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Decision 89-12-020 December 6, 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of Citizens Utilities Company of California (U87W) for an order pursuant to California Public Utilities Code § 2708 restricting the addition of customers to be furnished with water service in its Montara-Moss Beach District. | ORIGINAL<br>Application 85-06-010<br>(Filed June 6, 1985) |

(See Decisions 86-05-078 and 88-09-023 for appearances.)

Additional Appearances

David M. Sandhaus, Attorney at Law, for Montara-Moss Beach Water Improvement Association, protestant.
Lennie Roberts, for Committee for Green Foothills, interested party.

Replacement Appearance

Izetta C. R. Jackson, Attorney at Law, for Commission Advisory and Compliance Division, Water Utilities Branch.

SECOND INTERIM OPINION IN PHASE I

Summary

This decision grants, with certain conditions, the petition of Farallon Vista Associates (FVA) for an exemption from the moratorium on the connection of new customers to the Montara-Moss Beach District of Citizens Utilities Company of California (CUCC) imposed by the Commission in Decision (D.) 86-05-078 and extended by the Commission in D.86-12-069. The most important conditions are as follows: (1) FVA must transfer to CUCC a production well and a backup well, each capable of supplying at

least 50 gpm as demonstrated to the satisfaction of the Department of Health Services (DHS); (2) FVA and/or CUCC shall obtain all necessary permits from the County of San Mateo, the California Coastal Commission, and the Department of Health Services; (3) FVA shall construct, or cause to be constructed, one or more water tanks providing a total of 540,000 gallons of storage capacity; and (4) CUCC must obtain Coastal Commission and Department of Health Services permits for its emergency new airport well and its second proposed airport well and demonstrate that the needs of its existing customers are met through the provision of the 200 gpm of new water supply ordered by this Commission in D.86193. Several conditions of lesser importance are also imposed.

Procedural Background

In filing Application (A.) 85-06-010, CUCC sought an order of the Commission, pursuant to Public Utilities (PU) Code § 2708, authorizing it to restrict the addition of customers to its water system in the Montara-Moss Beach District. The Commission issued such an order in D.86-05-078, pursuant to the first sentence of § 2708, which provides:

> "Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any water company which is a public utility operating within this State has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation, the commission may order and require that no such corporation shall furnish water to any new or additional consumers until the order is vacated or modified by the commission. . . ."

On May 28, 1986, the Commission issued Decision (D.) 86-05-078, which imposed a moratorium, with certain exceptions, on connection of additional customers to CUCC's Montara-Moss Beach District. The term of the moratorium was six months; however, by

D.86-12-069, the Commission extended the moratorium until further order. The moratorium is still in effect.

The second sentence of § 2708 provides:

> "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."

Pursuant to the second sentence of § 2708, the Commission provided in Ordering Paragraph 6 of D.86-05-078 that:

> "A prospective customer may seek an exemption from Ordering Paragraph 1 by filing a petition for exemption in this proceeding. The petition should comply with the Rules of Practice and Procedure and shall show what extraordinary circumstances require an exemption."

On January 25, 1988, the Farallon Vista Associates (FVA) filed a petition for modification of D.86-12-069 pursuant to the second sentence of § 2708 and Ordering Paragraph 6 of D.86-05-078. FVA requested that the Commission exempt it from D.86-05-078 and D.86-12-069 regarding the moratorium on water service connections in the Montara-Moss Beach District of CUCC. It also requested that the Commission order CUCC to serve the FVA project.

A protest was filed February 24, 1988 by the Water Utilities Branch (Branch) of the Commission Advisory and Compliance Division (CACD). Branch requested that the petition not be granted without public hearings after it had completed a careful analysis of FVA's petition.

On March 4, 1988, CUCC filed a motion to file a late protest and proposed protest to the petition for modification of D.86-12-069 by FVA. By its motion, CUCC sought permission to file its attached protest and also requested that hearing be scheduled

to consider FVA's petition. By ruling filed March 11, 1988, the Administrative Law Judge (ALJ) granted CUCC's motion.

Evidentiary hearings were set and held on September 14, October 20 and 21, 1988, February 21 and 22, and March 16 and 17, 1989. With the consent of the parties, oral argument was held in lieu of briefing on April 24, 1989, and the matter was submitted on that date.

Positions of the Parties

Farallon Vista Associates

In its petition for exemption from the moratorium on new water service connection imposed by D.86-05-078, as amended by D.86-12-069, FVA alleges that circumstances have changed so significantly since D.86-12-069 that an exemption is now clearly warranted. Specifically, FVA alleges that it has now obtained a well site which could provide suitable water for its entire development; that it has entered into negotiations with CUCC to provide that the well site be sold to CUCC and agreed to conditions requested by CUCC for a "will-serve" commitment; has obtained reserve sewage capacity from the Montara-Moss Sanitary District; has obtained tentative subdivision map approval from the County of San Mateo for its low and moderate income housing project, which is a priority use under the County of San Mateo's Local Coastal Program; and that the County of San Mateo has taken extraordinary steps to assist FVA in processing permits for this project because it is interested in seeing that low and moderate income housing is provided for residents of the county. FVA alleges the only remaining hurdle for development to begin is the resolution of the water supply issue.

In essence, FVA argues that because it has taken the extraordinary step of securing its own water source for its proposed housing development there will be no adverse impact on the present customers of CUCC and therefore an exemption from the new

service moratorium should be granted and CUCC should be ordered to serve the FVA development.

CUCC's Response

CUCC conditionally supports FVA's request. It believes that service to the FVA project can be subject to conditions designed to protect the existing body of ratepayers. It proposes that the following conditions be imposed upon FVA before CUCC should be required to connect to the FVA project to its system:

1. FVA should transfer to CUCC a demonstrably adequate water source for the project at full buildout.

2. FVA should be willing to bear the entire financial risk and burden of the development of the water source to be transferred.

3. FVA and/or CUCC should obtain all other regulatory approvals before CUCC will be obligated to serve the FVA project. For example, approval from the Coastal Commission and the Department of Health Services will be required.

4. The Commission should retain jurisdiction to review and approve the final agreement between the FVA and CUCC.

CUCC asserts that these conditions are already largely reflected in a draft agreement that CUCC has presented to FVA. That document will be refined through further negotiations between FVA and CUCC. When the agreement is in its final form, the Commission can determine whether it protects the public.

Water Utilities Branch

The Water Utilities Branch (Branch) of the Commission's Advisory and Compliance Division (CACD) takes the position that no new customers should be added to the Montara-Moss Beach water system unless the utility is able to show that all existing customers and all prospective customers waiting for service will have a reliable source of water. In support of this position,

Branch cites General Order (GO) 103, Health and Safety Code §4017, Title 22, Code of California Regulations §§ 64562-64564, and Public Utilities Code §§ 2708 and 453.

In its closing argument, Branch asserted that the reliable well production of the Montara-Moss Beach District in October, 1988 was significantly less than the 0.200 reliable gallons per minute per customer produced in May, 1986, when the Commission imposed its customer moratorium (D.86-05-078). The actual production figure was 0.147 gpm per customer if the emergency airport well was included and 0.110 gpm if the well was excluded. Branch noted that reliable production is generally calculated by excluding the biggest water source from the calculations, on the ground that every well is bound to have some down time and it is necessary to be able to meet system needs while the biggest source is down.

Montara-Moss Beach Water Improvement Association

The Montara-Moss Beach Water Improvement Association (MMBWIA) also believes that no new customers should be added to CUCC's system until the shortfall of water affecting existing customers is corrected. MMBWIA contends that the Commission must act in a manner consistent with Department of Health Services regulations, which prohibit new connections to water systems which are not serving existing customers adequately. MMBWIA also contends that there is inadequate evidence that the aquifer from which the FVA wells will draw water is adequate to support either the new airport wells proposed by CUCC or the wells proposed by FVA while providing an adequate level of environmental protection; that FVA's water needs have been seriously underestimated since peak demand has not been considered; that there is no proof that the proposed FVA wells are capable of steadily producing as much water as FVA claims; and that a water shortage will still exist in the Montara-Moss Beach District even after the FVA water sources, storage facilities, and housing project are connected to the

system, so that FVA project residents would simply be added to a already inadequate water system.

Department of Health Services

The Department of Health Services (DHS) stated at the hearing that it could not say one way or the other whether the FVA well or project should be added to the system, since these matters have not come before DHS in the form of permit applications. DHS requested that any Commission order approving an FVA-CUCC connection be conditioned upon DHS's evaluation of the health and safety concerns that would be occasioned by such a decision. DHS wanted to make sure that any order arising out of this proceeding would not preclude DHS from imposing its own moratorium if its evaluation determines it would be detrimental to existing customers.

During cross-examination of the DHS witness, District Engineer Bowen, it became clear that even if the Commission did approve the request of FVA, in effect, allowing the FVA well and project to go forward, CUCC must still obtain a permit from DHS in order to connect the new water source to its water system. Any siting of the proposed well would be presented to DHS for its approval before any financial commitments are made. DHS is interested in looking at the plans for the well before there is any construction done. DHS looks at the overall proposal in the planning stages to evaluate the siting, financial commitments, and the method by which the source is to be added to the system. If a public utility receives positive feedback from DHS at the planning stages, the public utility may construct a well. However, before connecting the source to its system, the public utility must receive final approval from DHS.

Issues

The issues to be determined in this proceeding are:

1. What legal standards should be applied in evaluating a petition, filed under PU Code $ 2708, seeking exemption from an order of the Commission restricting future service connections?

2. Is there a sufficient surplus of water in the aquifer to allow additional pumping without environmental harm?

3. What amount of water will the FVA project require?

4. Will the well and other water system facilities to be provided by FVA produce sufficient water for the system to support the additional demands of the FVA project?

5. What other conditions should be added to an order granting an exemption in order to ensure that service to FVA project customers will not injuriously withdraw the supply in whole or in part from existing customers?

Discussion

Issue 1: What legal standards should be applied in evaluating a petition, filed under PU Code $ 2708, seeking exemption from an order of the Commission restricting future service connections?

The Branch and MMBWIA contend that the standards set forth in the Health & Safety (H&S) Code, and in the regulations issued pursuant thereto, must be applied before additional customers may be added to the system. The Branch asserts that it must be demonstrated that the Montara-Moss Beach system has a reliable supply of water for both its existing customers and for all prospective customers before FVA may be added to the system. Branch cites Health and Safety Code $ 4017, Title 22, Code of California Regulations, $$ 64562, 64563, and 64564; and GO 103 as authority for this proposition. MMBWIA cites this same authority, and in addition cites Health & Safety Code $$ 208, 209, and 4010 et seq.; and PU Code $$ 770(b).

PU Code $ 2708

PU Code $ 2708 requires that applicants for water service from a system subject to a Commission imposed moratorium on new services show that the provision of the requested service "will not injuriously withdraw the supply wholly or in part" from existing customers of the public utility. PU Code $ 2708 does not in itself require applicants for service to show that all existing and prospective customers are adequately served.

Branch and MWBIA argue that even if $ 2708 does not explicitly require that existing customers needs be met before new customers are connected, other relevant statutes and regulations make such a result imperative. Of the authorities cited, PU Code $ 770(b) is the most compelling.

PU Code $ 770(b) states in pertinent part that "No standard of the commission applicable to any water corporation shall be inconsistent with the regulations and standards of the State Department of Health pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code.

Department of Health waterworks standards are set forth in Title 22, California Code of Regulations, $$ 64551 et. seq. Section 64562 is the standard most on point. This section states that: "Sufficient water shall be available from the water sources and distribution reservoirs to supply adequately, dependably and safely the total requirements of all users under maximum demand conditions before agreement is made to permit additional service connections to a system."

It is clear that the Commission's regulations governing water companies must under PU Code $ 770(b) be consistent with DHS regulations including $ 64562. The Commission's primary regulation concerning water utilities, General Order (GO) 103, is in fact consistent with DHS regulations.

What is at issue here is not a Commission regulation or standard per se, but rather the Commission's decision on a petition filed pursuant to PU Code § 2708. Even though our interpretation of that sentence may be precedential, it will not therefore become a "standard" of the Commission within the commonly accepted legal meaning of that word - i.e., it will not become a formal Commission regulation. Therefore, the Commission is not bound by § 770(b) to interpret PU Code § 2708 in a manner consistent with DHS regulations. Nonetheless, public policy considerations compel us to do so. We think it best to work cooperatively rather than combatively with our sister agencies wherever possible.

In order to ensure our decision does not conflict with Section 64562, we will interpret PU Code § 2708 to permit a water company to hook up new customers only after the needs of existing customers are met. This interpretation will apply even where a prospective customer has water supplies it can make available to the utility to which it has applied for service.

Once the needs of existing customers are met, however, we will under the second sentence of PU Code § 2708 consider requests by prospective customers for service from utilities currently subject to moratoriums on new connections. Prospective customers who can make water available to the system from which they request service may be given priority over prospective customers without access to water.

Our distinction between different classes of prospective customers - those with water and those without - has a rational basis since permitting service to new customers with water sources would certainly be less likely to "injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility" than would service to new customers lacking water sources. This distinction formalizes to some extent the emphasis placed in earlier Commission decisions regarding CUCC's Montara-Moss Beach District on the need to show "extraordinary

circumstances" in order to gain Commission approval for new service in an area subject to a moratorium on new connections.

Since it does not place prospective customers with water in a position superior to and in conflict with the unmet needs of existing users in a water short utility's service area, our interpretation of PU Code § 2708 gives a meaning to the second sentence of that section which is consistent with our desire to make decisions consistent with DHS standards and regulations.

The burden of providing adequate and reliable water supplies for the customers and prospective customers within the service territory lies with the public utility. However, where the public utility cannot, has not, or will not provide such supplies to prospective customers on its own, a prospective customer should be able to offer proof that it is able to bring into the system sufficient additional supplies of water that its new demands on the system "will not injuriously withdraw the supply wholly or in part" from the existing customers. If a prospective customer can provide a water supply that is demonstrably adequate to meet its needs without causing water supply problems for affected water companies and other users of an aquifer, we will be inclined to look favorably on an application for service filed pursuant to § 2708.

While we feel constrained by the policy behind PU Code § 770(b) and the other authorities cited by Branch and MMBWIA to require proof that existing customers are adequately served before new customers are added, we do not believe that § 2708 requires such prospective customers meet the needs of other prospective customers in all circumstances. Since other prospective customers are, by definition, not currently being served by the water system, it is difficult to see how a prospective customer with water could injuriously withdraw water from them in violation of PU Code § 2708.

Notwithstanding PU Code § 2708, there may be policy reasons for not allowing certain prospective customer hookups. For

example, in areas where groundwater supplies are limited a prospective customer with water may indeed withdraw water that would conceivably be available to prior prospective customers. For this reason, we will continue to review applications for new service in areas subject to moratoriums on a case by case basis.

Accordingly, we hold that an applicant for new service need not show that it will cure all water supply problems of a public utility water corporation before it may qualify for connection to the water system under the second sentence of PU Code § 2708. It must, however, show that the utility has sufficient water to meet the needs of its current customers, and that the applicant has demonstrable water supplies sufficient to meet its own needs adequately.

This holding does not excuse a public utility from complying with the provisions of the Health and Safety Code, or the regulations issued pursuant thereto. Irrespective of any decision arising out of this proceeding, CUCC must apply for and obtain the permission of DHS before connecting FVA's proposed wells to the water system. Our action here will have no bearing on the application of CUCC to DHS.

PU Code § 453

The Branch also argues that by allowing FVA to connect to the system CUCC will be discriminating against other prospective customers in violation of PU Code § 453. This would be true if FVA was simply another prospective customer in line behind earlier prospective customers, and is precisely why D.86-05-078 did not allow FVA an exemption from the moratorium.

Now, however, there is a critical distinction between FVA and other prospective customers. Since D.86-05-078 was issued, FVA has expended, and will expend, a great deal of effort and time to explore for water, to find water, to drill test wells, to acquire real property, to purchase and erect a storage tank and other system facilities in order to place itself in a position to receive

water service from CUCC. FVA is willing to undertake these measures if it can obtain a commitment from CUCC to provide service to its project and recoup its expenses through a contract for refund of advances for construction. This willingness to develop water sources distinguishes FVA from the traditional prospective customer who expects the utility to supply all necessary water. It also alters the impact of $ 453 on this proceeding.

While PU Code $ 453 prohibits utilities from treating a particular customer differently than other similarly situated customers, it does not prohibit utilities from making rational distinctions between different classes of customers. It does not, for example, preclude a utility from treating industrial customers differently than residential customers. Much of utility rate design depends on just such distinctions. If all customers were treated identically, and one set of rules and one rate applied to everyone, our job as a regulatory commission would certainly be easier, but unfortunately such an approach would be an inadequate response to the varying circumstances of utility customers.

In the present proceeding, $ 453 would not preclude CUCC from treating prospective customers with their own water supplies differently than prospective customers with no water supplies. The ability to supply water is a characteristic distinctive enough to warrant creation of a new class of prospective customers. CUCC does, in fact, desire to serve FVA as a "preferred prospective customer" if suitable financial and other arrangements can be made. We do not find this to be a violation of $ 453. Naturally, all similarly situated prospective customers must be treated equally.

MMBWIA argues that the real issue is whether authorizing the connection of FVA discriminates against existing utility customers. We agree that this issue is an important one but do not see it as a problem here. If FVA was gaining a unique form of access to a specific water supply in preference to existing customers, this allegation of discrimination might have merit.

But, as contemplated by FVA and CUCC, any wells developed by FVA would simply be connected to the overall water system and the water therefrom would be available to all customers alike. Furthermore, our approval of a conditional FVA-CUCC connection does not mean we are abandoning existing customers or that we will not insist that CUCC develop water supplies necessary to remedy the current shortfall prior to connecting the FVA development. Nor does it mean that FVA will be able to develop its wells any sooner than CUCC will be able to develop its second new airport well. FVA will have to obtain Coastal Commission and DHS approval just as does CUCC. Unless the Coastal Commission changes its mind about the need for a comprehensive study of the safe yield of the aquifer in question, the FVA well will end up on the same time line as the CUCC airport well project - awaiting the completion of that study. We simply do not believe that our decision to approve the FVA-CUCC hookup will result in any discrimination against existing customers.

Issue 2: Is there a sufficient surplus of water in the aquifer to allow additional pumping without environmental harm?

When FVA first became subject to the restriction imposed in D.86-05-078, it took steps to locate another source of water for its project. It drilled two wells on the project site but only obtained about 8 gallons per minute from those wells, an amount insufficient to satisfy the project's requirements. However, those wells could be used to irrigate landscaping. FVA explored three additional sites before finding the fourth site, which is the subject of this proceeding. The well site that FVA proposes to use for the production of water is located near CUCC's airport wells, and draws from the same aquifer.

FVA witness Scalmanini testified that the FVA test well could meet the estimated average daily water requirement of the FVA development, between 26 and 28 gallons per minute. Scalmanini

acknowledged that when the test well was test pumped by Geo/Resources at a 32 gpm rate there was a dramatic decline in water level after some 50 minutes of pumping. Assuming that this decline in test well yields results from some specific characteristic of the well, rather than of the aquifer, Scalmanini estimates that since a nearby CUCC well produces roughly 100 gpm then FVA could develop a well sized to produce 50 gpm to provide a comfortable margin for FVA's project plus a surplus to be used to meet the needs of other CUCC customers.

Branch and MMBWIA are not so confident that an FVA well adequate to meet project needs could be developed at the site proposed by FVA. They point to the absence of a well test proving that such production is possible. Their basic attitude is Missourian: "I'll believe it when I see it."

Regardless of the test well issues just mentioned, there is a more fundamental problem in resolving the aquifer yield question. At present, there is a controversy between the California Coastal Commission and the County of San Mateo regarding the adequacy of evidence that the aquifer feeding CUCC's airport wells can support additional wells. The County believes there is adequate evidence that the aquifer can support additional wells without harming environmentally sensitive areas; the Coastal Commission does not. Since the Coastal Commission has ultimate authority over the issuance of coastal development permits, FVA must have that agency's approval before proceeding with its development.

This aquifer controversy first surfaced when environmentalists appealed the coastal development permit the County granted to CUCC so that the utility could develop two new wells near its existing airport wells in order to respond to this Commission's order in D.86193 to develop 200 gpm of additional well production so as to reduce or eliminate the existing shortfall in water supply.

The County of San Mateo's local coastal plan states that a preliminary safe yield for aquifer production must be determined before a well permit can be granted. The County's Phase I report, prepared in connection with CUCC's proposal to develop two new airport wells, estimated that the preliminary safe yield was between 650 and 1,350 acre feet of water a year.[1] Since CUCC's proposed 100 gpm wells would yield 322.63 acre feet of water a year, the County felt confident that the aquifer could easily supply CUCC's needs. Because it was interested in both the needs of existing customers and in the low to moderate income housing offered by FVA's proposed development, the County conditioned CUCC's coastal development permits to require that production from the CUCC wells be first used to correct existing water supply shortfalls and that a portion of any remaining new capacity be reserved for the priority land use known as Farallon Vista Housing Development.

Environmentalists appealed CUCC's coastal development permits to the Coastal Commission. The Coastal Commission incorporated the County's own permit conditions, but questioned the wisdom of the County's decision to allow well development based on preliminary safe yield studies to proceed concurrently with field studies to establish a final safe yield determination for the aquifer supplying the wells. Finding that these provisions were inconsistent with certain local coastal plan policies for the protection of sensitive areas, the Coastal Commission conditioned its permit on the completion of a comprehensive study of the safe yield of the aquifer. The final safe yield portion of the study required by the Coastal Commission is sometimes referred to as the Phase II Pillar Point Marsh study since that is the environmentally

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1 An acre-foot of water equals 325,828.8 gallons. A well steadily producing .62 gpm 24 hours a day for 365 days will yield one acre-foot of water a year.

sensitive area most likely to be affected by the proposed new wells. The Coastal Commission permit documents make clear that that Commission did not intend to authorize the development covered by the permit until the relevant water yield studies were completed. As the Coastal Commission noted in the staff report accompanying its notice of intent to issue the permit, it makes sense to determine the safe yield of an aquifer before authorizing new wells tapping that aquifer because otherwise people may come to depend on the water from the conditionally approved new wells and be severely disadvantaged if those new sources of water were subsequently withdrawn because the final yield study did not yield the expected results. This is simply a question of putting the horse before the cart.

In June, 1987, the Coastal Commission authorized development of one new airport well on an emergency basis because of a drastic shortfall in the water available to CUCC. This emergency authority extends only until the Phase II study is completed, at which time the two well CUCC proposal will be reevaluated. There is no reason to believe that the Coastal Commission will on the basis of today's decision now approve these wells prior to final completion of the Pillar Point Marsh water yield studies. Nor should we encourage them to do so.

When the Coastal Commission conditioned its approval of the new CUCC wells on the completion of a final safe yield study, FVA was again left without a water source. Thus, it undertook to develop the wells at issue in this proceeding.

While we admire the dogged determination of FVA to find water for its development, we cannot help but conclude that since the proposed FVA wells will draw water from the same aquifer as the CUCC's proposed airport wells the Coastal Commission is unlikely to authorize FVA's wells before the Phase II Pillar Point Marsh study is complete. For this reason it seems somewhat premature to spend much time addressing the aquifer yield question now. Basically, we

have before us the same information found satisfactory by the County but rejected as inadequate by the Coastal Commission. Nonetheless, since the parties went to great lengths to introduce and argue this safe yield evidence, we will address the issue here.

FVA witness Christine Gouig, the planning director of the County of San Mateo, testified concerning the permits that the County has issued for the wells proposed by FVA to support its project. She testified that both the Planning Commission and the Board of Supervisors found FVA's project consistent with the County's local coastal program.

It was Gouig's opinion, based on the Environmental Impact Reports (EIRs) and the studies that she had read, that the airport wells and the FVA's proposed well do not pose any threat to the water supply or to the marsh land habitat in the Denniston area. Nor do these wells pose a threat of salt-water intrusion. She further testified that there is not a shortage of water in the aquifer in question. The Phase I Pillar Point Marsh study and the other studies that she and her staff members had considered showed that there is a lot of water under the ground; in fact, there is water sufficient to serve homes above the number presently served. She believes the studies show that there is sufficient water under the ground to cover both the shortfall presently being experienced by the existing customers as well as the customers proposed to be added by the FVA project.

The County of San Mateo is interested in the FVA project because it involves the development of affordable housing. The FVA site is one of three sites identified in County planning documents as appropriate sites for affordable housing. However, the FVA site is the only one on which a development is proposed. In addition, the FVA project has a tentative subdivision map to develop 148 units of housing on the site in question. While San Mateo's local coastal program calls for protection of sensitive marshland, it also calls for the development of affordable housing. Gouig

explained that planning involves a balancing of various goals and interests, and that she did not allow a single policy of the local coastal program (for example, protecting the marsh habitat) to drive all the other policies set forth in the local coastal program. Since her data on water resources showed that no harm to the marsh would result from FVA's development, the development should be approved.

Gouig testified that before granting permits for the FVA well to be constructed the County first determined a preliminary safe yield for the aquifer in question. A safe yield is an amount of water that could be safely withdrawn from the aquifer without harming the marsh.

Senior County Planner Bill Rozar summarized the Phase I preliminary yield study as follows. The study calls for 100 acre-feet per year of output from the aquifer to protect the marsh, whereas the total flow through the Pillar Point Marsh area is about 2,000 acre-feet per year. In granting the permit for FVA, the county staff allowed 1,000 acre-feet as a reserve for the protection of the marsh habitat, even though the study said that 100 acre-feet would be the approximate figure. The Phase I report also said that 400 acre-feet is currently being pumped from the aquifer. That leaves 600 acre-feet available for additional development.[2] From that 600 feet, the FVA project will require approximately 45 acre-feet, leaving about 555 acre-feet reserved for other or additional development purposes. Based on the preliminary safe yield figures derived from the Phase I Pillar Point Marsh report, the planning staff believes that the FVA

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2 The Phase I report itself cites a preliminary safe yield of 650 acre-feet a year. Exhibit 50, Exhibit E, p. 2.

coastal development permit can be granted while assuring protection of the marsh.

FVA's expert witness Joseph Scalmanini testified that a 1974 study reported that there were some 800 acre-feet of groundwater being pumped from the Denniston Creek Subbasin. In his prepared testimony (Exhibit 50), however, he pointed out some of that study's limitations. For example, he noted that:

> "some serious misconceptions have developed as a result of erroneous estimates of water inflow, outflow, and usage presented in this report. For instance, agricultural pumping was estimated at 500 acre-feet/year (a.f.y.) in 1974, when it was probably negligible. At present, no groundwater is pumped for irrigation from the ground-water basin. All irrigation supplies are imported from San Vincente Creek, and total ground-water pumpage at present is considerably less than the total pumpage reported in 1974. Further, the 1974 estimate of municipal and domestic pumpage, which was 350 a.f.y., is substantially higher than the nearest recorded values (1976), when pumpage was about 250 a.f. Finally, the 1974 report may have over-estimated subsurface inflow, storage, and outflow as discussed herein." (Exhibit 50, pp. 4-5.)

FVA concludes that pumping from the subbasin is approximately one-half of what it was reported to have been 15 years ago and that the subbasin has more than adequate water to serve the FVA development. In light of the limitations of the 1974 study, however, we will not give it much weight.

The testimony of the county planning director and other FVA witnesses was largely uncontested. However, in the Branch's prepared testimony, page 19, paragraph 56, the Branch states that "...San Mateo County has set a maximum pumping limit of 42 acre-feet per year for the FVA project, the amount available from 26 gpm. This is significantly less than the amount needed."

In rebuttal to the foregoing staff position FVA called Bill Rozar as a witness. Rozar is a senior planner with the

planning division of the County of San Mateo. He has been with the County for 15 years. One of his roles with the planning division is to evaluate hydrology studies on the coast side. He has been involved in permitting of individual water wells in the mid-coast area since 1985. He has also been associated with the FVA project since the early 1980s, both in managing EIRs on the FVA project and in managing permits that have been granted for the FVA project in general and for the water supply project in particular. He is the senior planner in charge of the environmental resource administration section, which is the clearinghouse for all environmental documents in San Mateo County. He was also project manager for the EIR related to the coastal development permit for the FVA's proposed wells.

Rozar is familiar with the condition on total annual pumping that has been applied to the coastal development permit of FVA. He explained that the condition was originally imposed on the well permit at the request of Coastside County Water District. Coastside requested that an annual limitation on pumpage be imposed on any coastal development permit granted to FVA. Coastside argued that when it applied for a coastal development permit for its own wells it was limited to approximately 400 acre-feet per year. It was Coastside's view that any person receiving a similar permit should also have an annual cap on water production. The staff of the planning division agreed with Coastside's request and used as a basis for an annual cap a letter from CUCC indicating that 28 gallons per minute were needed for the FVA project. A simple calculation converted that figure into the 42-acre-foot per year pumpage limitation in the FVA coastal development permit.

Before continuing the discussion of this issue, it would be appropriate to introduce the following table of water production values. The table converts gallons per minute of well production into gallons per day, gallons per day per customer,

gallons per year and acre-feet per year. The witnesses discussed water production numbers in these various units making comparison difficult without the table.

**TABLE OF WATER PRODUCTION VALUES***

| gpm[1/] | gpd[2/] | gpd/cust.[3/] | gpyr.[4/] | Acre-ft./yr.[5/] |
|---|---|---|---|---|
| 26 | 37,440 | 253 | 13,665,600 | 42 |
| 28 | 40,320 | 272 | 14,716,800 | 45 |
| 30 | 43,200 | 291 | 15,768,000 | 48.4 |
| 30.4 | 43,741.4 | 296 | 15,965,611 | 49 |
| 33 | 47,520 | 321 | 17,344,800 | 53.2 |
| 40 | 57,600 | 389 | 21,024,000 | 64.5 |
| 50 | 72,000 | 486 | 26,280,000 | 80.7 |

1/ gallons per minute of well production.

2/ gallons per day, given 1,440 minutes per day.

3/ gallons per day per customer given 148 customers for FVA project.

4/ gallons per day times 365 days per year = gallons per year (gpyr.).

5/ acre-feet per year, given 325,828.8 gallons per acre-foot.

* Given:
- 1 acre-foot = 43,560 cu.ft.
- 1 cu.ft. = 7.48 gallons
- 1 acre-foot = 325,828.8 gallons

It is immediately apparent from the foregoing table that Rozar was mistaken when he discussed calculating 42-acre-feet per year from 28 gallons per minute of well production. Forty-two acre-feet per year is the value associated with well production of 26 gallons per minute, whereas 45 acre-feet per year is the annual figure associated with 28 gallons per minute of well production. Since Rozar was working from memory on the witness stand rather than from documentary evidence or testimony, it is understandable such a minor error might creep in. The problem appears to be a continuing one, since the County documents in Exhibit 49 variously employ either the 42 or the 45 acre-feet per year figure. For example, the recommended findings and conditions of approval prepared by the planning division staff for the Board of Supervisors for hearing on June 28, 1988 contained the following Condition 18:

> "The annual production of water pumped from the primary and back-up well shall not exceed 42 acre-feet without amendment of this permit."

Resolution 50538 of the Board of Supervisors adopted June 28, 1988, which certifies the final EIR for FVA's water supply development project, uses 37,000 gallons per day as the level of water production adequate to serve the FVA project while stating at another point that the project's demand is 45 acre-feet. (Exhibit 49.)

We do not consider the above discrepancies to be significant. The thrust of Rozar's testimony is that the pumping limitation is flexible and that the planning director has the authority to modify the pumping restriction within certain limits. Those limits are that the additional pumpage would not have a significant environmental effect. In Rozar's view, a pumping limitation of 49 acre-feet or 30.4 gallons per minute of well production would not have a significant impact on the environment. Accordingly, the planning director would have the discretion to modify the coastal development permit to increase the pumping

limitation from 42 to 45 or to 49 acre-feet per year. Of course, no such application for a discretionary modification of the pumping limitation has been sought. However, it is clear from Rozar's uncontested testimony that such a modification could be accomplished by the planning director if an application for such relief were filed. He did not know if the planning director would have the same discretion while the FVA coastal development permit was on appeal to the Coastal Commission.

We note that whether 42 or 49 acre-feet are needed to supply FVA itself makes little difference in light of the fact that FVA proposes to develop a production well that will produce 50 gpm, or about 80.7 acre-feet a year. This is the key figure in any evaluation of the amount of water FVA is likely to draw from the aquifer. FVA must obtain from the County of San Mateo a modification of the current pumping limitation sufficient to allow this level of pumping before its project will be able to proceed much further.

Moving on to the critical factor preventing FVA's project from moving forward, we will add to our prior discussion of the disagreement between the County of San Mateo and the Coastal Commission regarding the adequacy of evidence concerning aquifer yield. The FVA coastal development permit is now on appeal to the Coastal Commission. The following exchange between counsel for Branch and Rozar summarizes the basic issue from the County's perspective:

> "Q . . . Is there a reason that you would not want to wait for the result of the Phase II report before coming up with recommendations about changing acreage feet requirements in a well permit condition?
>
> "A We believe that there is enough information in the Phase I report to approve a coastal development permit that involves the consumption of water.

"Q Well, you believe that, I gather, when you issued the permit.

"A Our policy in the local coastal plan states that a preliminary safe yield must be determined prior to granting a permit and the Phase I report does determine the preliminary safe yield ranging from 650 and 1,350 acre feet.

"Q Well, then, why is the Coastal Commission requiring a Phase II report?

"A Because they are interested in biological resources of the Pillar Point Marsh, and they want to make sure there is enough water reserved within the aquifer for the survival of the marsh.

"Q And as I understand it, that Phase II requirement is in connection with two specific wells that you mentioned that Citizens Utilities is interested in developing, one of which has already been developed, I understand, and the other has not?

"A Uh-huh.

"Q Is your testimony that even though the Coastal Commission is interested in... getting the Phase II report before they make the decision about letting Citizens develop a second well, your office is not concerned about that?

"A We believe that they are in error, that they are wrong, that there is enough water, and we have testified to that in front of the Coastal Commission." (Tr. 13:1275-1276.)

Although no one from the Coastal Commission testified in this proceeding, the record contains ample evidence of the Coastal Commission's reasons for refusing to allow CUCC to develop its second new airport well or to obtain permanent status for its first new airport well until the Phase II study is complete. Exhibit 39 states that on November 14, 1986 the Coastal Commission granted

CUCC a conditional permit for the drilling of two community water wells with a maximum annual production not to exceed 400 acre-feet. The permit notice was accompanied by a staff report on appeals of the coastal development permit granted by the County which was adopted by and formed the basis for that Commission's permit decision. This staff report including the following references to the County's conditional coastal development permit:

> "The County approval allows the study to be undertaken concurrently with development and production (up to 400 AF a year) of the two new wells. Conditions attached to the approval provide that the County may reduce the annual levels of pumping if the study indicates that the wells are adversely affecting the marsh.
>
> "This approach is inconsistent with the clear policy direction of the (local coastal plan) for three reasons. First, the policy language requiring the preparation of the study is very straightforward as to intent and timing which is as follows:
>
> "1) New permits for water extraction in excess of safe yield will not be permitted (7.20(b), 2.32(c);
>
> "2) Safe yield is unknown, therefore studies to determine it are required (2.32 (d), 7.5 (a));
>
> "3) Safe yield must be determined then permit application can be analyzed based on its conformance to this figure (7.5 (a));"
>
> * * *
>
> "The proposed condition to possibly reduce extractions, if the studies reveal an adverse impact on the marsh, do not cure the basic defects outlined above. The condition is very discretionary and, from a strictly practical standpoint may be very difficult to apply since it would mean taking away a water supply that many people may since have come to rely on for both domestic use and emergencies. The more

> prudent approach, and one that has been known to the applicant since at least the certification of the (local coastal plan) over five years ago, is to prepare the study, analyze the findings of it and approve or disapprove the permit based on this information. . . . Therefore, as proposed, the project...must be denied because it does not provide assurance that the health and productivity of Pillar Point Marsh will be protected... However, conditional approval may be appropriate...
>
> "As conditioned, to provide for the preparation and analysis of the required report, and limitations of pumping based on the report prior to the connection of these wells to the CUC system, the project will be consistent with the Certified (local coastal plan.)" (Exhibit 39, Staff Report on Appeal A-3-SMC-86-155, Substantial Issue Determination, pp. 20-21.)

Although this Coastal Commission staff report refers to CUCC's proposed wells, the logic applies equally well to FVA's proposed wells. Although the County of San Mateo issued its preliminary safe yield, or Phase I report, in June, 1987, that report does not constitute compliance with the Coastal Commission's research conditions since it did not involve the well monitoring, biological research, and test pumping contemplated by that Commission. Thus, the Phase II study is still necessary.

Based on the record in this proceeding, we believe it is likely that the aquifer contains sufficient water for development purposes to supply the needs of the FVA project. There is little evidence to contradict FVA's testimony that there is adequate water in the aquifer to serve its needs, except perhaps the fact that the test well suffered significant drawdown when pumped at 32 gpm. In light of the CUCC emergency airport well's ability to produce about 100 gpm, this drawdown seems more likely to be the result of the inadequacy of that particular well than of the aquifer itself.

We recognize, however, that the Coastal Commission's concerns regarding the aquifer's ability to provide water for both utility purposes and environmental protection needs have not been fully answered. In light of the Coastal Commission's concerns, and the obvious fact that a definitive study of the aquifer's safe yield and ability to provide protection for the Pillar Point Marsh has yet to be completed, we decline to find definitively that the aquifer can adequately serve both the CUCC's new airport wells and the proposed FVA wells and at the same time meet the needs of the Pillar Point Marsh. We can, however, find that on the basis of the County's preliminary safe yield study it appears likely that this is so.

Issue 3: What amount of water will the FVA project require?

FVA sponsored substantial evidence on the estimated use of water by the FVA project. Initial estimates by former CUCC manager Stradley and present manager D'Addio range from 26 to 28 gallons per minute. In addition, FVA sponsored another witness with many years of experience as a water engineer. He used two approaches to determine the anticipated water use by the FVA project. First, using data received from CUCC, he derived a figure of 191 gallons per day per unit. Second, using a buildup approach, he derived the figure 230 gallons per day per unit. FVA showed that a well producing 50 gallons per minute would produce 72,000 gallons per day. Since unaccounted for water is about 15% in the Montara District, the production figure of 72,000 gallons per day must be reduced to 61,200 gallons per day of usable capacity. With 148 units at 23 gallons per day per unit, the project will use 34,040 gallons per day. With 61,200 gallons per day of usable capacity and 31,820 gallons per day of use from the FVA project, the FVA proposal produces a surplus of water of 27,160 gallons per day. That surplus would be available to other customers in the system.

FVA sponsored expert engineering testimony to show estimated water use by FVA's project. Witness Inerfield adjusted annual water sales data from CUCC's Montara District for the four year period 1984-1987 to reach his conclusions. Inerfield first estimated water use by larger customers at 72,000 gpd. He then subtracted that figure from total water sold for each of the four years. The remainder is total water sold to homes. He then divided this figure by the number of connections to obtain water used per residence. He assumed that 75% of that figure was water used within the house. These figures declined from 171 to 143 gpd per residential customer over the four-year period.

Even though a new condominium development like the FVA project could be assumed to achieve as much as a 30% decrease in water consumption over the older housing stock of Montara because of water conserving plumbing fixtures, Inerfield did not include such an adjustment in his estimate. Rather, he conservatively estimated household use per FVA unit at 200 gpd.

Next, Inerfield estimated FVA water use for landscape irrigation at 27.5 gpd per unit. He rounded this figure to 30 gpd per unit. The total of household use (200 gpd per unit) and of landscape irrigation (30 gpd per unit) was 230 gpd per unit.[3]

Inerfield double checked his first estimate, based on Montara District usage, with a second estimate based on engineering assumptions. He assumed that three persons would occupy each condominium unit in the FVA project; that each person would consume 65 gpd; that each unit would, therefore, consume 195 gpd; that

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3 The average water use per residential customer for the four-year period was 204.75 gpd, using Inerfield's method. This figure includes all uses, household and irrigation, for connections that are generally single-family dwellings. Inerfield estimates that a condominium unit would, on the average, consume more than a single-family unit.

landscaping use would be 30 gpd; and that total use per unit would be 225 gpd. Inerfield's second estimate of 225 gpd per unit compares favorably with his first estimate of 230 gpd.

Based upon these estimates, Inerfield opined that 37,000 gpd of well production is sufficient to supply the FVA project.[4]

The Branch also sponsored evidence on the estimated use of water by the FVA project. The Branch sponsored Exhibit 61, a printout showing consumption of water per residential customer per day for the Montara District for the years 1985, 1986 and 1987. The average residential customer in the Montara District consumed 215 gallons per day in 1987. The Branch testified that in the absence of better data it assumed that the amount of water production needed to supply the FVA development cannot be less than is presently being produced to supply 148 existing CUCC customers.

In order to calculate the amount of water production necessary to produce 215 gallons per day per residence, it is necessary to find an approximate unaccounted for water percentage. The Branch derived an unaccounted for water percentage by subtracting water sold from total water produced. The remainder of this calculation is unaccounted for water in gallons. The Branch then divided unaccounted for water by water sold to obtain a factor of 18.3% for unaccounted for water. The FVA engineering witness calculated unaccounted for water by subtracting water sold from total water produced. He then divided the remainder by total water produced and his unaccounted for water factor was 15%. The FVA method is preferred. The Branch method will achieve more than 100% if the 18.3% is added to the percentage derived from water sold divided by total water produced.

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4 A well pumping 26 gpm produces 37,440 gpd. With 148 units at 230 gpd per unit, the FVA project will require 34,040 gpd.

Using a 15% factor for unaccounted for water and the Branch's figure of 215 gallons per residence per day, we can derive the water production figure needed to produce 215 gallons per day per residence of water sold. Dividing 215 gallons per day per residence by .85 gives 253 gallons per day per resident of water production.

Although the Branch testified that an amount over and above 253 gallons per day should be imputed to the FVA project to account for supposed increases in the usage of the three major customers (El Granada Home Park, St. Catherine's Hospital, and the Chart House Restaurant), occasioned by increasing the number of residential customers by 148, the Branch ultimately conceded that the best proxy for estimating the use of condominiums would be 148 Montara residential customers rather than an average of all customers, including commercial customers, times 148 customers. Accordingly, we will not impute to FVA any increase in commercial customer usage that might occur as a result of increasing Montara's households by 148.

The Branch testified to another figure for residential consumption, a figure derived from Coastside County Water District. According to a conversation between the Branch witness and Robert Rathborne, general manager for Coastside County Water District, residential customers were using 278 gallons per minute. We may convert that figure to gallons per day by multiplying that figure by 1,440. However, we do not know the number of residential customers in Coastside County Water District. And, therefore, the figure is not comparable to the ones that we have been discussing.

The Branch estimates that 253 gallons per day per residential customer of water production will be needed to provide 215 gallons per day of water consumption to a residential customer. On the other hand, FVA estimates that 230 gallons per day of consumption will be needed by each FVA unit. Using the higher estimate, and the same unaccounted for water factor of 15%, we

calculate that 271 gallons per day of water production will be needed to provide water service to each FVA unit. We will accordingly adopt 271 gallons per day per FVA unit as the amount of water production needed for FVA.

Issue 4: Will the well, and other water system facilities, to be provided by FVA produce sufficient water for the system to support the additional demands of the FVA project?

At 271 gallons per day per customer, well production of about 28 gallons per minute or 40,320 gallons per day, or 45 acre-feet per year would be required to furnish sufficient production for the needs of the FVA project. This figure is very close to the well production of the existing test well on the parcel owned by FVA. The expert hydrologist called by FVA testified that in addition to the test well, a commercial sized well of 10 to 12 inches in diameter would be constructed to provide the primary supply for the FVA project. Such a well could conservatively produce not less than 50 gallons per minute of continuous pumping. This amount is almost twice the requirement of the FVA project (see table of water production values above). This testimony was not contradicted.

The proposed 50 gallons per minute commercial well will be near the location of CUCC's Airport Well No. 3, which, according to Branch testimony, is currently producing 99 gallons per minute. The two wells would tap the same aquifer. In addition to the 50 gpm production well and the 26 gpm backup well, FVA proposes to provide to the water system a 540,000 gallon water tank. The new tank would take the place of a 100,000 gallon tank that is currently located on the FVA project site. Thus, the system would gain 440,000 gallons net storage over and above the present storage capacity. 540,000 gallons of storage will more than meet the peak demand of CUCC's entire Montara-Moss Beach District for a single day. Although the tank to be constructed is sized to meet FVA's

project requirements, the water will also be available to fight fires elsewhere in the community.

Finally, the FVA project will be built in three phases over about three years. One-third of the housing units will be built in each of the three years. FVA proposes that the wells and the storage to be furnished to the system will be available to the system before construction starts. Thus, for approximately one year, FVA will draw little more than construction water and some landscaping establishment supplies. During the second year of construction presumably the first phase of construction will be occupied while the second phase is under construction. Thus, it will not be until three to four years after construction commences that the FVA project will consume the amount of water estimated for its 148 units at full buildout and occupancy. Also, the landscaping will be planted and established in three phases along with the construction of the three parts of the condominium project.

We believe that the amount of water to be furnished through the 50 gpm production well and through the 440,000 net gallons of additional storage would be more than sufficient to supply FVA's needs plus provide a surplus for the benefit of all CUCC's customers in the Montara District.

Issue 5: What other conditions should be added to the order granting an exemption in order to insure that service to FVA project customers will not injuriously withdraw the supply in whole or in part from existing customers?

We will adopt as the backbone of our order granting an exemption to FVA the four conditions advocated by CUCC, modified slightly in response to the comments of CUCC and DHS. These conditions are as follows:

a. CUCC shall obtain from FVA a water source demonstrably adequate to meet project needs at full build out, including:

(1) A production well of not less than 50 gallons per minute (gpm) sustained yield;

(2) A backup well of not less than 50 gpm sustained yield; and

(3) A treatment plant and related facilities, if the water from the wells to be provided by FVA requires treatment.

The wells and treatment plant shall be constructed to meet all applicable water utility standards, including those of both this Commission and the Department of Health Services. The sustained yields of these wells must be demonstrated to the satisfaction of the Department of Health Services in accordance with the waterworks standards and other regulations of that agency."

b. FVA shall bear the entire financial risk and burden of the development of the water production sources and treatment facilities described above to be transferred from FVA to CUCC.

As a condition of our approval of the exemption, FVA must finance the production well and the backup well, and a treatment plant if that is needed.

c. FVA and/or CUCC shall obtain all regulatory approvals required by law before CUCC shall be obligated to serve FVA's project. These approvals shall include Coastal Commission approval of the FVA coastal development permit, Department of Health Services approval of wells to be added to CUCC's system, and County of San Mateo approval of a modification of the pumping limitation on the coastal development permit.

d. The Commission shall retain jurisdiction to review and approve, through its Water Utilities Branch staff, the final agreement executed between FVA and CUCC regarding the facilities to be provided by FVA. This

approval must be obtained before CUCC is obligated to connect FVA's project to its system.

In addition to the foregoing conditions, we will also require that FVA construct the 540,000 gallon storage tank to be located on the site of the current 100,000 gallon tank that is within the property of FVA on the site of its proposed development. We will also require FVA to employ the two wells that it drilled on the FVA project property for irrigation of landscaping. Finally, we will require individual metering, as recommended by witness Inerfield.

In connection with the following order, we urge the Coastal Commission to allow CUCC to drill the second airport well that it proposed in 1986 once it is satisfied that the Pillar Point Marsh will not be harmed thereby. We also urge similar action on the FVA's coastal development permit so that a new production well and a new backup well producing at least 50 gallons per minute apiece may be added to the CUCC's system in connection with FVA's project. According to our best estimates, the surplus production of the primary FVA well will contribute significantly to the well-being of existing customers as well as meeting all anticipated needs of the FVA project. We believe that the development of the second new CUCC airport well, the permanent approval of the first new CUCC airport well, and the development, approval, and connection of the FVA primary and backup wells should satisfy the needs of current customers as well as those of FVA. Because the County of San Mateo required CUCC to reserve a certain portion of its new airport well production for use by FVA, the development of separate FVA wells should free this portion of airport well production for use by either existing or other prospective customers.

In the event that the Phase II Pillar Point Marsh study reveals an inadequate aquifer water supply, we will of course face once more the issue of water supply constraints in this district.

Comments Under Rule 77.1

The proposed decision of the ALJ was mailed to the parties on September 11, 1989, pursuant to PU Code $ 311. Comments were filed by FVA, CUCC, Branch, DHS, and MMBWIA. In addition, replies to comments were filed by FVA and Branch.

Comments of CUCC

In its brief comments CUCC made two points. First, it suggested changes to Ordering Paragraph 2(a) to insure that FVA was ordered to provide a backup well of not less than 50 gpm continuous pumping capacity. CUCC pointed to testimony in the record where it requested that both the production well and the backup well be able to produce not less than 50 gpm of water supply. Moreover, both wells according to CUCC should be designed and constructed to meet all applicable water utility standards. In its reply comments FVA does not object to this more stringent condition.

Second, CUCC requests that the Commission insert the following addition to Ordering Paragraph 2(a) to make clear that it is FVA's obligation to provide any treatment facility required for its wells:

> "In addition, if the water from the wells to be provided by FVA requires treatment, FVA shall provide the necessary treatment plant and related facilities."

In its reply comments FVA does not object to this proposed addition. We will make the two changes requested by CUCC, as well as related changes in the body of the opinion for the sake of consistency.

Comments of FVA

FVA suggests two modifications. FVA asked that Ordering Paragraph 2(b) be modified to show that after FVA has advanced the funds necessary for the development of the water source that CUCC should refund those advances over a 40-year period in accordance with the main extension rule (Rule 15). In support of its suggested modifications, FVA cites paragraph 11 of a proposed

agreement tendered by CUCC to FVA in connection with the subject project. (Exhibit 55, Appendix A, page 6, paragraph 11.) Paragraph 11 provides that:

> "Refund of refundable advances made by FVA to CUCC will be made by CUCC to FVA in accordance with Rule No. 15."

We do not interpret that language to necessarily require that the facilities to be provided by FVA be funded by advances, particularly in light of paragraph 9 of the same agreement, which provides:

> "Said main extension agreement will provide either for the advance or contribution by FVA to CUCC of the cost to construct the facilities necessary for CUCC to provide water service to FVA, or for FVA to construct and advance or contribute said facilities, all in accordance with the provisions of Rule No. 15."

Even if the proposed agreement were definitive, which it is not, its provisions do not settle the question whether the cost of the facilities to be provided by FVA should be funded by advances or contributions. The proposed agreement leaves this issue to be settled by negotiation between FVA and CUCC and to be more particularly defined by the main extension agreement provided for in the quoted language. After CUCC and FVA enter into an agreement, such as the proposed agreement, and a main extension agreement, our staff will evaluate the signed contracts for compliance with the provisions of Rule 15.

Second, FVA asked that Ordering Paragraph 2(e) be amended to authorize the provision of 540,000 gallons of storage capacity to be located in two or more places, in accordance with the engineering judgment of CUCC. Our primary concern was to increase the storage capacity of the system by a net of 440,000 gallons, after replacing the 100,000-gallon tank now on the FVA property with a 540,000-gallon tank to be constructed. It may, in fact, be more practical to locate the additional storage at more than one

site within the service area of CUCC. FVA points out that the 540,000-gallon figure is made up of three components: A 100,000-gallon existing storage tank on the FVA property; 240,000 gallons of additional storage capacity that would be necessary for the FVA project; and additional storage of 200,000 gallons that CUCC has been otherwise ordered to provide. FVA requests that CUCC be permitted to place that 200,000 gallons of additional storage off site if that is CUCC's desire. FVA points out that the goal is to increase water storage capacity and that would be accomplished, whether a single tank of 540,000 gallons is located on the FVA property or two or more tanks are located in the service area of CUCC, the combined storage of which would be 540,000 gallons. This issue is best left to the judgment of system engineering personnel of CUCC. We will make the necessary modifications to Ordering Paragraph 2(e) to allow CUCC the flexibility requested by FVA.

Comments of Branch

The Branch asserts that the proposed decision improperly interprets PU Code $$ 2708 and 453; ignores D.86-05-078; disregards the need to act in a manner consistent with the obligations of other state agencies; abrogates the Commission's responsibilities by authorizing final action conditioned on the future action of such agencies; allows FVA to attempt to pit various state agencies against each other with the implication that the Commission's decision may override other agencies' authority; erroneously concludes that FVA water usage will not adversely affect the Pillar Point Marsh, that the FVA test well can produce 28 gpm, and that the test wells drilled on FVA project land can produce the alleged 8 gpm; and improperly omits discussion of the demand during peak months of the year.

Although we do not believe the proposed decision's interpretation of PU Code $ 2708 is legally erroneous, we do believe we can interpret that section in a manner that is more in harmony with the standards and regulations of DHS but which

continues to favor prospective customers with water resources over those with no such resources. This new interpretation makes our decision consistent with DHS waterworks standards. The decision has been revised accordingly.

In response to the arguments regarding PU Code § 453 and D.86-05-078, we have augmented our discussion of why our approval of service to FVA does not violate that statute or that decision.

We fail to understand fully the Branch's concern that our decision will adversely affect decision making within other state agencies. We have no intention of abandoning our own responsibilities or overriding the responsibilities of other agencies. Each state agency has a specific role to play in the overall regulatory decision making process, and has its own statutes and regulations to implement and enforce. Because life is complex, the project of a water company or a developer will frequently fall under the jurisdiction of more than one state agency. The applicant for regulatory approval may be able to seek all required approvals within the same time frame, or may need to seek regulatory approval in a particular sequence. The fact that one approval may occur earlier than another does not mean that the later approvals are less important.

In the present proceeding, CUCC, acting under orders from the Commission to develop new water sources, first obtained a coastal development permit from the County of San Mateo to develop wells which would in part serve FVA. The County was convinced by the Phase I Pillar Point Marsh study that the relevant aquifer could supply adequate water to CUCC's wells. This approval was appealed to the Coastal Commission, which wanted a more thorough study before it granted its approval. The County's decision did not force the Coastal Commission's hand.

Concurrently, FVA sought unsuccessfully to be exempted from the moratorium CUCC requested because of inadequate water supplies. DHS had earlier imposed its own connection moratorium on

CUCC, which it lifted when the Commission imposed its more stringent moratorium.

Next, FVA itself obtained County permission to develop wells to serve its development. This approval was also appealed to the Coastal Commission. The Coastal Commission is unlikely to approve either the CUCC or the FVA well projects until it has the additional information it desires.

Finally, FVA sought from the Commission an exemption from the moratorium on the basis of its plan to develop wells to serve its development. Our granting this approval will not affect FVA's need to obtain Coastal Commission approval for its wells. Since our approval is based on the same preliminary yield information that satisfied the County but not the Coastal Commission with regard to CUCC's airport wells permit application, we don't see how our action will cause the Coastal Commission to change its decision making in this case. Nor will our approval obviate FVA's need to obtain DHS approval, which we must assume will only be granted if DHS believes the FVA wells are consistent with its water quality and water quantity standards.

By conditioning our approval on FVA's obtaining other necessary state agency approvals, we are not abrogating our responsibility, but rather pointing out the obvious need to obtain those authorities before CUCC can legally serve FVA.

By acting before those other agencies, we are not jumping the gun, but simply responding in a relatively timely fashion to a petition before us seeking exemption from a moratorium we imposed. DHS generally does not act before it has an application before it. This usually occurs when the well or wells in question have been constructed and are ready for testing. FVA has not constructed the wells yet because it needs our approval and the Coastal Commission approval. FVA also needs to obtain the County of San Mateo's approval of an increase in its pumping limitation from the 42 acre-feet needed to serve a 26 gpm well to the 80.7 acre-feet

need to serve its proposed 50 gpm well. We could delay our approval until after the County of San Mateo, DHS and the Coastal Commission act, but we do not see the point in doing so. We accomplish the same thing by making our approval of a CUCC - FVA connection contingent upon such approvals. If FVA cannot obtain those approvals, it cannot connect to CUCC.

By acting now, however, we eliminate the need for FVA to again petition us for permission to be served by CUCC once those approvals are obtained. This may help shorten the time before the new wells come on line. Since the wells will contribute some amount of surplus to existing or other prospective customers, we would prefer that these wells came on line sooner rather than later.

Moving on to the alleged factual errors in the proposed decision, we agree with the Branch that we cannot be absolutely certain that the aquifer can provide sufficient water for both the proposed wells and the Pillar Point Marsh until the Phase II study mandated by the Coastal Commission has been completed. Obviously, a safe yield study based on field tests may reveal information missed in the historical analysis upon which the Phase I preliminary safe yield report is based. Nonetheless, we agree with the County of San Mateo that the results of the Phase I study make it probable that the aquifer can support both the CUCC and FVA well projects and the Pillar Point Marsh. We understand the Coastal Commission desire for certainty regarding the aquifer's safe yield, and do not suggest that it abandon its requirement of the Phase II study or shortcut its responsibilities to ensure the protection of sensitive environments. It is neither our role nor our desire to tell the Coastal Commission how to do its job.

The Branch's concerns about the main test well's capacity should be alleviated by our decision to require a 50 gpm primary well supplemented by a 50 gpm backup well, and our specification that the capacity of these wells must be evaluated and approved by

DHS according to its waterworks standards before they can be used to support the connection of FVA to CUCC.

We are not concerned about the alleged lack of adequate evidence regarding the quantity of water the two wells the proposed decision orders to be used for landscaping purposes may produce. There is substantial evidence that the wells exist, although the estimated quantity of water they produce varies somewhat between the pre-filed and oral testimony of FVA's witnesses. Since the wells are not used as a basis for evaluating FVA's ability to develop water sources sufficient to meet its needs, the precise quantity of water the wells produce is not critical. It is evident that it would be better to use these wells for landscaping purposes than to abandon them, since their use will reduce the quantity of water the FVA project will draw from the water system. To be fair, we note that it is possible that more precise information on these wells will be required if FVA seeks to recover their costs through an "advance subject to refund" contract. If this occurs, we will revisit the issue.

Comments of MMBWIA

MMBWIA asserts that the proposed decision errs by (1) failing to apply the health and safety requirements of Title 22, Code of California Regulations, $ 64562 et seq. (DHS Waterworks Standards) as required by PU Code $$ 770(b), and Health and Safety Code $$ 208, 209 and 4010 et seq.; (2) granting FVA standing to apply for a lifting of the moratorium despite the fact that FVA itself is not an ultimate "customer;" (3) incorrectly stating the PU Code $ 2708 standard for evaluating whether the connection of an additional customer will injuriously withdraw water from existing customers; (4) incorrectly determining who is discriminated against under PU Code $ 453; (5) incorrectly placing personal property rights above health and safety considerations; and (6) relying on incompetent evidence regarding the proposed 540,000 storage tank and the two 8 gpm wells on FVA property. We

will address here only those comments which do not overlap with those made by the Branch.

We are unimpressed by the contention that since FVA itself is not an ultimate "customer" it cannot apply for a lifting of the moratorium. Local governmental approval of any new development is typically contingent upon the developer obtaining from local utilities an indication that they are willing to serve the new development. If "willingness to serve" letters are not obtained from the utilities, and the development is not permitted to be built, then there will not be any future residential customers to request service. In a sense, the developer acts as a necessary proxy for future customers when he or she negotiates with the utilities for future utility service. This is especially true when the development consists of completed residences rather than bare lots.

In the present case, FVA is acting as a proxy for the future residents of its development. Since FVA will use some water itself for construction and landscaping purposes, it will also be an ultimate customer to some extent. We will not deny FVA the opportunity to seek to lift the moratorium.

MMBWIA's contention that we mis-balance property rights and health and safety rights represents a misunderstanding of the actual impact of the proposed decision, since it assumes that our conditional approval of service to FVA overrides FVA's obligation to obtain authority from DHS and the Coastal Commission. DHS regulations require adequate service to existing customers before new connections are permitted. The Coastal Commission will almost certainly withhold approval of FVA's proposed wells until the results of the Phase II aquifer study are in, just as it has withheld permanent approval of CUCC's emergency and second new airport wells. We do not see how property rights will prevail over public health and safety. In any event, this contention is moot in light of our revised interpretation of PU Code § 2708.

We are not impressed by MMBWIA's contention that no environmental studies have been completed regarding a 540,000 gallon storage tank. As a preliminary matter, we note that we have revised the decision to require 540,000 gallons of storage capacity rather than a single 540,000 gallon tank. Thus, the storage can be met by more than one tank if this is desirable from a systems operations or environmental standpoint. Next, we note that by conditioning the hookup of FVA on the construction of such storage capacity we are in no way sanctioning a shortcut of environmental review. Naturally, appropriate environmental review will be a precondition for the construction of the tank or tanks. Since the construction can only occur after such review is complete, and since FVA can be hooked up to CUCC only after the tank or tanks are constructed, it is clear that FVA can only be served after environmental review is complete. If the tank project fails environmental review, then the tank or tanks will not be built and FVA will not be hooked up.

Comments of the Department of Health Services (DHS)

DHS comments that CUCC does not have an adequate supply of water to meet existing customer needs, that while PU Code $ 2708 does not require a showing that existing customer needs are met, the California Waterworks Standards prohibit additions to water systems with insufficient water to supply adequately and dependably the total requirements of all users under maximum demand conditions (Title 22, California Code of Regulations, $ 64562), and that to allow new service connections to a water system already in distress will subject both existing as well as new users to the hardship of inadequate water supply service. DHS also requests that the order be changed to refer to the subject of adequate water quality as well as quantity. Finally, DHS requests that the proposed decision be amended to include the following statement:

> "1. The PUCs granting exemption requested by Farallon Vista Association (FVA) shall not preclude the Department's authority

> from imposing its own moratorium restricting the service connections from Farallon Vista if in the Department's evaluation it determines that it would be detrimental to the existing customers of CUCC-Montara system."

Our responses to the comments of other parties address most of DHS's concerns. We have no objection to reaffirming DHS's authority to impose a moratorium restricting service connections to FVA should it find it necessary to do so.

Conclusion

To sum up, CUCC's Montara-Moss Beach District does not presently supply enough water to meet its customers needs. This Commission ordered CUCC to develop 200 additional gpm of water supply. The County of San Mateo and the Coastal Commission have conditionally authorized CUCC to drill two new airport wells. The county conditioned its authorization on the use of the new water to correct CUCC's current water shortage and on the reservation of a portion of the remainder of the new water for the priority use Farallon Vista Housing Development. The Coastal Commission incorporated these conditions, and imposed the further requirement of a final aquifer yield study designed to ensure that additional wells would not damage the environmentally sensitive Pillar Point Marsh. The Coastal Commission subsequently authorized emergency construction and use of one airport well. The final Phase II Pillar Point Marsh study has not yet begun, because a recalcitrant landowner has thus far prevented researchers from gaining access to the land upon which the study is to be conducted. The study will take about one year to complete.

In this proceeding, FVA seeks an exemption from our moratorium on new connections on the basis of a proposed deal with CUCC whereby the developer will assist in the development of a 50 gpm well to meet its own needs and provide some surplus water besides. We are but one step on the developer's path toward

obtaining full governmental approval for the well development project. If we approve the project, FVA will still need to obtain Coastal Commission approval. Thus, even if the Commission agreed with the County and the developer that the Phase I Pillar Point Marsh study was adequate evidence of safe yield, the Coastal Commission's failure to agree on this point would place FVA in roughly the same position as CUCC regarding final well approval.

There is nothing we could or should do to discourage the Coastal Commission from fully evaluating the safe yield issue before finally issuing its well permits. Its desire to evaluate yield before authorizing use is a good one.

Nor is there anything we should do to discourage the County of San Mateo from adequately re-evaluating its pumping limitation or to discourage DHS from carrying out its responsibilities.

On the other hand, there is no reason for us to delay our own approval of the well development program proposed by FVA and conditionally approved by CUCC. By making our determination now, based on the Phase I study alone, but conditioning final authority for the FVA-CUCC connection on FVA obtaining the necessary regulatory permits, we simply make it possible for things to happen more quickly once the study required by the Coastal Commission is completed, assuming the results are favorable.

In order to meet our regulatory obligations, we will impose some additional conditions of our own.

Findings of Fact

1. The FVA project will require average production of not more than 271 gallons per day per condominium unit. A well producing 28 gallons per minute will produce sufficient water for the FVA development, after assuming 15% unaccounted for water lost between production and consumption. A well producing 28 gpm uses about 45 acre-feet of water a year.

2. The production well proposed by FVA, which will have a capacity of not less than 50 gallons per minute, will be more than adequate to provide all the water that the FVA project requires. The well, if allowed by the County to pump at more than 45 acre-feet per year, will also provide a surplus of water for the benefit of all customers of CUCC's Montara District. A well producing 50 gpm uses about 80.7 acre-feet of water a year.

3. The emergency airport well developed by CUCC in 1987 in response to a shortage of water needed to serve existing customers produces about 100 gpm and uses about 161.4 acre-feet of water per year. CUCC's second proposed airport well should produce about the same quantity of water, for a total of about 323 acre-feet a year.

4. The Half Moon Bay Airport/Pillar Point Marsh Ground-Water Basin Phase I Study Report, issued in June, 1987, found a minimum preliminary safe yield of 650 acre-feet a year. FVA witnesses Gouig, Scalmanini and Rozar concluded on the basis of the Phase I report that a preliminary safe yield figure of 600 acre-feet a year is appropriate. If the 600 acre-feet figure is confirmed by the Phase II study recommended by the authors of the Phase I study and mandated by the Coastal Commission, there is likely to be surplus developable water in the aquifer amounting to 196.3 acre-feet after the 323 acre-feet production of the CUCC's emergency and second proposed airport wells and the 80.7 acre-feet production of the FVA's proposed 50 gpm well are deducted.

5. The aquifer appears to contain sufficient water for development purposes to supply the needs of the FVA project.

6. The water usage of the proposed FVA project is unlikely to adversely affect the Pillar Point Marsh.

7. The 540,000 gallon storage capacity which FVA proposes to provide to the system through the construction of one or more storage tanks will furnish a net addition to the system of 440,000 gallons of storage. Tank capacity of this magnitude will more than satisfy the system's peak demand for a single day.

8. It is impossible to determine from this record precisely how great is the water shortfall affecting existing CUCC customers, since well production figures varied during the course of this proceeding. It is reasonable to use the 200 gpm shortfall the Commission ordered to be remedied in D.86193 as a proxy for this shortfall.

9. If CUCC's 100 gpm emergency airport well and its second proposed 100 gpm airport well are granted permanent permits by the Coastal Commission and the second proposed well is approved by the Department of Health Services, then the shortfall affecting existing customers should be eliminated. The effect of the decline in CUCC water production noted by Branch over the past several years on the existing shortfall could be offset to some extent by the development of FVA's proposed wells since those wells should replace the portion of the 200 gpm of the proposed new CUCC production that was allocated to the FVA project by the County of San Mateo as a condition for its grant of a coastal development permit.

10. When FVA's 148 condominium units are added to the system after a period of three to four years of construction, and when the production well and backup well and storage tank or tanks as described are furnished to the system before any condominium units are added to the CUCC system, the addition of FVA proposed housing units to the system will not injuriously withdraw the supply of the existing customers in whole or in part if the unmet needs of existing customers are met by the permanent addition by CUCC of the one emergency and one proposed 100 gpm airport well currently subject to Coastal Commission and Department of Health Services approval.

Conclusions of Law

1. FVA must show that all existing customers in CUCC's Montara-Moss Beach District are receiving adequate water service conforming to Department of Health Services standards before it may

obtain an exemption from the Commission's order restricting future service connections pursuant to PU Code § 2708. FVA need not make a similar showing regarding other prospective new CUCC customers.

2. FVA must show that the addition of its proposed housing units, together with the water supply proposed to be contributed to the system, will not injuriously withdraw the supply of existing customers in whole or in part.

3. The petition of FVA for an exemption from the Commission's moratorium order in D.86-05-078, as extended by D.86-12-069, should be granted with the conditions set forth above and as set forth in the following order.

4. The Commission's conditional approval of an FVA-CUCC connection and its granting of FVA's request for an exemption from the Commission's moratorium order set forth in Decision (D.) 86-05-078, as extended by D.86-12-069 does not preclude the Department of Health Services from imposing its own moratorium restricting service connections to Farallon Vista if in the Department's evaluation it determines that such corrections would be detrimental to the existing customers of CUCC's Montara-Moss Beach water system.

5. The Commission's conditional authorization of an FVA-CUCC connection does not eliminate the need for CUCC to obtain Coastal Commission and Department of Health Services approval for its one emergency and one proposed 100 gpm airport wells or for FVA to obtain Coastal Commission and Department of Health Services approval for its proposed 50 gpm wells. Nor does it eliminate the need for FVA to obtain from the County of San Mateo a modification of the pumping limitation in its coastal development permit so that it can pump the 80.7 acre-feet required by its proposed 50 gpm well. The Commission's conditional authorization cannot override the responsibilities of the County of San Mateo, the Coastal Commission and the Department of Health Services to implement their statutory and regulatory mandates.

## SECOND INTERIM ORDER

IT IS ORDERED that:

1. The petition of Farallon Vista Associates (FVA) for an exemption from the moratorium order contained in Decision (D.) 86-05-078, as extended by D.86-12-069, is granted, subject to the conditions set forth below.

2. Citizens Utilities Company of California (CUCC), may connect the housing units of the FVA project in no less than three phases over a period of not less than three years from the date of this order, subject to the following conditions, each of which must be met before CUCC is required to serve FVA:

a. CUCC shall obtain from FVA a water source demonstrably adequate to meet project needs at full build out, including:

(1) A production well of not less than 50 gallons per minute (gpm) sustained yield;

(2) A backup well of not less than 50 gpm sustained yield;

(3) A treatment plant and related facilities, if the water from the wells to be provided by FVA requires treatment.

The wells and treatment plant shall be constructed to meet all applicable water utility standards, including those of both this Commission and the Department of Health Services. The sustained yields of these wells must be demonstrated to the satisfaction of the Department of Health Services in accordance with the waterworks standards and other regulations of that agency.

rental charges. Rather, charges for water shall be separately stated, provided that any water purchased from CUCC for landscaping or other common purposes may be allotted to condominium units as part of the rent or lease payments.

h. FVA and CUCC must submit to the Water Utilities Branch of the Commission's Compliance and Advisory Division evidence that the California Coastal Commission has issued to CUCC permanent permits for the development and operation of the one emergency airport well and the second proposed airport well, that CUCC has developed the second proposed airport well, and that CUCC has obtained Department of Health Services approval of the connection of these wells to CUCC's water system. The Commission shall retain jurisdiction, through its Water Utilities Branch, to confirm that such evidence shows that all existing customers in CUCC's Montara-Moss Beach District are receiving adequate water service conforming to Department of Health Services standards as required before FVA can be granted an exemption from the current moratorium on new connections pursuant to PU Code $ 2708.

This order becomes effective 30 days from today.

Dated December 6, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

b. FVA shall bear the entire financial risk and burden of the development of the water production sources and treatment facilities described above to be transferred from FVA to CUCC.

As a condition of our approval of the exemption, FVA must finance the production well and the backup well, and a treatment plant if that is needed.

c. FVA and/or CUCC shall obtain all regulatory approvals required by law before CUCC shall be obligated to serve FVA's project. These approvals shall include Coastal Commission approval of the FVA coastal development permit, Department of Health Services approval of wells to be added to CUCC's system, and County of San Mateo approval of a modification of the pumping limitation in the coastal development permit.

d. The Commission shall retain jurisdiction to review and approve, through its Water Utilities Branch staff, the final agreement executed between FVA and CUCC regarding the facilities to be provided by FVA.

e. FVA shall construct, or cause to be constructed, 540,000 gallons of storage capacity on the FVA's project site at or near the location of a 100,000 gallon CUCC tank, which is to be replaced; provided that CUCC may elect to have 200,000 gallons of that storage built elsewhere within the Montara District service area if such construction would prove more beneficial to the system as a whole than a single tank on the FVA site.

f. FVA shall employ the two low production wells on the FVA project site to provide irrigation for landscaping.

g. Each of the FVA condominium units shall be individually metered, either by CUCC or by FVA, and individual bills shall be rendered to individual households. If FVA owns and controls the metering system, FVA shall not consolidate the charges for water with

b. FVA shall bear the entire financial risk and burden of the development of the water production sources and treatment facilities described above to be transferred from FVA to CUCC.

As a condition of our approval of the exemption, FVA must finance the production well and the backup well, and a treatment plant if that is needed.

c. FVA and/or CUCC shall obtain all regulatory approvals required by law before CUCC shall be obligated to serve FVA's project. These approvals shall include Coastal Commission approval of the FVA coastal development permit, Department of Health Services approval of wells to be added to CUCC's system, and County of San Mateo approval of a modification of the pumping limitation in the coastal development permit.

d. The Commission shall retain jurisdiction to review and approve, through its Water Utilities Branch staff, the final agreement executed between FVA and CUCC regarding the facilities to be provided by FVA.

e. FVA shall construct, or cause to be constructed, 540,000 gallons of storage capacity on the FVA's project site at or near the location of a 100,000 gallon CUCC tank, which is to be replaced; provided that CUCC may elect to have 200,000 gallons of that storage built elsewhere within the Montara District service area if such construction would prove more beneficial to the system as a whole than a single tank on the FVA site.

f. FVA shall employ the two low production wells on the FVA project site to provide irrigation for landscaping.

g. Each of the FVA condominium units shall be individually metered, either by CUCC or by FVA, and individual bills shall be rendered to individual households. If FVA owns and controls the metering system, FVA shall not consolidate the charges for water with

rental charges. Rather, charges for water shall be separately stated, provided that any water purchased from CUCC for landscaping or other common purposes may be allotted to condominium units as part of the rent or lease payments.

h. FVA and CUCC must submit to the Water Utilities Branch of the Commission's Compliance and Advisory Division evidence that the California Coastal Commission has issued to CUCC permanent permits for the development and operation of the one emergency airport well and the second proposed airport well, that CUCC has developed the second proposed airport well, and that CUCC has obtained Department of Health Services approval of the connection of these wells to CUCC's water system. The Commission shall retain jurisdiction, through its Water Utilities Branch, to confirm that such evidence shows that all existing customers in CUCC's Montara-Moss Beach District are receiving adequate water service conforming to Department of Health Services standards as required before FVA can be granted an exemption from the current moratorium on new connections pursuant to PU Code § 2708.

This order becomes effective 30 days from today.

Dated December 6, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

Decision 89 12 020 DEC 6 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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|---|---|
| In the Matter of the Application of Citizens Utilities Company of California (U87W) for an order pursuant to California Public Utilities Code § 2708 restricting the addition of customers to be furnished with water service in its Montara-Moss Beach District. | Application 85-06-010 (Filed June 6, 1985) |

(See Decisions 86-05-078 and 88-09-023 for appearances.)

Additional Appearances

David M. Sandhaus, Attorney at Law, for Montara-Moss Beach Water Improvement Association, protestant.
Lennie Roberts, for Committee for Green Foothills, interested party.

Replacement Appearance

Izetta C. R. Jackson, Attorney at Law, for Commission Advisory and Compliance Division, Water Utilities Branch.

SECOND INTERIM OPINION IN PHASE I

Summary

This decision grants, with certain conditions, the petition of Farallons Vista Associates (FVA) for an exemption from the moratorium on the connection of new customers to the Montara-Moss Beach District of Citizens Utilities Company of California (CUCC) imposed by the Commission in Decision (D.) 86-05-078 and extended by the Commission in D.86-12-069. The most important conditions are as follows: 1) FVA must transfer to CUCC a production well and a backup well, each capable of supplying at

least 50 gpm as demonstrated to the satisfaction of the Department of Health Services (DHS); 2) FVA and/or CUCC shall obtain all necessary permits from the County of San Mateo, the California Coastal Commission, and the Department of Health Services; 3) FVA shall construct, or cause to be constructed, one or more water tanks providing a total of 540,000 gallons of storage capacity; 4) CUCC must obtain Coastal Commission and Department of Health Services permits for its emergency new airport well and its second proposed airport well and demonstrate that the needs of its existing customers are met through the provision of the 200 gpm of new water supply ordered by this Commission in D. 86193. Several conditions of lesser importance are also imposed.

Procedural Background

In filing Application (A.) 85-06-010, CUCC sought an order of the Commission, pursuant to Public Utilities (PU) Code § 2708, authorizing it to restrict the addition of customers to its water system in the Montara-Moss Beach District. The Commission issued such an order in D.86-05-078, pursuant to the first sentence of § 2708, which provides:

> "Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any water company which is a public utility operating within this State has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation, the commission may order and require that no such corporation shall furnish water to any new or additional consumers until the order is vacated or modified by the commission. ..."

On May 28, 1986, the Commission issued Decision (D.) 86-05-078, which imposed a moratorium, with certain exceptions, on connection of additional customers to CUCC's Montara-Moss Beach District. The term of the moratorium was six months; however, by

system, so that FVA project residents would simply be added to a already inadequate water system.

Department of Health Services

The Department of Health Services (DHS) stated at the hearing that it could not say one way or the other whether the FVA well or project should be added to the system, since these matters have not come before DHS in the form of permit applications. DHS requested that any Commission order approving an FVA-CUCC connection be conditioned upon DHS's evaluation of the health and safety concerns that would be occasioned by such a decision. DHS wanted to make sure that any order arising out of this proceeding would not preclude DHS from imposing its own moratorium if its evaluation determines it would be detrimental to existing customers.

During cross-examination of the DHS witness, District Engineer Bowen, it became clear that even if the Commission did approve the request of FVA, in effect, allowing the FVA well and project to go forward, CUCC must still obtain a permit from DHS in order to connect the new water source to its water system. Any siting of the proposed well would be presented to DHS for its approval before any financial commitments are made. DHS is interested in looking at the plans for the well before there is any construction done. DHS looks at the overall proposal in the planning stages to evaluate the siting, financial commitments, and the method by which the source is to be added to the system. If a public utility receives positive feedback from DHS at the planning stages, the public utility may construct a well. However, before connecting the source to its system, the public utility must receive final approval from DHS.

Issues

The issues to be determined in this proceeding are:

1. What legal standards should be applied in evaluating a petition, filed under PU Code § 2708, seeking exemption from an order of the Commission restricting future service connections?

2. Is there a sufficient surplus of water in the aquifer to allow additional pumping without environmental harm?

3. What amount of water will the FVA project require?

4. Will the well and other water system facilities to be provided by FVA produce sufficient water for the system to support the additional demands of the FVA project?

5. What other conditions should be added to an order granting an exemption in order to ensure that service to FVA project customers will not injuriously withdraw the supply in whole or in part from existing customers?

Discussion

Issue 1: What legal standards should be applied in evaluating a petition, filed under PU Code § 2708, seeking exemption from an order of the Commission restricting future service connections?

The Branch and MMBWIA contend that the standards set forth in the Health & Safety (H&S) Code, and in the regulations issued pursuant thereto, must be applied before additional customers may be added to the system. The Branch asserts that it must be demonstrated that the Montara-Moss Beach system has a reliable supply of water for both its existing customers and for all prospective customers before FVA may be added to the system. Branch cites Health and Safety Code § 4017, Title 22, Code of California Regulations, §§ 64562, 64563, and 64564; and GO 103 as authority for this proposition. MMBWIA cites this same authority, and in addition cites Health & Safety Code §§ 208, 209, and 4010 et seq.; and PU Code §§ 770 (b).

PU Code § 2708

PU Code § 2708 requires that applicants for water service from a system subject to a Commission imposed moratorium on new

services show that the provision of the requested service "will not injuriously withdraw the supply wholly or in part" from existing customers of the public utility. PU Code $ 2708 does not in itself require applicants for service to show that all existing and prospective customers are adequately served.

Branch and MWBIA argue that even if $ 2708 does not explicitly require that existing customers needs be met before new customers are connected, other relevant statutes and regulations make such a result imperative. Of the authorities cited, PU Code $ 770 (b) is the most compelling.

PU Code $ 770 (b) states in pertinent part that "No standard of the commission applicable to any water corporation shall be inconsistent with the regulations and standards of the State Department of Health pursuant to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code.

Department of Health waterworks standards are set forth in Title 22, California Code of Regulations, $$ 64551 et. seq. Section 64562 is the standard most on point. This section states that: "Sufficient water shall be available from the water sources and distribution reservoirs to supply adequately, dependably and safely the total requirements of all users under maximum demand conditions before agreement is made to permit additional service connections to a system."

It is clear that the Commission's regulations governing water companies must under PU Code $ 770 (b) be consistent with DHS regulations including $ 64562. The Commission's primary regulation concerning water utilities, General Order (GO) 103, is in fact consistent with DHS regulations.

What is at issue here is not a Commission regulation or standard per se, but rather the Commission's decision on a petition filed pursuant to PU Code $ 2708. Even though our interpretation of that sentence may be precedential, it will not therefore become

a "standard" of the Commission within the commonly accepted legal meaning of that word - i.e., it will not become a formal Commission regulation. Therefore, the Commission is not bound by § 770 (b) to interpret PU Code § 2708 in a manner consistent with DHS regulations. Nonetheless, public policy considerations compel us to do so. We think it best to work cooperatively rather than combatively with our sister agencies wherever possible.

In order to ensure our decision does not conflict with Section 64562, we will interpret PU Code § 2708 to permit a water company to hook up new customers only after the needs of existing customers are met. This interpretation will apply even where a prospective customer has water supplies it can make available to the utility to which it has applied for service.

Once the needs of existing customers are met, however, we will under the second sentence of PU Code § 2708 consider requests by prospective customers for service from utilities currently subject to moratoriums on new connections. Prospective customers who can make water available to the system from which they request service may be given priority over prospective customers without access to water.

Our distinction between different classes of prospective customers - those with water and those without - has a rational basis since permitting service to new customers with water sources would certainly be less likely to "injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility" than would service to new customers lacking water sources. This distinction formalizes to some extent the emphasis placed in earlier Commission decisions regarding CUCC's Montara-Moss Beach District on the need to show "extraordinary circumstances" in order to gain Commission approval for new service in an area subject to a moratorium on new connections.

Since it does not place prospective customers with water in a position superior to and in conflict with the unmet needs of

existing users in a water short utility's service area, our interpretation of PU Code § 2708 gives a meaning to the second sentence of that section which is consistent with our desire to make decisions consistent with DHS standards and regulations.

The burden of providing adequate and reliable water supplies for the customers and prospective customers within the service territory lies with the public utility. However, where the public utility cannot, has not, or will not provide such supplies to prospective customers on its own, a prospective customer should be able to offer proof that it is able to bring into the system sufficient additional supplies of water that its new demands on the system "will not injuriously withdraw the supply wholly or in part" from the existing customers. If a prospective customer can provide a water supply that is demonstrably adequate to meet its needs without causing water supply problems for affected water companies and other users of an aquifer, we will be inclined to look favorably on an application for service filed pursuant to § 2708.

While we feel constrained by the policy behind PU Code § 770 (b) and the other authorities cited by Branch and MMBWIA to require proof that existing customers are adequately served before new customers are added, we do not believe that § 2708 requires such prospective customers meet the needs of other prospective customers in all circumstances. Since other prospective customers are, by definition, not currently being served by the water system, it is difficult to see how a prospective customer with water could injuriously withdraw water from them in violation of PU Code § 2708.

Notwithstanding PU Code § 2708, there may be policy reasons for not allowing certain prospective customer hookups. For example, in areas where groundwater supplies are limited a prospective customer with water may indeed withdraw water that would conceivably be available to prior prospective customers. For

this reason, we will continue to review applications for new service in areas subject to moratoriums on a case by case basis.

Accordingly, we hold that an applicant for new service need not show that it will cure all water supply problems of a public utility water corporation before it may qualify for connection to the water system under the second sentence of PU Code § 2708. It must, however, show that the utility has sufficient water to meet the needs of its current customers, and that the applicant has demonstrable water supplies sufficient to meet its own needs adequately.

This holding does not excuse a public utility from complying with the provisions of the H&S Code, or the regulations issued pursuant thereto. Irrespective of any decision arising out of this proceeding, CUCC must apply for and obtain the permission of DHS before connecting FVA's proposed wells to the water system. Our action here will have no bearing on the application of CUCC to DHS.

PU Code § 453

The Branch also argues that by allowing FVA to connect to the system CUCC will be discriminating against other prospective customers in violation of PU Code § 453. This would be true if FVA was simply another prospective customer in line behind earlier prospective customers, and is precisely why D.86-05-078 did not allow FVA an exemption from the moratorium.

Now, however, there is a critical distinction between FVA and other prospective customers. Since D.86-05-078 was issued, FVA has expended, and will expend, a great deal of effort and time to explore for water, to find water, to drill test wells, to acquire real property, to purchase and erect a storage tank and other system facilities in order to place itself in a position to receive water service from CUCC. FVA is willing to undertake these measures if it can obtain a commitment from CUCC to provide service to its project and recoup its expenses through a contract for

refund of advances for construction. This willingness to develop water sources distinguishes FVA from the traditional prospective customer who expects the utility to supply all necessary water. It also alters the impact of § 453 on this proceeding.

While PU Code § 453 prohibits utilities from treating a particular customer differently than other similarly situated customers, it does not prohibit utilities from making rational distinctions between different classes of customers. It does not, for example, preclude a utility from treating industrial customers differently than residential customers. Much of utility rate design depends on just such distinctions. If all customers were treated identically, and one set of rules and one rate applied to everyone, our job as a regulatory commission would certainly be easier, but unfortunately such an approach would be an inadequate response to the varying circumstances of utility customers.

In the present proceeding, § 453 would not preclude CUCC from treating prospective customers with their own water supplies differently than prospective customers with no water supplies. The ability to supply water is a characteristic distinctive enough to warrant creation of a new class of prospective customers. CUCC does, in fact, desire to serve FVA as a "preferred prospective customer" if suitable financial and other arrangements can be made. We do not find this to be a violation of § 453. Naturally, all similarly situated prospective customers must be treated equally.

MMBWIA argues that the real issue is whether authorizing the connection of FVA discriminates against existing utility customers. We agree that this issue is an important one but do not see it as a problem here. If FVA was gaining a unique form of access to a specific water supply in preference to existing customers, this allegation of discrimination might have merit. But, as contemplated by FVA and CUCC, any wells developed by FVA would simply be connected to the overall water system and the water therefrom would be available to all customers alike. Furthermore,

our approval of a conditional FVA-CUCC connection does not mean we are abandoning existing customers or that we will not insist that CUCC develop water supplies necessary to remedy the current shortfall prior to connecting the FVA development. Nor does it mean that FVA will be able to develop its wells any sooner than CUCC will be able to develop its second new airport well. FVA will have to obtain Coastal Commission and DHS approval just as does CUCC. Unless the Coastal Commission changes its mind about the need for a comprehensive study of the safe yield of the aquifer in question, the FVA well will end up on the same time line as the CUCC airport well project - awaiting the completion of that study. We simply do not believe that our decision to approve the FVA-CUCC hookup will result in any discrimination against existing customers.

Issue 2: Is there a sufficient surplus of water in the aquifer to allow additional pumping without environmental harm?

When FVA first became subject to the restriction imposed in D.86-05-078, it took steps to locate another source of water for its project. It drilled two wells on the project site but only obtained about 8 gallons per minute from those wells, an amount insufficient to satisfy the project's requirements. However, those wells could be used to irrigate landscaping. FVA explored three additional sites before finding the fourth site, which is the subject of this proceeding. The well site that FVA proposes to use for the production of water is located near CUCC's airport wells, and draws from the same aquifer.

FVA witness Scalmanini testified that the FVA test well could meet the estimated average daily water requirement of the FVA development, between 26 and 28 gallons per minute. Scalmanini acknowledged that when the test well was test pumped by Geo/Resources at a 32 gpm rate there was a dramatic decline in water level after some 50 minutes of pumping. Assuming that this

decline in test well yields results from some specific characteristic of the well, rather than of the aquifer, Scalmanini estimates that since a nearby CUCC well produces roughly 100 gpm then FVA could develop a well sized to produce 50 gpm to provide a comfortable margin for FVA's project plus a surplus to be used to meet the needs of other CUCC customers.

Branch and MMBWIA are not so confident that an FVA well adequate to meet project needs could be developed at the site proposed by FVA. They point to the absence of a well test proving that such production is possible. Their basic attitude is Missourian: "I'll believe it when I see it."

Regardless of the test well issues just mentioned, there is a more fundamental problem in resolving the aquifer yield question. At present, there is a controversy between the California Coastal Commission and the County of San Mateo regarding the adequacy of evidence that the aquifer feeding CUCC's airport wells can support additional wells. The County believes there is adequate evidence that the aquifer can support additional wells without harming environmentally sensitive areas; the Coastal Commission does not. Since the Coastal Commission has ultimate authority over the issuance of coastal development permits, FVA must have that agency's approval before proceeding with its development.

This aquifer controversy first surfaced when environmentalists appealed the coastal development permit the County granted to CUCC so that the utility could develop two new wells near its existing airport wells in order to respond to this Commission's order in D.86193 to develop 200 gpm of additional well production so as to reduce or eliminate the existing shortfall in water supply.

The County of San Mateo's local coastal plan states that a preliminary safe yield for aquifer production must be determined before a well permit can be granted. The County's Phase I report, prepared in connection with CUCC's proposal to develop two new

airport wells, estimated that the preliminary safe yield was between 650 and 1,350 acre feet of water a year.[1] Since CUCC's proposed 100 gpm wells would yield 322.63 acre feet of water a year, the County felt confident that the aquifer could easily supply CUCC's needs. Because it was interested in both the needs of existing customers and in the low to moderate income housing offered by FVA's proposed development, the County conditioned CUCC's coastal development permits to require that production from the CUCC wells be first used to correct existing water supply shortfalls and that a portion of any remaining new capacity be reserved for the priority land use known as Farallon Vista Housing Development.

Environmentalists appealed CUCC's coastal development permits to the Coastal Commission. The Coastal Commission incorporated the County's own permit conditions, but questioned the wisdom of the County's decision to allow well development based on preliminary safe yield studies to proceed concurrently with field studies to establish a final safe yield determination for the aquifer supplying the wells. Finding that these provisions were inconsistent with certain local coastal plan policies for the protection of sensitive areas, the Coastal Commission conditioned its permit on the completion of a comprehensive study of the safe yield of the aquifer. The final safe yield portion of the study required by the Coastal Commission is sometimes referred to as the Phase II Pillar Point Marsh Study since that is the environmentally sensitive area most likely to be affected by the proposed new wells. The Coastal Commission permit documents make clear that that Commission did not intend to authorize the development covered by the permit until the relevant water yield studies were

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1 An acre foot of water equals 325,828.8 gallons. A well steadily producing .62 gpm 24 hours a day for 365 days will yield one acre foot of water a year.

completed. As the Coastal Commission noted in the staff report accompanying its notice of intent to issue the permit, it makes sense to determine the safe yield of an aquifer before authorizing new wells tapping that aquifer because otherwise people may come to depend on the water from the conditionally approved new wells and be severely disadvantaged if those new sources of water were subsequently withdrawn because the final yield study did not yield the expected results. This is simply a question of putting the horse before the cart.

In June, 1987, the Coastal Commission authorized development of one new airport well on an emergency basis because of a drastic shortfall in the water available to CUCC. This emergency authority extends only until the Phase II study is completed, at which time the two well CUCC proposal will be re-evaluated. There is no reason to believe that the Coastal Commission will on the basis of today's decision now approve these wells prior to final completion of the Pillar Point Marsh water yield studies. Nor should we encourage them to do so.

When the Coastal Commission conditioned its approval of the new CUCC wells on the completion of a final safe yield study, FVA was again left without a water source. Thus, it undertook to develop the wells at issue in this proceeding.

While we admire the dogged determination of FVA to find water for its development, we cannot help but conclude that since the proposed FVA wells will draw water from the same aquifer as the CUCC's proposed airport wells the Coastal Commission is unlikely to authorize FVA's wells before the Phase II Pillar Point Marsh Study is complete. For this reason it seems somewhat premature to spend much time addressing the aquifer yield question now. Basically, we have before us the same information found satisfactory by the County but rejected as inadequate by the Coastal Commission. Nonetheless, since the parties went to great lengths to introduce and argue this safe yield evidence, we will address the issue here.

FVA witness Christine Gouig, the planning director of the County of San Mateo, testified concerning the permits that the County has issued for the wells proposed by FVA to support its project. She testified that both the Planning Commission and the Board of Supervisors found FVA's project consistent with the County's local coastal program.

It was Gouig's opinion, based on the Environmental Impact Reports (EIRs) and the studies that she had read, that the airport wells and the FVA's proposed well do not pose any threat to the water supply or to the marsh land habitat in the Denniston area. Nor do these wells pose a threat of salt-water intrusion. She further testified that there is not a shortage of water in the aquifer in question. The Phase I Pillar Point Marsh study and the other studies that she and her staff members had considered showed that there is a lot of water under the ground; in fact, there is water sufficient to serve homes above the number presently served. She believes the studies show that there is sufficient water under the ground to cover both the shortfall presently being experienced by the existing customers as well as the customers proposed to be added by the FVA project.

The County of San Mateo is interested in the FVA project because it involves the development of affordable housing. The FVA site is one of three sites identified in County planning documents as appropriate sites for affordable housing. However, the FVA site is the only one on which a development is proposed. In addition, the FVA project has a tentative subdivision map to develop 148 units of housing on the site in question. While San Mateo's local coastal program calls for protection of sensitive marshland, it also calls for the development of affordable housing. Gouig explained that planning involves a balancing of various goals and interests, and that she did not allow a single policy of the local coastal program (for example, protecting the marsh habitat) to drive all the other policies set forth in the local coastal

program. Since her data on water resources showed that no harm to the marsh would result from FVA's development, the development should be approved.

Gouig testified that before granting permits for the FVA well to be constructed the County first determined a preliminary safe yield for the aquifer in question. A safe yield is an amount of water that could be safely withdrawn from the aquifer without harming the marsh.

Senior County Planner Bill Rozar summarized the Phase I preliminary yield study as follows. The study calls for 100 acre - feet per year of output from the aquifer to protect the marsh, whereas the total flow through the Pillar Point Marsh area is about 2,000 acre-feet per year. In granting the permit for FVA, the county staff allowed 1,000 acre-feet as a reserve for the protection of the marsh habitat, even though the study said that 100 acre feet would be the approximate figure. The Phase I Report also said that 400 acre-feet is currently being pumped from the aquifer. That leaves 600 acre-feet available for additional development.[2] From that 600 feet, the FVA project will require approximately 45 acre-feet, leaving about 555 acre-feet reserved for other or additional development purposes. Based on the preliminary safe yield figures derived from the Phase I Pillar Point Marsh report, the planning staff believes that the FVA coastal development permit can be granted while assuring protection of the marsh.

FVA's expert witness Joseph Scalmanini testified that a 1974 study reported that there were some 800 acre-feet of groundwater being pumped from the Denniston Creek Subbasin. In his prepared testimony (Exhibit 50), however, he pointed out some of that study's limitations. For example, he noted that:

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2 The Phase I Report itself cites a preliminary safe yield of 650 Acre Feet a year. Exhibit 50, Exhibit E, p. 2.

> "some serious misconceptions have developed as a result of erroneous estimates of water inflow, outflow, and usage presented in this report. For instance, agricultural pumping was estimated at 500 acre feet/year (a.f.y.) in 1974, when it was probably negligible. At present, no groundwater is pumped for irrigation from the ground-water basin. All irrigation supplies are imported from San Vincente Creek, and total ground-water pumpage at present is considerably less than the total pumpage reported in 1974. Further, the 1974 estimate of municipal and domestic pumpage, which was 850 a.f.y. , is substantially higher than the nearest recorded values (1976), when pumpage was about 250 a.f. Finally, the 1974 report may have over-estimated subsurface inflow, storage, and outflow as discussed herein." (Exhibit 50, pp. 4-5.)

FVA concludes that pumping from the subbasin is approximately one-half of what it was reported to have been 15 years ago and that the subbasin has more than adequate water to serve the FVA development. In light of the limitations of the 1974 study, however, we will not give it much weight.

The testimony of the county planning director and other FVA witnesses was largely uncontested. However, in the Branch's prepared testimony, page 19, paragraph 56, the Branch states that "...San Mateo County has set a maximum pumping limit of 42 acre-feet per year for the FVA project, the amount available from 26 gpm. This is significantly less than the amount needed."

In rebuttal to the foregoing staff position FVA called Bill Rozar as a witness. Rozar is a senior planner with the planning division of the County of San Mateo. He has been with the County for 15 years. One of his roles with the planning division is to evaluate hydrology studies on the coast side. He

has been involved in permitting of individual water wells in the mid-coast area since 1985. He has also been associated with the FVA project since the early 1980s, both in managing EIRs on the FVA project and in managing permits that have been granted for the FVA project in general and for the water supply project in particular. He is the senior planner in charge of the environmental resource administration section, which is the clearinghouse for all environmental documents in San Mateo County. He was also project manager for the EIR related to the coastal development permit for the FVA's proposed wells.

Rozar is familiar with the condition on total annual pumping that has been applied to the coastal development permit of FVA. He explained that the condition was originally imposed on the well permit at the request of Coastside County Water District. Coastside requested that an annual limitation on pumpage be imposed on any coastal development permit granted to FVA. Coastside argued that when it applied for a coastal development permit for its own wells it was limited to approximately 400 acre-feet per year. It was Coastside's view that any person receiving a similar permit should also have an annual cap on water production. The staff of the planning division agreed with Coastside's request and used as a basis for an annual cap a letter from CUCC indicating that 28 gallons per minute were needed for the FVA project. A simple calculation converted that figure into the 42-acre-foot per year pumpage limitation in the FVA coastal development permit.

Before continuing the discussion of this issue, it would be appropriate to introduce the following table of water production values. The table converts gallons per minute of well production into gallons per day, gallons per day per customer, gallons per year and acre-feet per year. The witnesses discussed water production numbers in these various units making comparison difficult without the table.

**TABLE OF WATER PRODUCTION VALUES***

| gpm[1/] | gpd[2/] | gpd/cust.[3/] | gpyr.[4/] | Acre-ft./yr.[5/] |
|---|---|---|---|---|
| 26 | 37,440 | 253 | 13,665,600 | 42 |
| 28 | 40,320 | 272 | 14,716,800 | 45 |
| 30 | 43,200 | 291 | 15,768,000 | 48.4 |
| 30.4 | 43,741.4 | 296 | 15,965,611 | 49 |
| 33 | 47,520 | 321 | 17,344,800 | 53.2 |
| 40 | 57,600 | 389 | 21,024,000 | 64.5 |
| 50 | 72,000 | 486 | 26,280,000 | 80.7 |

1/ gallons per minute of well production.

2/ gallons per day, given 1,440 minutes per day.

3/ gallons per day per customer given 148 customers for FVA project.

4/ gallons per day times 365 days per year = gallons per year (gpyr.).

5/ acre-feet per year, given 325,828.8 gallons per acre-foot.

* Given:
- 1 acre-foot = 43,560 cu.ft.
- 1 cu.ft. = 7.48 gallons
- 1 acre-foot = 325,828.8 gallons

It is immediately apparent from the foregoing table that Rozar was mistaken when he discussed calculating 42-acre-feet per year from 28 gallons per minute of well production. Forty-two acre feet per year is the value associated with well production of 26 gallons per minute, whereas 45-acre feet per year is the annual figure associated with 28 gallons per minute of well production. Since Rozar was working from memory on the witness stand rather than from documentary evidence or testimony, it is understandable such a minor error might creep in. The problem appears to be a continuing one, since the County documents in Exhibit 49 variously employ

either the 42 or the 45 acre-feet per year figure. For example, the recommended findings and conditions of approval prepared by the planning division staff for the Board of Supervisors for hearing on June 28, 1988 contained the following Condition 18:

> "The annual production of water pumped from the primary and back-up well shall not exceed 42 acre-feet without amendment of this permit."

Resolution 50538 of the Board of Supervisors adopted June 28, 1988, which certifies the final EIR for FVA's water supply development project, uses 37,000 gallons per day as the level of water production adequate to serve the FVA project while stating at another point that the project's demand is 45 acre-feet. (Exhibit 49)

We do not consider the above discrepancies to be significant. The thrust of Rozar's testimony is that the pumping limitation is flexible and that the planning director has the authority to modify the pumping restriction within certain limits. Those limits are that the additional pumpage would not have a significant environmental effect. In Rozar's view, a pumping limitation of 49 acre-feet or 30.4 gallons per minute of well production would not have a significant impact on the environment. Accordingly, the planning director would have the discretion to modify the coastal development permit to increase the pumping limitation from 42 to 45 or to 49 acre-feet per year. Of course, no such application for a discretionary modification of the pumping limitation has been sought. However, it is clear from Rozar's uncontested testimony that such a modification could be accomplished by the planning director if an application for such relief were filed. He did not know if the planning director would have the same discretion while the FVA coastal development permit was on appeal to the Coastal Commission.

We note that whether 42 or 49 acre-feet are needed to supply FVA itself makes little difference in light of the fact that

FVA proposes to develop a production well that will produce 50 gpm, or about 80.7 acre-feet a year. This is the key figure in any evaluation of the amount of water FVA is likely to draw from the aquifer. FVA must obtain from the County of San Mateo a modification of the current pumping limitation sufficient to allow this level of pumping before its project will be able to proceed much further.

Moving on to the critical factor preventing FVA's project from moving forward, we will add to our prior discussion of the disagreement between the County of San Mateo and the Coastal Commission regarding the adequacy of evidence concerning aquifer yield. The FVA coastal development permit is now on appeal to the Coastal Commission. The following exchange between counsel for Branch and Rozar summarizes the basic issue from the County's perspective:

> "Q ...Is there a reason that you would not want to wait for the result of the Phase II report before coming up with recommendations about changing acreage feet requirements in a well permit condition?
>
> "A We believe that there is enough information in the Phase I report to approve a coastal development permit that involves the consumption of water.
>
> "Q Well, you believe that, I gather, when you issued the permit.
>
> "A Our policy in the local coastal plan states that a preliminary safe yield must be determined prior to granting a permit and the Phase I report does determine the preliminary safe yield ranging from 650 and 1,350 acre feet.
>
> "Q Well, then, why is the Coastal Commission requiring a Phase II report?
>
> "A Because they are interested in biological resources of the Pillar Point Marsh, and they want to make sure there is enough water

reserved within the aquifer for the survival of the marsh.

"Q And as I understand it, that Phase II requirement is in connection with two specific wells that you mentioned that Citizens Utilities is interested in developing, one of which has already been developed, I understand, and the other has not?

"A Uh-huh.

"Q Is your testimony that even though the Coastal Commission is interested in... getting the Phase II report before they make the decision about letting Citizens develop a second well, your office is not concerned about that?

"A We believe that they are in error, that they are wrong, that there is enough water, and we have testified to that in front of the Coastal Commission." (Tr. 13:1275-1276.)

Although no one from the Coastal Commission testified in this proceeding, the record contains ample evidence of the Coastal Commission's reasons for refusing to allow CUCC to develop its second new airport well or to obtain permanent status for its first new airport well until the Phase II study is complete. Exhibit 39 states that on November 14, 1986 the Coastal Commission granted CUCC a conditional permit for the drilling of two community water wells with a maximum annual production not to exceed 400 acre feet. The permit notice was accompanied by a staff report on appeals of the coastal development permit granted by the County which was adopted by and formed the basis for that Commission's permit decision. This staff report including the following references to the County's conditional coastal development permit:

"The County approval allows the study to be undertaken concurrently with development and production (up to 400 AF a year) of the two new wells. Conditions attached to the approval

provide that the County may reduce the annual levels of pumping if the study indicates that the wells are adversely affecting the marsh.

This approach is inconsistent with the clear policy direction of the (local coastal plan) for three reasons. First, the policy language requiring the preparation of the study is very straightforward as to intent and timing which is as follows:

1) New permits for water extraction in excess of safe yield will not be permitted (7.20(b), 2.32(c);

2) Safe yield is unknown, therefore studies to determine it are required (2.32 (d), 7.5 (a));

3) Safe yield must be determined then permit application can be analyzed based on its conformance to this figure (7.5 (a).);

....

The proposed condition to possibly reduce extractions, if the studies reveal an adverse impact on the marsh, do not cure the basic defects outlined above. The condition is very discretionary and, from a strictly practical standpoint may be very difficult to apply since it would mean taking away a water supply that many people may since have come to rely on for both domestic use and emergencies. The more prudent approach, and one that has been known to the applicant since at least the certification of the (local coastal plan) over five years ago, is to prepare the study, analyze the findings of it and approve or disapprove the permit based on this information. .... Therefore, as proposed, the project ... must be denied because it does not provide assurance that the health and productivity of Pillar Point Marsh will be protected.... However, conditional approval may be appropriate...

As conditioned, to provide for the preparation and analysis of the required report, and limitations of pumping based on the report prior to the connection of these wells to the CUC system, the

project will be consistent with the Certified (local coastal plan.)" (Exhibit 39, Staff Report on Appeal A-3-SMC-86-155, Substantial Issue Determination, pp. 20-21).

Although this Coastal Commission staff report refers to CUCC's proposed wells, the logic applies equally well to FVA's proposed wells. Although the County of San Mateo issued its preliminary safe yield, or Phase I report, in June, 1987, that report does not constitute compliance with the Coastal Commission's research conditions since it did not involve the well monitoring, biological research, and test pumping contemplated by that Commission. Thus, the Phase II study is still necessary.

Based on the record in this proceeding, we believe it is likely that the aquifer contains sufficient water for development purposes to supply the needs of the FVA project. There is little evidence to contradict FVA's testimony that there is adequate water in the aquifer to serve its needs, except perhaps the fact that the test well suffered significant drawdown when pumped at 32 gpm. In light of the CUCC emergency airport well's ability to produce about 100 gpm, this drawdown seems more likely to be the result of the inadequacy of that particular well than of the aquifer itself.

We recognize, however, that the Coastal Commission's concerns regarding the aquifer's ability to provide water for both utility purposes and environmental protection needs have not been fully answered. In light of the Coastal Commission's concerns, and the obvious fact that a definitive study of the aspirants safe yield and ability to provide protection for the Pillar Point Marsh has yet to be completed, we decline to find definitively that the aquifer can adequately serve both the CUCC's new airport wells and the proposed FVA wells and at the same time meet the needs of the Pillar Point Marsh. We can, however, find that on the basis of the County's preliminary safe yield study it appears likely that this is so.

Issue 3: What amount of water will the FVA project require?

FVA sponsored substantial evidence on the estimated use of water by the FVA project. Initial estimates by former CUCC manager Stradley and present manager D'Addio range from 26 to 28 gallons per minute. In addition, FVA sponsored another witness with many years of experience as a water engineer. He used two approaches to determine the anticipated water use by the FVA project. First, using data received from CUCC, he derived a figure of 191 gallons per day per unit. Second, using a buildup approach, he derived the figure 230 gallons per day per unit. FVA showed that a well producing 50 gallons per minute would produce 72,000 gallons per day. Since unaccounted for water is about 15% in the Montara District, the production figure of 72,000 gallons per day must be reduced to 61,200 gallons per day of usable capacity. With 148 units at 23 gallons per day per unit, the project will use 34,040 gallons per day. With 61,200 gallons per day of usable capacity and 31,820 gallons per day of use from the FVA project, the FVA proposal produces a surplus of water of 27,160 gallons per day. That surplus would be available to other customers in the system.

FVA sponsored expert engineering testimony to show estimated water use by FVA's project. Witness Inerfield adjusted annual water sales data from CUCC's Montara District for the four year period 1984-1987 to reach his conclusions. Inerfield first estimated water use by larger customers at 72,000 gpd. He then subtracted that figure from total water sold for each of the four years. The remainder is total water sold to homes. He then divided this figure by the number of connections to obtain water used per residence. He assumed that 75% of that figure was water used within the house. These figures declined from 171 to 143 gpd per residential customer over the four-year period.

Even though a new condominium development like the FVA project could be assumed to achieve as much as a 30% decrease in water consumption over the older housing stock of Montara because of water conserving plumbing fixtures, Inerfield did not include such an adjustment in his estimate. Rather, he conservatively estimated household use per FVA unit at 200 gpd.

Next, Inerfield estimated FVA water use for landscape irrigation at 27.5 gpd per unit. He rounded this figure to 30 gpd per unit. The total of household use (200 gpd per unit) and of landscape irrigation (30 gpd per unit) was 230 gpd per unit.[3]

Inerfield double checked his first estimate, based on Montara District usage, with a second estimate based on engineering assumptions. He assumed that three persons would occupy each condominium unit in the FVA project; that each person would consume 65 gpd; that each unit would, therefore, consume 195 gpd; that landscaping use would be 30 gpd; and that total use per unit would be 225 gpd. Inerfield's second estimate of 225 gpd per unit compares favorably with his first estimate of 230 gpd.

Based upon these estimates, Inerfield opined that 37,000 gpd of well production is sufficient to supply the FVA project.[4]

The Branch also sponsored evidence on the estimated use of water by the FVA project. The Branch sponsored Exhibit 61, a printout showing consumption of water per residential customer per

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3 The average water use per residential customer for the four-year period was 204.75 gpd, using Inerfield's method. This figure includes all uses, household and irrigation, for connections that are generally single-family dwellings. Inerfield estimates that a condominium unit would, on the average, consume more than a single-family unit.

4 A well pumping 26 gpm produces 37,440 gpd. With 148 units at 230 gpd per unit, the FVA project will require 34,040 gpd.

day for the Montara District for the years 1985, 1986 and 1987. The average residential customer in the Montara District consumed 215 gallons per day in 1987. The Branch testified that in the absence of better data, it assumed that the amount of water production needed to supply the FVA development cannot be less than is presently being produced to supply 148 existing CUCC customers.

In order to calculate the amount of water production necessary to produce 215 gallons per day per residence, it is necessary to find an approximate unaccounted for water percentage. The Branch derived an unaccounted for water percentage by subtracting water sold from total water produced. The remainder of this calculation is unaccounted for water in gallons. The Branch then divided unaccounted for water by water sold to obtain a factor of 18.3% for unaccounted for water. The FVA engineering witness calculated unaccounted for water by subtracting water sold from total water produced. He then divided the remainder by total water produced and his unaccounted for water factor was 15%. The FVA method is preferred. The Branch method will achieve more than 100% if the 18.3% is added to the percentage derived from water sold divided by total water produced.

Using a 15% factor for unaccounted for water and the Branch's figure of 215 gallons per residence per day, we can derive the water production figure needed to produce 215 gallons per day per residence of water sold. Dividing 215 gallons per day per residence by .85 gives 253 gallons per day per resident of water production.

Although the Branch testified that an amount over and above 253 gallons per day should be imputed to the FVA project to account for supposed increases in the usage of the three major customers (El Granada Home Park, St. Catherine's Hospital, and the Chart House Restaurant), occasioned by increasing the number of residential customers by 148, the Branch ultimately conceded that the best proxy for estimating the use of condominiums would be

148 Montara residential customers rather than an average of all customers, including commercial customers, times 148 customers. Accordingly, we will not impute to FVA any increase in commercial customer usage that might occur as a result of increasing Montara's households by 148.

The Branch testified to another figure for residential consumption, a figure derived from Coastside County Water District. According to a conversation between the Branch witness and Robert Rathborne, general manager for Coastside County Water District, residential customers were using 278 gallons per minute. We may convert that figure to gallons per day by multiplying that figure by 1,440. However, we do not know the number of residential customers in Coastside County Water District. And, therefore, the figure is not comparable to the ones that we have been discussing.

The Branch estimates that 253 gallons per day per residential customer of water production will be needed to provide 215 gallons per day of water consumption to a residential customer. On the other hand, FVA estimates that 230 gallons per day of consumption will be needed by each FVA unit. Using the higher estimate, and the same unaccounted for water factor of 15%, we calculate that 271 gallons per day of water production will be needed to provide water service to each FVA unit. We will accordingly adopt 271 gallons per day per FVA unit as the amount of water production needed for FVA.

Issue 4: Will the well, and other water system facilities, to be provided by FVA produce sufficient water for the system to support the additional demands of the FVA project?

At 271 gallons per day per customer, well production of about 28 gallons per minute or 40,320 gallons per day, or 45 acre-feet per year would be required to furnish sufficient production for the needs of the FVA project. This figure is very close to the well production of the existing test well on the

parcel owned by FVA. The expert hydrologist called by FVA testified that in addition to the test well, a commercial sized well of 10 to 12 inches in diameter would be constructed to provide the primary supply for the FVA project. Such a well could conservatively produce not less than 50 gallons per minute of continuous pumping. This amount is almost twice the requirement of the FVA project (see table of water production values above). This testimony was not contradicted.

The proposed 50 gallons per minute commercial well will be near the location of CUCC's Airport Well No. 3, which, according to Branch testimony, is currently producing 99 gallons per minute. The two wells would tap the same aquifer. In addition to the 50 gpm production well and the 26 gpm backup well, FVA proposes to provide to the water system a 540,000 gallon water tank. The new tank would take the place of a 100,000 gallon tank that is currently located on the FVA project site. Thus, the system would gain 440,000 gallons net storage over and above the present storage capacity. 540,000 gallons of storage will more than meet the peak demand of CUCC's entire Montara-Moss Beach District for a single day. Although the tank to be constructed is sized to meet FVA's project requirements, the water will also be available to fight fires elsewhere in the community.

Finally, the FVA project will be built in three phases over about three years. One-third of the housing units will be built in each of the three years. FVA proposes that the wells and the storage to be furnished to the system will be available to the system before construction starts. Thus, for approximately one year, FVA will draw little more than construction water and some landscaping establishment supplies. During the second year of construction presumably the first phase of construction will be occupied while the second phase is under construction. Thus, it will not be until three to four years after construction commences that the FVA project will consume the amount of water estimated for

its 148 units at full buildout and occupancy. Also, the landscaping will be planted and established in three phases along with the construction of the three parts of the condominium project.

We believe that the amount of water to be furnished through the 50 gpm production well and through the 440,000 net gallons of additional storage would be more than sufficient to supply FVA's needs plus provide a surplus for the benefit of all CUCC's customers in the Montara District.

Issue 5: What other conditions should be added to the order granting an exemption in order to insure that service to FVA project customers will not injuriously withdraw the supply in whole or in part from existing customers?

We will adopt as the backbone of our order granting an exemption to FVA the four conditions advocated by CUCC, modified slightly in response to the comments of CUCC, and DHS. These conditions are as follows:

a. CUCC shall obtain from FVA a water source demonstrably adequate to meet project needs at full build out, including:

(1) A production well of not less than 50 gallons per minute (gpm) sustained yield;

(2) A backup well of not less than 50 gpm sustained yield;

(3) A treatment plant and related facilities, if the water from the wells to be provided by FVA requires treatment.

The wells and treatment plant shall be constructed to meet all applicable water utility standards, including those of both this Commission and the Department of Health Services. The sustained yields of these wells must be demonstrated to the satisfaction of the Department of Health Services in accordance with the waterworks

standards and other regulations of that agency."

b. FVA shall bear the entire financial risk and burden of the development of the water production sources and treatment facilities described above to be transferred from FVA to CUCC.

As a condition of our approval of the exemption, FVA must finance the production well and the backup well, and a treatment plant if that is needed.

c. FVA and/or CUCC shall obtain all regulatory approvals required by law before CUCC shall be obligated to serve FVA's project. These approvals shall include Coastal Commission approval of the FVA coastal development permit, Department of Health Services approval of wells to be added to CUCC's system, and County of San Mateo approval of a modification of the pumping limitation on the coastal development permit.

e. The Commission shall retain jurisdiction to review and approve, through its Water Utilities Branch staff, the final agreement executed between FVA and CUCC regarding the facilities to be provided by FVA. This approval must be obtained before CUCC is obligated to connect FVA's project to its system

In addition to the foregoing conditions, we will also require that FVA construct the 540,000 gallon storage tank to be located on the site of the current 100,000 gallon tank that is within the property of FVA on the site of its proposed development. We will also require FVA to employ the two wells that it drilled on the FVA project property for irrigation of landscaping. Finally, we will require individual metering, as recommended by witness Inerfield.

In connection with the following order, we urge the Coastal Commission to allow CUCC to drill the second airport well that it proposed in 1986 once it is satisfied that the Pillar Point Marsh

will not be harmed thereby. We also urge similar action on the FVA's coastal development permit so that a new production well and a new backup well producing at least 50 gallons per minute apiece may be added to the CUCC's system in connection with FVA's project. According to our best estimates, the surplus production of the primary FVA well will contribute significantly to the well-being of existing customers as well as meeting all anticipated needs of the FVA project. We believe that the development of the second new CUCC airport well, the permanent approval of the first new CUCC airport well, and the development, approval, and connection of the FVA primary and backup wells should satisfy the needs of current customers as well as those of FVA. Because the County of San Mateo required CUCC to reserve a certain portion of its new airport well production for use by FVA, the development of separate FVA wells should free this portion of airport well production for use by either existing or other prospective customers.

In the event that the Phase II Pillar Point Marsh Study reveals an inadequate aquifer water supply, we will of course face once more the issue of water supply constraints in this district.

Comments Under Rule 77.1

The proposed decision of the ALJ was mailed to the parties on September 11, 1989, pursuant to PU Code § 311. Comments were filed by FVA, CUCC, Branch, DHS, and MMBWIA. In addition, replies to comments were filed by FVA and Branch.

Comments of CUCC

In its brief comments CUCC made two points. First, it suggested changes to Ordering Paragraph 2(a) to insure that FVA was ordered to provide a backup well of not less than 50 gpm continuous pumping capacity. CUCC pointed to testimony in the record where it requested that both the production well and the backup well be able to produce not less than 50 gpm of water supply. Moreover, both wells according to CUCC should be designed and constructed to meet

all applicable water utility standards. In its reply comments FVA does not object to this more stringent condition.

Second, CUCC requests that the Commission insert the following addition to Ordering Paragraph 2(a) to make clear that it is FVA's obligation to provide any treatment facility required for its wells:

> "In addition, if the water from the wells to be provided by FVA requires treatment, FVA shall provide the necessary treatment plant and related facilities."

In its reply comments FVA does not object to this proposed addition. We will make the two changes requested by CUCC, as well as related changes in the body of the opinion for the sake of consistency.

Comments of FVA

FVA suggests two modifications. FVA asked that Ordering Paragraph 2(b) be modified to show that after FVA has advanced the funds necessary for the development of the water source that CUCC should refund those advances over a 40-year period in accordance with the main extension rule (Rule 15). In support of its suggested modifications, FVA cites paragraph 11 of a proposed agreement tendered by CUCC to FVA in connection with the subject project. (Exhibit 55, Appendix A, page 6, paragraph 11.) Paragraph 11 provides that:

> "Refund of refundable advances made by FVA to CUCC will be made by CUCC to FVA in accordance with Rule No. 15."

We do not interpret that language to necessarily require that the facilities to be provided by FVA be funded by advances, particularly in light of paragraph 9 of the same agreement, which provides:

> "Said main extension agreement will provide either for the advance or contribution by FVA to CUCC of the cost to construct the facilities necessary for CUCC to provide water service to FVA, or for FVA to construct and advance or

contribute said facilities, all in accordance with the provisions of Rule No. 15."

Even if the proposed agreement were definitive, which it is not, its provisions do not settle the question whether the cost of the facilities to be provided by FVA should be funded by advances or contributions. The proposed agreement leaves this issue to be settled by negotiation between FVA and CUCC and to be more particularly defined by the main extension agreement provided for in the quoted language. After CUCC and FVA enter into an agreement, such as the proposed agreement, and a main extension agreement, our staff will evaluate the signed contracts for compliance with the provisions of Rule 15.

Second, FVA asked that Ordering Paragraph 2(e) be amended to authorize the provision of 540,000 gallons of storage capacity to be located in two or more places, in accordance with the engineering judgment of CUCC. Our primary concern was to increase the storage capacity of the system by a net of 440,000 gallons, after replacing the 100,000-gallon tank now on the FVA property with a 540,000-gallon tank to be constructed. It may, in fact, be more practical to locate the additional storage at more than one site within the service area of CUCC. FVA points out that the 540,000-gallon figure is made up of three components: A 100,000-gallon existing storage tank on the FVA property; 240,000 gallons of additional storage capacity that would be necessary for the FVA project; and additional storage of 200,000 gallons that CUCC has been otherwise ordered to provide. FVA requests that CUCC be permitted to place that 200,000 gallons of additional storage off site if that is CUCC's desire. FVA points out that the goal is to increase water storage capacity and that would be accomplished, whether a single tank of 540,000 gallons is located on the FVA property or two or more tanks are located in the service area of CUCC, the combined storage of which would be 540,000 gallons. This issue is best left to the judgment of system engineering personnel

of CUCC. We will make the necessary modifications to Ordering Paragraph 2(e) to allow CUCC the flexibility requested by FVA.

Comments of Branch

The Branch asserts that the proposed decision improperly interprets PU Code $$ 2708 and 453; ignores D.86-05-078; disregards the need to act in a manner consistent with the obligations of other state agencies; abrogates the Commission's responsibilities by authorizing final action conditioned on the future action of such agencies; allows FVA to attempt to pit various state agencies against each other with the implication that the Commission's decision may override other agencies' authority; erroneously concludes that FVA water usage will not adversely affect the Pillar Point Marsh, that the FVA test well can produce 28 gpm, and that the test wells drilled on FVA project land can produce the alleged 8 gpm; and improperly omits discussion of the demand during peak months of the year.

Although we do not believe the proposed decision's interpretation of PU Code $ 2708 is legally erroneous, we do believe we can interpret that section in a manner that is more in harmony with the standards and regulations of DHS but which continues to favor prospective customers with water resources over those with no such resources. This new interpretation makes our decision consistent with DHS waterworks standards. The decision has been revised accordingly.

In response to the arguments regarding PU Code $ 453 and D.86-05-078, we have augmented our discussion of why our approval of service to FVA does not violate that statute or that decision.

We fail to understand fully the Branch's concern that our decision will adversely affect decision making within other state agencies. We have no intention of abandoning our own responsibilities or overriding the responsibilities of other agencies. Each state agency has a specific role to play in the overall regulatory decision making process, and has its own

statutes and regulations to implement and enforce. Because life is complex, the project of a water company or a developer will frequently fall under the jurisdiction of more than one state agency. The applicant for regulatory approval may be able to seek all required approvals within the same time frame, or may need to seek regulatory approval in a particular sequence. The fact that one approval may occur earlier than another does not mean that the later approvals are less important.

In the present proceeding, CUCC, acting under orders from the Commission to develop new water sources, first obtained a coastal development permit from the County of San Mateo to develop wells which would in part serve FVA. The County was convinced by the Phase I Pillar Point Marsh Study that the relevant aquifer could supply adequate water to CUCC's wells. This approval was appealed to the Coastal Commission, which wanted a more thorough study before it granted its approval. The County's decision did not force the Coastal Commission's hand.

Concurrently, FVA sought unsuccessfully to be exempted from the moratorium CUCC requested because of inadequate water supplies. DHS had earlier imposed its own connection moratorium on CUCC, which it lifted when the Commission imposed its more stringent moratorium.

Next, FVA itself obtained County permission to develop wells to serve its development. This approval was also appealed to the Coastal Commission. The Coastal Commission is unlikely to approve either the CUCC or the FVA well projects until it has the additional information it desires.

Finally, FVA sought from the Commission an exemption from the moratorium on the basis of its plan to develop wells to serve its development. Our granting this approval will not affect FVA's need to obtain Coastal Commission approval for its wells. Since our approval is based on the same preliminary yield information that satisfied the County but not the Coastal Commission with

regard to CUCC's airport wells permit application, we don't see how our action will cause the Coastal Commission to change its decision making in this case. Nor will our approval obviate FVA's need to obtain DHS approval, which we must assume will only be granted if DHS believes the FVA wells are consistent with its water quality and water quantity standards.

By conditioning our approval on FVA's obtaining other necessary state agency approvals, we are not abrogating our responsibility, but rather pointing out the obvious need to obtain those authorities before CUCC can legally serve FVA.

By acting before those other agencies, we are not jumping the gun, but simply responding in a relatively timely fashion to a petition before us seeking exemption from a moratorium we imposed. DHS generally does not act before it has an application before it. This usually occurs when the well or wells in question have been constructed and are ready for testing. FVA has not constructed the wells yet because it needs our approval and the Coastal Commission approval. FVA also needs to obtain the County of San Mateo's approval of an increase in its pumping limitation from the 42 acre feet needed to serve a 26 gpm well to the 80.7 acre feet need to serve its proposed 50 gpm well. We could delay our approval until after the County of San Mateo, DHS and Coastal Commission act, but we do not see the point in doing so. We accomplish the same thing by making our approval of a CUCC - FVA connection contingent upon such approvals. If FVA can't obtain those approvals, it can't connect to CUCC.

By acting now, however, we eliminate the need for FVA to again petition us for permission to be served by CUCC once those approvals are obtained. This may help shorten the time before the new wells come on line. Since the wells will contribute some amount of surplus to existing or other prospective customers, we would prefer that these wells came on line sooner rather than later.

Moving on to the alleged factual errors in the proposed decision, we agree with the Branch that we cannot be absolutely certain that the aquifer can provide sufficient water for both the proposed wells and the Pillar Point Marsh until the Phase II study mandated by the Coastal Commission has been completed. Obviously, a safe yield study based on field tests may reveal information missed in the historical analysis upon which the Phase 1 preliminary safe yield report is based. Nonetheless, we agree with the County of San Mateo that the results of the Phase 1 study make it probable that the aquifer can support both the CUCC and FVA well projects and the Pillar Point Marsh. We understand the Coastal Commission desire for certainty regarding the aquifer's safe yield, and do not suggest that it abandon its requirement of the Phase II study or shortcut its responsibilities to ensure the protection of sensitive environments. It is neither our role nor our desire to tell the Coastal Commission how to do its job.

The Branch's concerns about the main test well's capacity should be alleviated by our decision to require a 50 gpm primary well supplemented by a 50 gpm backup well, and our specification that the capacity of these wells must be evaluated and approved by DHS according to its waterworks standards before they can be used to support the connection of FVA to CUCC.

We are not concerned about the alleged lack of adequate evidence regarding the quantity of water the two wells the proposed decision orders to be used for landscaping purposes may produce. There is substantial evidence that the wells exist, although the estimated quantity of water they produce varies somewhat between the pre-filed and oral testimony of FVA's witnesses. Since the wells are not used as a basis for evaluating FVA's ability to develop water sources sufficient to meet its needs, the precise quantity of water the wells produce is not critical. It is evident that it would be better to use these wells for landscaping purposes than to abandon them, since their use will

reduce the quantity of water the FVA project will draw from the water system. To be fair, we note that it is possible that more precise information on these wells will be required if FVA seeks to recover their costs through an "advance subject to refund" contract. If this occurs, we will revisit the issue.

Comments of MMBWIA

MMBWIA asserts that the proposed decision errs by 1) failing to apply the health and safety requirements of Title 22, Code of California Regulations, § 64562 et. seq. (DHS Waterworks Standards) as required by PU Code §§ 770 (b), 4017, and Health and Safety Code 208, 209 and 4017; 2) granting FVA standing to apply for a lifting of the moratorium despite the fact that FVA itself is not an ultimate "customer;" 3) incorrectly stating the PU Code § 2708 standard for evaluating whether the connection of an additional customer will injuriously withdraw water from existing customers, 4) incorrectly determining who is discriminated against under PU Code § 453; 5) incorrectly placing personal property rights above health and safety considerations, and 6) relying on incompetent evidence regarding the proposed 540,000 storage tank and the two 8 gpm wells on FVA property. We will address here only those comments which do not overlap with those made by the Branch.

We are unimpressed by the contention that since FVA itself is not an ultimate "customer" it cannot apply for a lifting of the moratorium. Local governmental approval of any new development is typically contingent upon the developer obtaining from local utilities an indication that they are willing to serve the new development. If "willingness to serve" letters are not obtained from the utilities, and the development is not permitted to be built, then there will not be any future residential customers to request service. In a sense, the developer acts as a necessary proxy for future customers when he or she negotiates with the utilities for future utility service. This is especially true

when the development consists of completed residences rather than bare lots.

In the present case, FVA is acting as a proxy for the future residents of its development. Since FVA will use some water itself for construction and landscaping purposes, it will also be an ultimate customer to some extent. We will not deny FVA the opportunity to seek to lift the moratorium.

MMBWIA's contention that we mis-balance property rights and health and safety rights represents a misunderstanding of the actual impact of the proposed decision, since it assumes that our conditional approval of service to FVA overrides FVA's obligation to obtain authority from DHS and the Coastal Commission. DHS regulations require adequate service to existing customers before new connections are permitted. The Coastal Commission will almost certainly withhold approval of FVA's proposed wells until the results of the Phase II aquifer study are in, just as it has withheld permanent approval of CUCC's emergency and second new airport wells. We do not see how property rights will prevail over public health and safety. In any event, this contention is moot in light of our revised interpretation of PU Code § 2708.

We are not impressed by MMBWIA's contention that no environmental studies have been completed regarding a 540,000 gallon storage tank. As a preliminary matter, we note that we have revised the decision to require 540,000 gallons of storage capacity rather than a single 540,000 gallon tank. Thus, the storage can be met by more than one tank if this is desirable from a systems operations or environmental standpoint. Next, we note that by conditioning the hookup of FVA on the construction of such storage capacity we are in no way sanctioning a shortcut of environmental review. Naturally, appropriate environmental review will be a precondition for the construction of the tank or tanks. Since the construction can only occur after such review is complete, and since FVA can be hooked up to CUCC only after the tank or tanks are

constructed, it is clear that FVA can only be served after environmental review is complete. If the tank project fails environmental review, then the tank or tanks will not be built and FVA will not be hooked up.

Comments of the Department of Health Services (DHS)

DHS comments that CUCC does not have an adequate supply of water to meet existing customer needs, that while PU Code § 2708 does not require a showing that existing customer needs are met, the California Waterworks Standards prohibit additions to water systems with insufficient water to supply adequately and dependably the total requirements of all users under maximum demand conditions (Title 22, California Code of Regulations, § 64562), and that to allow new service connections to a water system already in distress will subject both existing as well as new users to the hardship of inadequate water supply service. DHS also requests that the order be changed to refer to the subject of adequate water quality as well as quantity. Finally, DHS requests that the proposed decision be amended to include the following statement:

> "1. The PUCs granting exemption requested by Farallon Vista Association (FVA) shall not preclude the Department's authority from imposing its own moratorium restricting the service connections from Farallon Vista if in the Department's evaluation it determines that it would be detrimental to the existing customers of CUCC-Montara system."

Our responses to the comments of other parties address most of DHS's concerns. We have no objection to reaffirming DHS's authority to impose a moratorium restricting service connections to FVA should it find it necessary to do so.

Conclusion

To sum up, CUCC's Montara-Moss Beach District does not presently supply enough water to meet its customers needs. This Commission ordered CUCC to develop 200 additional gpm of water

supply. The County of San Mateo and the Coastal Commission have conditionally authorized CUCC to drill two new airport wells. The county conditioned its authorization on the use of the new water to correct CUCC's current water shortage and on the reservation of a portion of the remainder of the new water for the priority use Farallon Vista Housing Development. The Coastal Commission incorporated these conditions, and imposed the further requirement of a final aquifer yield study designed to ensure that additional wells would not damage the environmentally sensitive Pillar Point Marsh. The Coastal Commission subsequently authorized emergency construction and use of one airport well. The final Phase II Pillar Point Marsh study has not yet begun, because a recalcitrant landowner has thus far prevented researchers from gaining access to the land upon which the study is to be conducted. The study will take about one year to complete.

In this proceeding, FVA seeks an exemption from our moratorium on new connections on the basis of a proposed deal with CUCC whereby the developer will assist in the development of a 50 gpm well to meet its own needs and provide some surplus water besides. We are but one step on the developer's path toward obtaining full governmental approval for the well development project. If we approve the project, FVA will still need to obtain Coastal Commission approval. Thus, even if the Commission agreed with the County and the developer that the Phase I Pillar Point Marsh study was adequate evidence of safe yield, the Coastal Commission's failure to agree on this point would place FVA in roughly the same position as CUCC regarding final well approval.

There is nothing we could or should do to discourage the Coastal Commission from fully evaluating the safe yield issue before finally issuing its well permits. Its desire to evaluate yield before authorizing use is a good one.

Nor is there anything we should do to discourage the County of San Mateo from adequately re-evaluating its pumping

limitation or to discourage DHS from carrying out its responsibilities.

On the other hand, there is no reason for us to delay our own approval of the well development program proposed by FVA and conditionally approved by CUCC. By making our determination now, based on the phase one study alone, but conditioning final authority for the FVA-CUCC connection on FVA obtaining the necessary regulatory permits, we simply make it possible for things to happen more quickly once the study required by the Coastal Commission is completed, assuming the results are favorable.

In order to meet our regulatory obligations, we will impose some additional conditions of our own.

Findings of Fact

1. The FVA project will require average production of not more than 271 gallons per day per condominium unit. A well producing 28 gallons per minute will produce sufficient water for the FVA development, after assuming 15% unaccounted for water lost between production and consumption. A well producing 28 gpm uses about 45 acre feet of water a year.

5. The production well proposed by FVA, which will have a capacity of not less than 50 gallons per minute, will be more than adequate to provide all the water that the FVA project requires. The well, if allowed by the County to pump at more than 45 acre-feet per year, will also provide a surplus of water for the benefit of all customers of CUCC's Montara District. A well producing 50 gpm uses about 80.7 acre feet of water a year.

3. The emergency airport well developed by CUCC in 1987 in response to a shortage of water needed to serve existing customers produces about 100 gpm and uses about 161.4 acre feet of water per year. CUCC's second proposed airport well should produce about the same quantity of water, for a total of about 323 acre feet a year.

4. The Half Moon Bay Airport/Pillar Point Marsh Ground-Water Basin Phase I Study Report, issued in June, 1987, found a minimum preliminary safe yield of 650 acre feet a year. FVA witnesses Gouig, Scalmanini and Rozar concluded on the basis of the Phase I report that a preliminary safe yield figure of 600 acre feet a year is appropriate. If the 600 acre feet figure is confirmed by the Phase II Study recommended by the authors of the Phase I Study and mandated by the Coastal Commission, there is likely to be surplus developable water in the aquifer amounting to 196.3 acre feet after the 323 acre feet production of the CUCC's emergency and second proposed airport wells and the 80.7 acre feet production of the FVA's proposed 50 gpm well are deducted.

5. The aquifer appears to contain sufficient water for development purposes to supply the needs of the FVA project.

6. The water usage of the proposed FVA project is unlikely to adversely affect the Pillar Point Marsh.

7. The 540,000 gallon storage capacity which FVA proposes to provide to the system through the construction of one or more storage tanks will furnish a net addition to the system of 440,000 gallons of storage. Tank capacity of this magnitude will more than satisfy the system's peak demand for a single day.

8. It is impossible to determine from this record precisely how great is the water shortfall affecting existing CUCC customers, since well production figures varied during the course of this proceeding. It is reasonable to use the 200 gpm shortfall the Commission ordered to be remedied in D.86193 as a proxy for this shortfall.

9. If CUCC's 100 gpm emergency airport well and its second proposed 100 gpm airport well are granted permanent permits by the Coastal Commission and the second proposed well is approved by the Department of Health Services, then the shortfall affecting existing customers should be eliminated. The effect of the decline in CUCC water production noted by Branch over the past several

years on the existing shortfall could be offset to some extent by the development of FVA's proposed wells since those wells should replace the portion of the 200 gpm of the proposed new CUCC production that was allocated to the FVA project by the County of San Mateo as a condition for its grant of a coastal development permit.

10. When FVA's 148 condominium units are added to the system after a period of three to four years of construction, and when the production well and backup well and storage tank or tanks as described are furnished to the system before any condominium units are added to the CUCC system, the addition of FVA proposed housing units to the system will not injuriously withdraw the supply of the existing customers in whole or in part if the unmet needs of existing customers are met by the permanent addition by CUCC of the one emergency and one proposed 100 gpm airport well currently subject to Coastal Commission and Department of Health Services approval.

Conclusions of Law

1. FVA must show that all existing customers in CUCC's Montara-Moss Beach District are receiving adequate water service conforming to Department of Health Services standards before it may obtain an exemption from the Commission's order restricting future service connections pursuant to PU Code § 2708. FVA need not make a similar showing regarding other prospective new CUCC customers.

2. FVA must show that the addition of its proposed housing units, together with the water supply proposed to be contributed to the system, will not injuriously withdraw the supply of existing customers in whole or in part.

3. The petition of FVA for an exemption from the Commission's moratorium order in D.86-05-078, as extended by D.86-12-069, should be granted with the conditions set forth above and as set forth in the following order.

4. The Commission's conditional approval of an FVA-CUCC connection and its granting of FVA's request for an exemption from the Commission's moratorium order set forth in Decision (D.) 86-05-078, as extended by D.86-12-069 does not preclude the Department of Health Services from imposing its own moratorium restricting the service connections from Farallon Vista if in the Department's evaluation it determines that it would be detrimental to the existing customers of CUCC's Montara-Moss Beach water system.

5. The Commission's conditional authorization of an FVA-CUCC connection does not eliminate the need for CUCC to obtain Coastal Commission and Department of Health Services approval for its one emergency and one proposed 100 gpm airport wells or for FVA to obtain Coastal Commission and Department of Health Services approval for its proposed 50 gpm wells. Nor does it eliminate the need for FVA to obtain from the County of San Mateo a modification of the pumping limitation in its coastal development permit so that it can pump the 80.7 acre feet required by its proposed 50 gpm well. The Commission's conditional authorization cannot override the responsibilities of the County of San Mateo, the Coastal Commission and the Department of Health Services to implement their statutory and regulatory mandates.

## SECOND INTERIM ORDER

IT IS ORDERED that:

1. The petition of Farallon Vista Associates (FVA) for an exemption from the moratorium order contained in Decision (D.) 86-05-078, as extended by D.86-12-069 is granted, subject to the conditions set forth below.

2. Citizens Utilities Company of California (CUCC), may connect the housing units of the FVA project in no less than three phases over a period of not less than three years from the date of

this order, subject to the following conditions, each of which must be met before CUCC is required to serve FVA:

a. CUCC shall obtain from FVA a water source demonstrably adequate to meet project needs at full build out, including:

(1) A production well of not less than 50 gallons per minute (gpm) sustained yield;

(2) A backup well of not less than 50 gpm sustained yield;

(3) A treatment plant and related facilities, if the water from the wells to be provided by FVA requires treatment.

The wells and treatment plant shall be constructed to meet all applicable water utility standards, including those of both this Commission and the Department of Health Services. The sustained yields of these wells must be demonstrated to the satisfaction of the Department of Health Services in accordance with the waterworks standards and other regulations of that agency."

b. FVA shall bear the entire financial risk and burden of the development of the water production sources and treatment facilities described above to be transferred from FVA to CUCC.

As a condition of our approval of the exemption, FVA must finance the production well and the backup well, and a treatment plant if that is needed.

c. FVA and/or CUCC shall obtain all regulatory approvals required by law before CUCC shall be obligated to serve FVA's project. These approvals shall include Coastal Commission approval of the FVA coastal development permit, Department of Health Services approval of wells to be added to CUCC's system, and County of San Mateo approval of a modification of the pumping limitation in the coastal development permit.

d. The Commission shall retain jurisdiction to review and approve, through its Water Utilities Branch staff, the final agreement executed between FVA and CUCC regarding the facilities to be provided by FVA.

e. FVA shall construct, or cause to be constructed, 540,000 gallons of storage capacity on the FVA's project site at or near the location of a 100,000 gallon CUCC tank, which is to be replaced; provided that CUCC may elect to have 200,000 gallons of that storage built elsewhere within the Montara District service area if such construction would prove more beneficial to the system as a whole than a single tank on the FVA site.

f. FVA shall employ the two low production wells on the FVA project site to provide irrigation for landscaping.

g. Each of the FVA condominium units shall be individually metered, either by CUCC or by FVA, and individual bills shall be rendered to individual households. If FVA owns and controls the metering system, FVA shall not consolidate the charges for water with rental charges. Rather, charges for water shall be separately stated, provided that any water purchased from CUCC for landscaping or other common purposes may be allotted to condominium units as part of the rent or lease payments.

h. FVA and CUCC must submit to the Water Utilities Branch of the Commission's Compliance and Advisory Division evidence that the California Coastal Commission has issued to CUCC permanent permits for the development and operation of the one emergency airport well and the second proposed airport well, that CUCC has developed the second proposed airport wells, and that CUCC has obtained Department of Health Services approval of the connection of these wells to CUCC's water system. The Commission shall retain jurisdiction, through its Water Utilities Branch, to confirm that such evidence shows

that all existing customers in CUCC's Montara-Moss Beach District are receiving adequate water service conforming to Department of Health Services standards as required before FVA can be granted an exemption from the current moratorium on new connections pursuant to PU Code § 2708.

This order becomes effective 30 days from today.

Dated DEC 6 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners