to achieve this goal. He questioned, however, the need to add a surcharge to finance the loan.

³ Wesmilton's ratepayers received a \$4 per month increase in September 1980 and a \$1 per month electric power offset increase in 1982.

At the July 7, 1983 hearing the Committee also requested that any decision on the application be delayed for one year to give time to consider other alternatives. The DHS responded to the Committee's request by letter dated July 12, 1983. It stated its understanding that among the alternatives to be considered was a change from private ownership to a community district or a mutual water company, which does not involve improvement of the system. On that basis DHS's Sanitary Engineering Branch stated it opposes any delay, urging a decision as soon as possible.

Evidentiary Hearing

Kenneth Phillips, sanitary engineer, testified for DHS. He stated that Wesmilton is a three-well, no-storage system and all of the wells produce DECP in excess of the one part per billion action level set by the State as safe for human consumption. He stated Wesmilton was advised of the contamination and was asked to submit a proposal to correct the situation. DHS approved the utility's proposal to drill two new wells.

With regard to activated carbon filtration as an alternative to new wells, he stated that in the two systems where such a proposal was considered the cost per unit at the well site was approximately \$500,000. He stated these units are very costly requiring installation of storage tanks and standby chlorination facilities. For this reason DHS did not favor filters for Wesmilton.

On the DBCP problem, Phillips stated Wesmilton's three wells have been tested about 30 times since 1979. Complete test results for the three wells was introduced as Exhibit 1. With the exception of two tests, Well No. 1 exceeded the 1.0 ppb action level for each test. Well No. 2 was above the 1 ppb action level over half the time it was tested. Well No. 3 was above the 1 ppb for 34 tests or each time it was tested. The latest tests taken June 22, 1983 were as follows:

<u>Well No.</u>	<u>DBCP ppb</u>
1	0.62
2	0.6
3	1.1

He stated that the only explanation he could offer for the low reading on June 22, 1983 was the wet winter which obviously had an effect on the DBCP level. However, he stated that DHS does not believe that one test out of 30 shows that the DBCP problem no longer exists.

The witness stated that should the application not be approved DHS would still recommend that the DBCP problem be solved. If the problem is not corrected DHS would consider recommending a building moratorium or constraints on the transfer of ownership.

Finally, he stated that two new deep wells both would improve system capacity and might improve the DBCP problem. He could not guarantee that the proposed improvements would completely eliminate the DBCP problem. DHS will make a final inspection to determine that all work on the project has been completed before final payment is made to Wesmilton.

Kenneth Okawara testified for DWR. He stated it was his job to determine Wesmilton's eligibility for a SDWBA loan. He reviewed all of the filings before reaching the decision that Wesmilton should be granted a loan and concluded that its customers have the financial ability to repay the loan. To estimate the customers' financial ability to pay the surcharge, he stated he used \$13,000 as the median annual family income for the area.⁴ He concluded that such a median income is sufficient to amortize the loan without causing hardships on ratepayers. The witness explained the steps taken by DWR to ensure that the loan proceeds are used for proper purposes and how the surcharge funds are accounted for.

⁴ Although the witness was unable to explain the derivation of the \$13,000 during cross-examination, on July 15, 1983 DWR supplied the parties of record the source and calculation of the median income figure.

Harry Aubright, financial examiner, testified on behalf of the Commission staff. Aubright prepared and introduced a staff report (Exhibit 2) outlining financial details of the SDWBA loan and its effect on applicant's rates. He explained in detail the role of the various state agencies in approving, monitoring, and servicing a loan made under the SDWBA.

Aubright stated he recommended the loan as the only source of funds available to the utility provided that DHS determines that the additional plant is required to protect the health and well-being of Wesmilton's customers. Based on construction estimates and the due date for payment of principal and interest, Aubright recommended that the surcharge go into effect for service on and after February 1, 1984.

For undeveloped lots, Aubright recommended that upon requesting service for an undeveloped lot, the lot owner be required to pay the accumulated surcharge calculated from the date the surcharge went into effect to the date customer requests service. He recommended a cap of \$560 (5 years accumulation) on the surcharge for undeveloped lots, reasoning that a five-year period is a reasonable time for the average person to build within an improved area.

Finally, he stated that for additional or new hookups within the service area, the SDWBA rate surcharge would be periodically adjusted to take into account any increase in customers.

Discussion

The record shows that: (1) DWR is the sole source for an improvement loan, when a utility has been turned down by regular lending institutions; (2) the amount of the SDWBA water improvements would not be added to rate base and thus would not be the basis for future rate increases; (3) all three of applicant's present wells have had DBCP in excess of the action level set by DHS as safe for

human consumption; (4) an SDWBA loan is the least expensive method to finance the drilling of new wells; (5) the alleged primary purpose of the loan is to drill new wells to serve present users, not to aid development; and (6) the most recent test results show a declining level of DBCP in the wells.

From Exhibit 1 we note that the three wells had a high reading of 6.5 ppb (Well No. 3 on February 13, 1980) but most of the time they registered between 1.0 and 2.5 ppb. After the 1982-83 winter rains the DBCP has decreased steadily. The results since October 1982 are as follows:

<u>DBCP Parts per Billion (ppb)</u>			
<u>Date Sampled</u>	<u>Well No. 1</u>	<u>Well No. 2</u>	<u>Well No. 3</u>
10/28/82	2.0	1.4	1.5
11/23/82	1.3	1.2	1.0
6/22/83	0.62	0.6	1.1

At the conclusion of the July 7, 1983 hearing, the administrative law judge requested further testing of the wells by DHS. In response to this request DHS conducted tests of Wells 1 and 3 on July 26, 1983 and again on August 25, 1983. DHS also tested Well 2 on September 28, 1983. By Administrative Law Judge (ALJ) Ruling dated November 16, 1983, we assigned late-filed Exhibits 4, 5, and 6 to the items of correspondence containing these DHS test results. Late-filed Exhibits 4, 5, and 6 demonstrate the continuing decrease in DBCP levels:

<u>DBCP Parts per Billion (ppb)</u>			
<u>Date Tested</u>	<u>Well No. 1</u>	<u>Well No. 2*</u>	<u>Well No. 3</u>
July 26, 1983	0.53	not tested	0.70
August 25, 1983	0.44	not tested	0.73
September 28, 1983	not tested	0.32	not tested

* Well No. 2 was not tested in July and August because it is not in use. The DHS notice did not explain why only Well No. 2 results were forwarded in late-filed Exhibit 6.

Our ALJ Ruling notified the parties that we would likely rely on the three late-filed exhibits in reaching our decision on the merits of this application. For that reason we requested written comments from the parties by December 6, 1983. We received comments from the Committee and from applicant. The Committee requested disapproval of the rate increase based on the July, August, and September tests. Applicant, on the other hand, urged that we not disapprove the application based upon a few months' tests. Applicant also asserted that "only a relatively few Wesmilton customers have knowingly and voluntarily expressed opposition to the project" (page 4, Comments of Applicant).⁵ Finally, applicant highlighted the seriousness of the DBCP problem and noted the possibility that the Environmental Protection Agency data underlying the state DHS standard (1.0 ppb) is now questionable. According to applicant:

" . . . More recent information, however, has led the EPA to reconsider their prior estimates so that the EPA has informed DHS that DBCP is ten times more carcinogenic and potentially harmful than previously thought (unpublished DHS data - 1983). The effect of that in light of the late-filed Exhibits No. 4, No. 5 and No. 6 is simply that all three production wells vastly exceed what EPA believes is the safe level for DBCP contamination in the Wesmilton Water System." (Page 4, Comments of Applicant.) (Emphasis in Original.)

⁵ We note, however, that close to 100 people attended both the public witness and technical hearings to express opposition to the application.

While we did not receive comments from any of the other participants in this proceeding, DHS continued to test the wells and send test results to the ALJ. October 27, 1983 testing of Wells Nos. 2 and 3 showed levels of 1.1 and 1.3 ppb, respectively. November 28, 1983 testing of the same wells indicated levels of 1.2 ppb for each well. Despite this disturbing turn of events, no party, including DHS, has requested an extension of the December 6 comment period deadline to address the issue of the increasing DBCP levels apparent in the October and November testing of Wells Nos. 2 and 3. In the absence of any formal comment from DHS, we must assume that DHS continues to recommend approval of the loan.

While we have not made the October and November test results exhibits in this proceeding, and consequently cannot rely upon them at this time to reach a decision on the merits, these results do illustrate the much larger problem that we face here: Basically, DHS's position is terribly confusing. Since DHS is the expert agency in this area, we would ordinarily accord its recommendation great weight. Here we are unable to do so.

DHS's favorable recommendation is keyed to an objective standard (1.0 ppb). At the time this application was heard DHS continued in its recommendation despite the fact that DBCP levels were consistently below this objective standard. Its witness attempted to explain the fluctuating levels as follows:

" . . . I think it is a fair conclusion at this point to say we have just come through the wettest year in history, and this has affected the level of DBCP which we are getting from these wells. These are fairly shallow wells. Other than that, I couldn't tell you." (Tr.17.)

This explanation is obviously of little help to those attempting to analyze the import of the sudden and anomalous rise in DBCP levels in the two relatively wet months of October and November. Nor does the record provide any guidance or analysis of the margin of error associated with DHS testing procedures.

We recognize that, under state law, DHS is charged with the responsibility of determining whether drinking water supplied by private and public water companies meets appropriate standards. However, in this case, DHS has been unable to provide sufficient factual support for its recommendation. Of equal significance is DHS's admission that there is no guarantee that two new deeper wells will remain free of DBCP contamination, although DHS indicates its present experience is that DBCP is being found only in shallow, and not deep, wells. Naturally we would feel more comfortable on this point had DHS presented a more thorough analysis of this issue. Wesmilton's customers, with a median annual income of \$13,000, and facing a potential doubling of average monthly charges via a \$9.40 per month surcharge (assuming this application is granted), were certainly entitled to a more detailed analysis buttressing DHS's contention that the proposed loan will eliminate DBCP contamination from Wesmilton's water system. These customers raised criticisms throughout the hearing process that DHS had not adequately considered the possibility that DBCP could, over time, migrate to the newer, deeper wells.

Under Public Utilities Code § 818, the Commission can only approve loans that are reasonably required for the purposes specified in the order. There can be no doubt that DHS's lack of analysis of the causes underlying presently fluctuating DBCP levels as well as the likelihood of future contamination in the proposed new wells raises serious decision-making problems for this Commission. Nonetheless these uncertainties pale in comparison with the societal consequences of our denying this application outright, only to find at a later date that the present DBCP problem indeed represents a real health threat to Wesmilton's customers, as DHS contends.

We have no alternative but to direct that further hearings be held in this matter to fully address the concerns expressed in this interim opinion. We expect DHS, in particular, to address the following issues:

1. The availability of government funds specifically earmarked for clean-up or mitigation of toxicity problems caused by agricultural chemicals.
2. The derivation and current status of the 1 ppb action standard vis-a-vis DHS's analysis of DBCP contamination.
3. The nature of the testing procedures used by DHS, including margin of error, with specific reference to the test results currently in the record as well as those discussed in this opinion, but not yet included in this record.
4. The factors underlying DHS's analysis of the possibility of DBCP migration to the new deeper wells proposed for the Wesmilton system.
5. Assuming the migration issue is adequately addressed, an analysis (in terms of present system needs) of the alternative of drilling one additional well and blending water from that well with the other three wells to achieve acceptable DBCP levels.
6. The nature of DHS analysis of the causes underlying the widely fluctuating DBCP levels in Wesmilton's Wells Nos. 1, 2, and 3.
7. Is the applicant proposing the new wells to accommodate further development, or legitimate health purposes, or both? If further development is all or even part of the reason for applicant's proposal, there are alternative sources of funding, such as contributions, which should be analyzed before sole reliance is placed on the SDWBA funding mechanism.

We are unwilling to consider this application further until these issues are addressed satisfactorily.

We expect these additional hearings to be completed as soon as possible given the scheduling requirements of the parties, including our staff. We are concerned, given the potential health problem at issue, that this proceeding not be unduly delayed.

Findings of Fact

1. SDWBA loans are a means to provide low-cost capital for needed water system improvements.
2. The SDWBA loan is available to Wesmilton through DWR at 8 1/2% repayable over a 35-year period.
3. The proposed improvements are proposed primarily to reduce the DBCP in the water to a level acceptable to DHS.
4. For the past year, there has been an unexplained steady decline in the level of DBCP in applicant's wells, except for some recent data that clouds this trend.
5. Test results for July, August, and September 1983 show levels of DBCP declining below the action level standard set by DHS.
6. There is no guarantee that the proposed improvements would completely eliminate the DBCP problem.
7. The proposed surcharges would increase annual revenues by approximately \$32,592, which would be used to meet the loan payment and accumulate a reserve equal to two semiannual loan payments as required by DWR. Average residential rates would increase by approximately \$9.40 per month. Rates for customers with services larger than 3/4" would be increased proportionately.

8. Based on the present record, it is unclear that the proposed improvements are reasonably required for the health of Wesmilton's customers, unless ratepayers can be assured that new wells will correct the DBCP problem and that there are no effective alternatives.

Conclusion of Law

Submission of this proceeding should be set aside for the purpose of receiving in evidence late-filed Exhibits 4, 5, and 6 and to take further testimony on the issues outlined in this interim opinion.

INTERIM ORDER

IT IS ORDERED that:

1. Late-filed Exhibits 4, 5, and 6 are received in evidence.
2. Further hearings shall be held in A.83-01-49 to develop the issues outlined previously in this interim opinion.

This order is effective today.

Dated FEB 16 1984, at San Francisco,

California.

LEONARD M. GRIMES, JR.
President

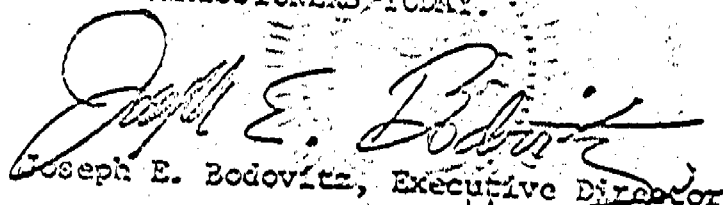
PRISCILLA C. CREW

DONALD VIAL

WILLIAM T. BAGLEY
Commissioners

Commissioner Victor Calvo,
being necessarily absent, did
not participate

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director