

ORIGINAL

Decision 84 11 014

NOV 7 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Antelope Valley
Water Company for Authority to
Transfer its Facilities and to
Abandon its Rights, Privileges
and Obligations to Furnish Water
Service in its Willow Springs
Service Area in Kern County,
California.

Application 83-05-14
(Filed May 6, 1983)

O P I N I O N

Introduction

Antelope Valley Water Company (Antelope or applicant) is a public utility water corporation, which was acquired by Dominguez Water Corporation in 1965. It has been operated as a division of Dominguez since that time. Since 1958, Antelope has been certificated to serve a nearly 60-acre parcel some nine miles west of Rosamond, in Kern County, which is most often referred to as its Willow Springs Area, but has also been called Tentative Tract 2026 or the Panzich area in some documents. More precisely, the area consists of the south three-quarters of the east one-half of the southeast one quarter of Section 18, Township 9 North, Range 13 West, SBB&M (San Bernardino Base and Meridian).

There are presently 17 owners of the land in the area. Most of the land has never been developed or inhabited. Since 1958, the maximum number of simultaneous customers in the Willow Springs Area has been two commercial and three residential customers. Presently there is one residential and one commercial

customer. They are located on Parcel 19, an 18+ acre plot in the southeast corner of the service area bounded by Rosamond Boulevard on the south and 90th Street on the east. This parcel is the only one which has been developed.

The water service customers are a residence and a bar/cafe. Both sites are owned by the Moreno family and rented to others. Service at the residence is in the Moreno's name. Service for the bar/cafe is in the name of its operator, Raymond Larramendy.

The system facilities consist of a well located in Parcel 20, adjacent to Parcel 19, which has a 5-horsepower motor capable of pumping 22 to 25 gallons per minute; a 2,000-gallon hydropneumatic tank; two distribution lines of 6-inch and 4-inch steel pipe which form a "loop main" and which are located entirely in Parcel 19 and run from the well to the loop end near 90th Street. The boundaries of parcel Nos. 11, 12, 13, 16, and 17 are located 350 feet from the distribution system. In addition to the two buildings presently receiving service, there are foundation remnants of two fire-damaged residences and a boarded-up service station. These are also in Parcel 19.

By this application Antelope seeks to surrender its certificate of public convenience and necessity (CPC&N) and public utility obligations in the Willow Springs Area and to transfer all its interest in the well, well site, and other facilities to its present customers^{1/} by an ex parte order.

^{1/} Actually, the application only describes transferring these facilities to the owners of the service area land and not to the customer(s) who rent it.

Background

In 1983, the Commission's Hydraulic Branch staff investigated public entities providing water service in the vicinity of Willow Springs. The closest is the Rosamond Community Services District. At the staff's instigation, Antelope offered to transfer the Willow Springs system to Rosamond. Rosamond declined the offer, stating that due to the 8-mile distance between its service boundary and Willow Springs the action would not be economically feasible. Staff thereafter concluded that there was no likelihood that any public entity would be interested in acquiring Antelope's CPC&N to operate the Willow Springs Area.

Another alternative investigated by staff was the possible formation of a mutual water company or landowners' water association. In 1980, Antelope contacted all the current landowners about a rate increase in the Willow Springs Area and offered, among other things, to assist in the creation of a mutual water company. None of the landowners responded. In June 1983, Antelope again contacted all the area landowners and customers, this time to inform them that the company had applied to the Commission to surrender and abandon its CPC&N and to transfer the system and facilities to the present customers to operate as private parties. The letter included an attachment to be returned to the Hydraulic Branch, telling whether the person opposed or agreed with the proposal and why. The Hydraulic Branch received seven responses. Five opposed the proposed action. Four were concerned with possible decrease in property value, one expressed general concern about water availability for future development of the area. That person (M. Bucich,

Parcel 12) did not claim to have any plans for development, however.

As a result of this opposition and the Commission's long-standing policy (set forth below), in a report dated April 19, 1984, staff recommended that Antelope should be required to once again notify all landowners of its intention to help form a mutual water company. Staff went on to suggest that:

1. If no landowners other than present customers respond within 30 days after receipt of notice, the Commission should proceed with processing Antelope's request for abandonment.
- b. If after six months from notification the landowners have not formed a mutual water company meeting the requirements of the California Corporations Commission, the Commission should proceed with processing the request for abandonment.

The notice would, of course, be approved for sufficiency by staff before being sent.

Antelope followed this recommendation and sent certified notices, return receipt requested, to all landowners on May 23, 1984 in which Antelope explained staff's suggestion, briefly described the formation of a mutual water company, offering to assist in the formation, and inviting the attendance of the owners at an organization meeting on Tuesday, July 10, 1984, at the offices of Dominguez. All notice receipts were returned but only one landowner, Gladys Evans, attended the meeting. According to the minutes of that meeting, Ms. Evans "stated that her only reason for attending the meeting was that other landowners might attend and she wanted to protect herself from any financial outlay for land she did not intend to develop."

As a result of the preceding events, Hydraulic Branch staff sent a memorandum informing the administrative law judge assigned to this matter that Antelope had exhausted all prospects for the formation of a mutual water company and that staff therefore recommended that Antelope's request should be approved.

Facilities and Finances

The report prepared by Hydraulic Branch staff dated April 19, 1984 states the following:

- Existing pumping capacity would be inadequate to serve additional customers.
- Antelope's system does not meet the water supply or fire flow requirements of our General Order 103.
- No mains exist to serve parcels north of Parcel 19.
- The existing well and storage tank would have to be enlarged to be sufficient to supply additional future needs.
- Any extension of service would require engineering and economic studies.
- According to Antelope's operations manager, a larger 25-horsepower motor and pump once equipped the well, but the motor burned out in 1969 because the pump continually broke suction (i.e. water was not flowing into the well fast enough to keep a sufficient volume available for such a fast pump).
- The operations manager recommends that before attempting to increase the well's present yield test pumping, bailing, and video logging should be conducted. He says this might cost \$10,000 to \$15,000.

- In 1982, Antelope's Willow Springs Area had a net rate base of \$7,624, collected \$159 in metered revenues, and sustained a net loss of \$1,882, with a reported negative rate of return on rate base of 22.3%.
- The service area is too far from the closest community, Rosamond, to be likely to develop and grow.
- The land is arid and semiarid.
- No landowners are presently contemplating residential land development.

The report concludes that there is little likelihood that the operation of a public utility service in the Willow Springs Area will ever be economical.

Discussion

The certificated area is about 57 acres in size. The fact of certification means that the landowners in the area have the right to be served with water if they make the request and are willing to pay the costs of extending the present service to their parcels. The application requests that the certificate be canceled and that the owners of the present service area (a 19+ acre parcel within the 57-acre certificated area) be given all the existing water company facilities including its interest in the parcel of land the well is located on. The result of such action would be that, while the owners of the present service area land would continue to have access to an existing water supply, the owners of the other 14 parcels in the certificated area would no longer have the right to the extension of the present service to their land even if they were willing to pay for it.

We set out our policy regarding small, unviable or marginal water utilities in Resolution M-4708 adopted August 28, 1979. In relevant part, we stated:

"WHEREAS: The Commission finds that Class D water company operations tend to be inadequate for both owners and customers. The lack of economies of scale often results in a limited return on the owner's investment and poor service to the customer. Now, therefore, be it resolved that the Commission will:"

* * *

"(c) cancel unexercised certificates for operations unlikely to be viable systems if developed; likewise cancel certificates for constructed systems serving no customers when the owner requests a transfer and sale of the utility which would not be likely to result in a viable operation;

"(d) support and promote the conversion of unviable or marginal water utilities to public ownership or their mergers with more viable entities when opportunities arise and customer service is more likely to improve through such change than without it;"

* * *

Decisions of the Commission and of the Supreme Court concerning the effect on beneficiaries of a revocation of a dedicated source have remained quite constant over the years. For example, in Francioni v Soledad Land & Water Co. (1915) 170 Cal 221, the Supreme Court stated:

"It is obvious that if the water had become dedicated to public use in 1905, it was not within the power of the water company, as purveyor or owner thereof, to revoke the

dedication and convert it into a private use. This cannot be done in any case without the consent, express or implied, of all the beneficiaries of the use." 170 Cal 221 at 228.

Thus, a significant issue here presented involves the rights of the landowners in the certificated area outside Parcel 19 weighed against the duty of the applicant to serve. We need to explore the notion of the beneficiaries' consent to the proposed action.

We were confronted with circumstances very similar to the ones in the present matter in another Antelope Valley Water Company application to abandon a certificate, for service near Lancaster, California, Application 58734, decided by Decision 91733 ((1980) 3 CPUC 2d 624). In that decision, we noted:

"The issue before us is whether a public utility has an obligation to continue to stand ready to serve, unlimited as to time, a service area which has no customers and is no longer viable when the only interest to be protected is that of the property owners whose property values can be diminished by the absence of a public utility water system." 3 CPUC 2d at 628.

We went on to observe that, as is the case here:

"No suggestion has been made by any protestant or property owner that applicant was not ready, willing, and able to render water service [to them] during the early years of its certification. . . . It would be difficult to suggest a fixed period of time for which it would be reasonable to expect applicant to hold itself in readiness to serve, but we believe that a period of more than 20 years is clearly unreasonable." Id. at 630.

This present matter differs from the one described above only in that there are some customers. Thus, rather than total abandonment, applicant here proposes turning over the existing facilities to the owners of the land being served. The rest of the landowners have not requested service or in any way indicated a desire to develop their land during the 26 years applicant has been certificated to serve the area which has become known as the Willow Springs Area. As a consequence, we believe the rationale we set forth in deciding the Lancaster matter is applicable here.

We view the property owners' lack of expressed desire to develop the land and their unwillingness to become involved in the establishment of a mutual water company as "implied consent" (as that term was used in the Francioni case) to revocation of Antelope's dedication of its facilities and water to the public use. We perceive no likelihood that continued existence of Antelope's Willow Springs Area would result in a viable operation beyond service to Tract 19.

Since the owners of Tract 19 have agreed to take over the rights to the existing system, they will not be prejudiced by such abandonment. While we could not have authorized such a transfer to private use if it had been the sole proposal, we feel it is appropriate where, as here, the rest of the landowners have rejected the offer that they become owners in the only other feasible way--by forming a mutual water company.

Therefore, it is totally consistent with our policy and the case law in this area to grant the application as requested and we shall do so.

Findings of Fact

1. The only consumers taking water service from Antelope's Willow Springs Area are the owners and tenants of Parcel 19.
2. There has been no request for water service outside Parcel 19 since before Dominguez took over the system in 1965.
3. There is no evidence of further development occurring within the Willow Springs certificated area in the foreseeable future.
4. No further present or future need for water service in the certificated area has been demonstrated.
5. The present system could not provide additional service to any part of the certificated area without engineering studies, and a larger motor and pump and a sufficient supply still cannot be guaranteed.
6. Additional service to other parts of the area would require extension of mains.
7. Antelope's Willow Springs Area cannot support a viable water system at the present time or in the foreseeable future.
8. The Commission's policy favors decertification of unviable systems.
9. The present water rights of the owners of Parcel 19 would not be prejudiced by receiving Antelope's facilities.
10. Conversion of this certificated area to public ownership or merger with a more viable entity is not possible.

Conclusions of Law

1. A water utility does not have a continuing obligation, unlimited by time, to hold itself ready, willing, and able to serve a speculative future need for water service when none presently exists and none will exist in the foreseeable future.

2. Public convenience and necessity do not now require water service to be provided to Antelope's Willow Springs Area.

3. Transfer of Antelope's present Willow Springs facilities will further the interests of present customers and the Commission's policy regarding treatment of unviable water systems.

4. Since there were no requests for hearing and since all landowners of the area in question were fully informed of applicant's request and given an opportunity to and did communicate their positions to staff and applicant, no hearing was required in this matter.

5. The application should be granted ex parte.

O R D E R

IT IS ORDERED that:

1. After the effective date of this order, applicant, Antelope Valley Water Company, is authorized to abandon and discontinue water service in its Willow Springs Area and to cancel tariffs for service therein.

2. Applicant is authorized to transfer, free of charge, its interest in the well, well site, and other water facilities presently installed in its Willow Springs Area to the present owners of Parcel 19, the only parcel receiving water service.

3. If the authority herein granted is exercised, applicant shall, within 30 days thereafter, notify this Commission in writing of the date of such discontinuance of service, the transfer of facilities, and of its compliance with the terms of this order.

4. Within 30 days after the date of this order, applicant shall notify in writing each and every property owner of record affected by this order that:

- a. It has abandoned water service in accordance with the authorization granted herein.
- b. Since other property owners had no interest in forming a mutual water company and no other viable water furnisher was interested in acquiring its interests in the Willow Springs Area, it has transferred its interest in the well, well site, and other water facilities to the owners of the land which it was serving until the time of abandonment and discontinuance.

Applicant shall file with this Commission a certified statement that such notice has been duly given, within 10 days thereafter.

5. Upon compliance with all of the foregoing requirements of this order, applicant shall stand relieved of all further public utility obligations and liabilities in connection with

the operation of the public utility water system herein authorized to be abandoned and service therefrom discontinued.

6. The application is granted as set forth above.

This order becomes effective 30 days from today.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

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