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Decision 91-04-022 April 10, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of the Southern California Water
Company (U-133-W) for an order
establishing a growth moratorium
for water service in its Ojai
District.

ORIGINAL

Application 90-08-016
(Filed August 8, 1990)

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Conway and Floyd E. Wicks, for
Southern California Water Company,
applicant.

John J. Johnson and Richard H.
Barnett, for Casitas Municipal
Water District, interest party.

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

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O P I N I O N

Background

Southern California Water Company (SCWC) is a public utility rendering water service in various areas in Contra Costa, Imperial, Lake, Los Angeles, Orange, Sacramento, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties. SCWC also provides electric service in the vicinity of Big Bear Lake in San Bernardino County.

SCWC's Ojai District (District), an interconnected water system which serves the City of Ojai and adjacent unincorporated territory in Ventura County, is the subject of this opinion. As of December 31, 1989, SCWC served 2,688 customers in the District. Approximately 97.8% of these customers were residential and business customers.

The District's water supply is obtained from four company-owned wells and from purchases of water from Casitas Municipal Water District (CMWD). Storage capacity is available from six tanks and reservoirs, four of which are steel and two concrete, with a combined capacity of 1,536,000 gallons, or approximately 5 acre-feet.

Request for a Moratorium on Water Service

On August 8, 1990, SCWC filed its application for authority to establish a moratorium on new services and service extensions in the District, pursuant to Public Utilities (PU) Code § 453.

SCWC's moratorium request is the result of a Moratorium Resolution (Resolution No. 90-43) passed by CMWD's Board of Directors on April 11, 1990. This resolution imposed regulations and restrictions on the delivery and consumption of CMWD water.

The resolution precludes CMWD water to be provided to CMWD's direct service customers and resale agency customers for either new water service or for expansion of an existing service

after April 11, 1990. Although the resolution requests that its customers reduce their water consumption by 20%, existing customers may, without any penalty, use more water than they have used in the past. Direct service customers are end users who obtain water directly from CMWD for their own use. Resale agencies are customers, such as SCWC, that purchases water from CMWD for resale to their own customers.

If SCWC, as a resale agency, fails to abide by the new service and service extension moratorium, the resolution requires CMWD to impose the following penalties:

1. No further allocation of water to that resale agency;
2. A penalty equal to ten times the connection fees that would have been charged by CMWD for the service had it been a customer of CMWD; and
3. A penalty equal to ten times the water rate that CMWD would have charged a similar direct customer.

SCWC did not identify the monetary amount of the penalty that may be imposed. However, it asserts that the penalty would result in an excessive financial hardship to SCWC. Therefore, SCWC requested that a hearing be held to facilitate the granting of its water service moratorium in the District as soon as possible.

Hearings

A concurrent public participation and evidentiary hearing was held in the City of Ojai before Administrative Law Judge (ALJ) Galvin on October 25 and 26, 1990. Public statements were received from a dozen interested parties and evidence from four witnesses. Oral briefs were provided at the conclusion of the evidentiary hearing on October 26, 1990. This proceeding was submitted upon the filing of the hearing transcripts with the Commission's Central Files on November 30, 1990.

Public Statement Hearing

Those parties that provided public statements at the hearing concur that the current year's water supply is less than last year's water supply. There is a difference of opinion, however, on whether a moratorium on new services and extension of existing services is necessary.

Two-thirds of those who provided statements believe that the City of Ojai's growth management plan of allowing only twelve new building permits a year is effective and makes moot the need to control water usage with SCWC's proposed moratorium. To impose the moratorium improperly places the burden of an anticipated water shortage on only a few people and will save a very insignificant amount of water. In support of the insignificant amount of water savings from prohibiting the extension of water service from a meter already in place, parties explained that a customer applying for a building permit would:

1. Replace an existing house with a new home consisting of one additional bathroom proposed to use water conservation fixtures and agreed not to exceed the average water use for the last three years.
2. Add an additional bedroom and bath to an existing house proposed to use water conservation fixtures and agreed not to exceed the average water usage for the last three years.
3. Build an office building, equal in size to another, proposed to retrofit all existing water fixtures with conservation fixtures, to install conservation fixtures in the new building, and agreed not to exceed the average water usage for the last three years.
4. Add a bathroom to an existing house agreed to use conservation toilets.
5. Add a granny unit behind an existing home explained that he will use less water

because two of his children are away at college.

In regard to building homes with a new service, it was explained that the City of Ojai approved permits for ten people to build new homes two years ago. Subsequently, these ten people have spent money to buy land and to design storm drains and other facilities while relying on a water availability certificate. The impact of new homes such as these is nominal and represents less than one percent of existing water services.

On the other side of the need to impose a moratorium, it was explained that we must look at conservation as a form of water supply because the entire state is under a water demand supply crisis. It was also explained that the Commission should not get caught up in whether procedural matters were properly followed but should let CMWD, SCWC, the City of Ojai, and property owners work together to develop a local water management plan to solve their regional water problem.

Evidentiary Hearing

Floyd Wicks, president of SCWC, testified for SCWC. General Manager John S. Johnson and Engineering Department Manager Richard H. Barnett testified for CMWD. Senior Utilities Engineer Richard Tom testified for the Commission's Water Utilities Branch of the Commission Advisory and Compliance Division, (Water Branch).

CMWD History

Before discussing the parties' positions it is appropriate to review the history of CMWD to understand the impact of CMWD purchased water. CMWD, formerly Ventura River Municipal Water District, was formed in 1952 to develop and provide a supplemental water supply for the Ojai and Ventura County area because the water supply from the Ventura River and Ojai groundwater basins were inadequate to meet demands during critical drought periods.

The U.S. Bureau of Reclamation, under contract to CMWD, constructed the Casitas Dam and related facilities during 1959. CMWD's sole water supply source is Lake Casitas, the reservoir which is capable of storing 240,000 acre-feet of water. CMWD's water rights license states that CMWD shall not withdraw more than 28,500 acre-feet of water per year from the lake.

At the time CMWD first received its water rights license for Lake Casitas in the 1950's, CMWD projected its safe annual yield to be 20,350 acre-feet. Subsequently, CMWD revised the safe annual yield upward by 1,570 acre-feet to approximately 22,000 acre-feet.

CMWD currently provides approximately 22,000 acre-feet of water a year to 2,700 service connections over a 150 square mile service area to four general classes of customers as follows:

<u>Class</u>	<u>Acre-feet</u>
Farmers	11,700
City of Ventura	8,400
Miscellaneous Users	1,300
SCWC	580
Total Water Supplied	21,980

CMWD has no authority to manage the Ventura River Basin or the Ojai Basin groundwater supplies or to assure that demands on these basins do not exceed available yields. Since the Ojai groundwater basin is non-adjudicated, no entity has control over the use of basin water. If groundwater basin supplies are not adequate to meet demands, CMWD is called upon to make up the deficiency.

CMWD Position

Johnson explained that the moratorium is necessary because of the low water supply stored in Lake Casitas, the Ojai Basin, and the adjacent Ventura River Basin. This low level of water supply exists because of three consecutive drought years. Pursuant to California Water Code § 350 through 352, CMWD declared

a water shortage emergency. Although Johnson was to provide a late-filed exhibit (Late-Filed Exhibit 5) on the content of CMWD's hearing notice to its customers, including SCWC, the information was not received.

The level of water supply and demand from Lake Casitas, the Ojai Basin, and Ventura River Basin on April 11, 1990, the date of the resolution imposing a moratorium was as follows:

<u>Source</u>	<u>Supply</u>	<u>Demand</u>	<u>Surplus</u>
		(Acre-Feet)	
Lake Casitas	21,920	21,400	520
Ojai Basin	4,200	3,700	500
Ventura River Basin	4,787	5,220	(433)
Total	30,907	30,320	587

Lake Casitas Water Supply

A Lake Casitas water supply and demand study presented by Barnett to CMWD's Board of Directors in July 1989 showed that CMWD had a water surplus of approximately 600 acre-feet a year. Subsequently, a January 1990 study conducted by Barnett showed that the demand on Lake Casitas water averaged slightly in excess of the 22,000 acre-feet safe yield.

Barnett's data shows that the the current level of water in Lake Casitas is approximately 137,000 acre-feet, or 20,000 acre-feet less than would be expected under safe yield operations during a repeat of the 1944 to 1965 critical drought record. If demands on CMWD water increase at normal rates, Lake Casitas will be empty eight years earlier than expected during a repeat of the critical drought period.

Ojai Basin Water Supply

The Ojai Basin, which holds about 68,000 acre-feet, is currently at the 41,000 acre-foot level. Johnson is unsure whether the Ojai Basin has a surplus of water. However, based on a review of recent data, he does not believe that a surplus exists.

Approximately 43% of the Ojai Basin water is used by SCWC, 45% is pumped by agricultural and other water agencies in the area, and 12% is surplus water.

Barnett acknowledged that a January 1990 memorandum prepared by him found that the Ojai Basin had a current surplus of approximately 500 acre-feet per year. However, based on an analysis conducted one week prior to the evidentiary hearing he finds that there has been a drop in basin storage by about 400 acre-feet in less than nine months. This recent shift in pumping more Ojai Basin water is occurring because of CMWD's public information program which encouraged farmers to increase pumping water from the Ojai Basin.

Ventura River Basin Water Supply

Barnett's data also shows that the Ventura River Basin's water level, which holds approximately 14,000 acre-feet of water, is at an historical low. The current demand on this basin exceeds the supply by 433 acre-feet; therefore, the Ventura River Basin water purveyors are beginning to depend heavily on CMWD water.

Since CMWD's figures show that the Ventura River Basin is almost drained, CMWD will be called upon to provide, at least in the short-term, an additional 6,000 to 8,000 acre-feet of water to water purveyors that utilize the Ventura River Basin, thereby making less water available to CMWD's other customers.

Water Supply Summary

CMWD is concerned that if the Ojai Basin continues to be utilized at the current rate, then CMWD will need to supply additional water to Ojai Basin water purveyors in addition to the Ventura River Basin water purveyors. Barnett concludes that any plan for managing the Ojai Basin requires the cooperation of the ranchers, SCWC, and CMWD.

Commission Authority

CMWD followed California Water Code procedures in declaring its water shortage emergency. CMWD stated that it was

not aware that SCWC needed Commission approval to impose a moratorium until after the resolutions were approved by CMWD's Board of Directors. However, California Water Code § 357 specifically requires any distributor of water supply subject to Commission regulation to secure Commission approval prior to imposing any regulations or restrictions adopted as a result of a water shortage emergency condition. Irrespective of this regulation, SCWC complied with CMWD's resolutions.

To provide additional water sources CMWD is looking at introducing short-term production from wells outside of the basins, reinforcing Matilija Dam and removing the silt out of the dam, and importing state water.

SCWC Position

SCWC purchases only 580 acre-feet of its yearly 2,230 acre-feet water requirement from CMWD. This equates to 26% of SCWC's yearly water needs. The remaining 74% of SCWC's water needs is pumped from SCWC's four wells located in the center of the Ojai Basin.

Ojai Basin Water Supply

Wicks acknowledges that the water supply in the Ojai Basin is lower than in prior years. However, he asserts that there is no emergency relative to water shortage in the Ojai Basin. This is substantiated by a 1988 Kienlen and Associates report prepared at the direction of CMWD which concluded that the Ojai groundwater basin is not in a state of overdraft.

Although SCWC's existing wells can satisfy SCWC's customers water demands on an annual basis, the summertime water demands exceed the pumping capabilities of the four wells, making it necessary for SCWC to obtain water supplies from outside sources. In November 1989, SCWC proposed a potential solution to CMWD to satisfy SCWC's outside water needs. SCWC proposed to pump surplus water from its wells during the low demand period October

through April, and to wheel that water to CMWD. In turn, SCWC would take back the wheeled water during SCWC's high water demand period.

Slow Growth Policy

Wicks explained that the City of Ojai's slow growth policy, which resulted in an average of 20 new customers a year for the past 10 years, has had little impact on the water demand. However, he does believe that the region needs additional water supplies and needs to implement conservation efforts.

Implementation of Resolution

CMWD's resolution imposing penalties came as a surprise to SCWC. SCWC, well aware that it is regulated by the Commission, did not seek any legal advice on whether the resolution applied to SCWC immediately. SCWC did explain to CMWD that SCWC would need Commission authority to impose the moratorium. However, CMWD responded that the resolution was applicable to SCWC effective April 11, 1990.

After meetings with CMWD and officials of the City of Ojai, SCWC concluded that it would be assessed penalties if it did not voluntarily comply with CMWD's resolution. SCWC adopted the resolution retroactive to April 11, 1990. SCWC did this because it believed that the community wanted SCWC to do so. Also, it believed that the penalties it might incur from not imposing the moratorium outweighed any damages that could occur to those persons denied water service.

Denial of Water Service

From April 11, 1990 to August 27, 1990 SCWC denied eight requests for water service, six of which were for expanded levels of service due to anticipated additions to existing structures. SCWC notified the eight customers by letter informing them that, "due to the current water supply situation, no new water availability letters are being issued." The water supply situation was not explained to these customers or to any potential customers

who may have inquired by telephone. Further, these customers and potential customers were not notified of their right to complain to the Commission.

Subsequently, Water Branch, prior to the issuance of its October 1990 report to this application, notified SCWC that SCWC cannot impose a moratorium on water hook-ups without Commission authority. However, SCWC, concerned about the magnitude of the penalty, concluded that it was best to comply with CMWD's resolutions.

SCWC's Solution

SCWC believes that it can comply with the intent of the resolutions by reducing its purchase of CMWD water by 20% without a moratorium and wants to work collectively with CMWD, the City of Ojai, the City of Ventura, and the County of Ventura in establishing a water management plan. Wicks offers a short-term solution of replacing CMWD purchased water. He proposes to drill additional wells in the Ojai Basin and to pump enough additional water from the basin to meet the water demands currently being met with CMWD water.

In the long-term, Ventura County's demands for CMWD water will be reduced, making Ventura County's share of CMWD water available for other CMWD water customers. This will occur because Ventura County has an annual 20,000 acre-feet water entitlement from the California aqueduct which it has not yet obtained because Ventura County lacks the necessary facilities to receive water from the aqueduct. However, a water pipeline designed to interconnect Oxnard's water system, that connects to the aqueduct via the Metropolitan Water District and Calleguas Municipal Water District, to Santa Barbara's water system, is now being constructed. Once connected, Ventura County would be able to access aqueduct water and draw upon its entitlement. This would substantially reduce Ventura County's need for CMWD water and make such water available to other CMWD customers.

Alternative Solutions

Wicks also believes that viable alternatives are available to eliminate the need to drill new wells in the Ojai Basin. These alternatives are:

- a. Initiate a water exchange program between SCWC and CMWD as discussed above.
- b. Develop alternative sources of supply or initiate a long-term cut-back plan for steep-slope irrigation.
- c. Use reclaimed waste water for oil company needs.
- d. Promote water exchange contracts with other water purveyors.
- e. Enhance conservation efforts.

Revised Solution

SCWC, in its closing argument presented at the conclusion of the evidentiary hearing, requested authority to:

- a. Construct and put into service two new wells and necessary transmission lines, as recommended by Water Branch. Wicks estimates the cost to be approximately \$531 per acre-foot.
- b. Approve the water service moratorium until the wells and transmission lines are placed into service.
- c. Provide service to customers denied service pending a decision from the Commission.

Water Branch Position

Tom testified that there is no water shortage in the Ojai groundwater basin, where SCWC pumps approximately 74% of its customers water needs. The Water Branch's exhibit points out that even CMWD concurs that the Ojai groundwater basin is currently being underutilized by approximately 500 acre-feet of water per year.

Water Branch believes that this underutilization of the Ojai basin resulted from a growing dependence on CMWD water supplies since the 1977 drought when a number of agricultural individuals turned to CMWD for additional purchased water, thus reducing their groundwater pumping.

Tom's prepared testimony explains that water conservation was an issue in SCWC's general rate proceeding (Application 90-02-059), a decision on which is pending before the Commission. In that proceeding, both SCWC and Water Branch agreed on a 1991 test year reduction of 10% in total water sales due to conservation efforts. Therefore, SCWC's need to utilize CMWD purchased water is diminishing.

Tom believes that if SCWC drilled two additional wells in the Ojai basin, SCWC would have sufficient water for its customers and not need to impose a moratorium on new services or on extension of services.

Denial of Water Service

Water Branch is also concerned that SCWC improperly denied water service to at least eight individuals in direct conflict with the Commission's General Order (GO) 103, PU Code § 2708, and California Water Code § 357.

Although GO 103 provides specific conditions for a utility to refuse water service to a potential customer, SCWC's situation does not meet any of the conditions listed. The PU Code provides for a water moratorium to be established only after a hearing which finds that the utility has reached the limit of its capacity to supply water. Finally, the California Water Code states that any distributor of water, such as SCWC, shall secure the approval of the Commission before making such regulations and restriction.

Recommendations

The Water Branch recommends that the SCWC request for a moratorium be denied. The Water Branch also recommends that SCWC:

1. Provide water service to those individuals already denied service by SCWC.
2. Work cooperatively with CMWD to develop a long-range plan to resolve the Ojai groundwater basin's water problem.
3. Drill two new wells in the Ojai basin if SCWC and CMWD don't reach a satisfactory solution to the Ojai ground water basin problem. Allow SCWC to seek a rate base offset for the wells, if drilled, through an advice letter filing.
4. Prepare a Water Management Plan (WMP) pursuant to Decision (D.) 90-08-055. SCWC should include in its WMP projected water demands, customer growth, and water supply needs for the current time period, five years into the future, and ten years into the future.

Discussion

Although CMWD asserts that the Commission should let CMWD, SCWC, the City of Ojai, and property owners work together to develop a local water management plan to solve a regional problem, the testimony in this proceeding shows that the local community may not be able to solve this problem. Following are six examples which lead us to this conclusion:

1. CMWD's delay and deferral of considering SCWC's proposal to initiate a water exchange program until an environmental assessment has been prepared. SCWC as an investor-owned entity cannot act as a lead agency in preparing such an assessment.
2. CMWD's imposition of a water moratorium on new services and extension of services while allowing its present customers to use more water than they have previously used.
3. CMWD's policy to encourage farmers to use Ojai Basin water.

4. Potential water customers' proposals to use only water conservation fixtures, and not to exceed their water usage for the last three years.
5. SCWC's failure to follow Water Code § 357.
6. CMWD's failure to provide Late-Filed Exhibit 5 as promised by its witness Johnson.

Our generic investigation (D.90-08-055) into the measures needed to mitigate the effects of drought on regulated water utilities requires SCWC, and other water utilities, to file a WMP with the Commission for approval. We concur with CMWD's argument that local cooperation is needed and, therefore, invite CMWD, the City of Ojai, and SCWC's customers to actively participate with SCWC in developing SCWC's WMP. Those parties interested in participating in a WMP proceeding should contact the Commission's Public Advisor's Office for the WMP schedule.

CMWD, not subject to Commission regulation, followed California Water Code procedures in declaring its water shortage emergency and establishing regulations and restrictions that it deemed necessary.

CMWD implemented water restrictions on all of its resale agencies, including SCWC, preventing its resale agencies from hooking up new customers or allowing for the expansion of existing customers' services. Similar restrictions were imposed on CMWD's individual customers.

SCWC is dependent on CMWD water because SCWC's existing wells are not capable of pumping all of SCWC's water needs during peak periods and summer months, or capable of providing adequate fire flow protection. As Wicks testified, SCWC's fire flow availability would be dramatically reduced without CMWD water.

All of CMWD's other customers conform to CMWD water restrictions. If we deny SCWC's request for a moratorium on new services and on extensions of existing services we will be giving

SCWC and its customers preferential treatment over CMWD's other customers during CMWD's water emergency situation. Further, SCWC would be put in a worst water supply situation at the point in time that CMWD imposes its stated penalties and discontinues providing CMWD water to SCWC.

Clearly, SCWC should be required to abide by CMWD water restrictions during CMWD's water emergency period so long as SCWC is dependent on CMWD water. We find that a water emergency exists for SCWC, as outlined in § 350 of the Water Code, because the adequacy of SCWC's fire flow availability will be dramatically reduced by the loss of CMWD water.

However, Water Code § 357 specifically precludes SCWC from implementing any of CMWD's water emergency regulations or restrictions until it has obtained Commission approval. Both CMWD and SCWC should have known of the existence of Water Code § 357.

CMWD utilized the California Water Code to impose its water shortage emergency declaration. Although Water Code § 357 is an integral part of the Water Code pertaining to the declaration of water shortage emergency and the establishment of regulations and restrictions applicable to the water shortage, CMWD erroneously represented to SCWC that CMWD would impose its newly enacted penalties if SCWC did not impose a moratorium on new services and service extensions retroactive to April 11, 1990, and prior to Commission authorization.

SCWC, a seasoned utility under Commission jurisdiction, was aware that it needed Commission authority to impose a water moratorium and should have been aware of Water Code § 357. It imposed the moratorium contrary to its tariff provisions and GO 103 without Commission authority and without notifying those customers seeking new water service or an extension of water service that they may appeal SCWC's actions to the Commission. Further, SCWC's application, filed approximately four months after CMWD's resolution due to organizational changes within SCWC and

discussions with CMWD, does not mention SCWC's unilateral imposition of a water moratorium and does not seek authority to deny new service connections and extension of service connections retroactive to April 11, 1990. Concurrent with SCWC's filing of this application, in D.90-08-055 we reiterated Commission policy to major water utilities, of which SCWC was a named respondent, that water utilities should not be allowed to initiate or terminate water rationing plans on their own.

Penalty

PU Code § 2107 provides, in relevant part, that: "Any public utility...which fails or neglects to comply with any part or provision of any...rule...of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each offense...." PU Code § 2108 provides, in relevant part, that: "every violation...of any part of any...rule...of the Commission, by any corporation or person is a separate and distinct offense...." PU Code § 2109 provides, in relevant part, that: "In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility."

SCWC's own testimony substantiates that SCWC was aware that it needed Commission authority and that it misled and denied water service to at least eight customers or potential customers. Each of these eight instances coupled with SCWC's testimony that it was aware that it needed Commission authority constitute separate and distinct violations of GO 103 and Rule 1 of our Rules of Practice and Procedure. Each of the eight instances should be subject to the maximum penalty of \$2,000 permitted for each violation of GO 103 and Rule 1.

If SCWC does not voluntarily pay the penalty within 45 days of the effective date of this order, the Commission's General Counsel will be ordered to bring and prosecute to final judgment an action to recover this \$16,000 penalty in the name of the people of the State of California in Ventura County's Superior Court, as provided by PU Code § 2104.

SCWC is required to provide water service to those customers, eight of which are documented by SCWC, previously denied such service within 45 days of the effective date of this order. SCWC is also required to provide a copy of this order to each of the parties denied service within 45 days of the effective date of this order.

Water Service Moratorium

SCWC modified its requested relief of authority to establish a moratorium on new services and extension of existing services in SCWC's Ojai District during closing arguments. Now, SCWC agrees with Water Branch that SCWC should be authorized to put into service two new wells and transmission lines. Wicks estimated that it would cost approximately \$531 per acre-foot for water pumped from these additional wells. In the interim, SCWC requests that the water moratorium in SCWC's Ojai District be approved until the wells and transmission lines are put into service.

SCWC, CMWD, and Water Branch concur that the Ojai Basin does not have a water supply shortage. Although sufficient water exists in the Ojai Basin, SCWC does not have the facilities to pump all of its water demands during peak periods and summer months. SCWC should seek a feasible and dependable alternative water supply to replace CMWD water for the period of time that CMWD imposes its service moratorium.

Wicks also testified that property owners located within CMWD's boundaries are required to pay for the construction and operation of CMWD's dam through mandatory assessments on their

property tax bill. SCWC should determine and pursue its legal right to CMWD water.

An alternative source of water supply needs to be found. Although the best alternative, and least cost to the ratepayer is the water exchange program suggested by SCWC to CMWD, or with another water purveyor, there is no information to show that it will become a reality. The drilling of two wells will solve SCWC's problem; however, there is insufficient information to conclude that two wells are necessary. One well may be more than adequate. Therefore, SCWC should explore its alternatives to obtain a new source of water supply for the duration of CMWD's moratorium. If SCWC determines that it cannot enter into a water exchange program in the near future and that the drilling of an additional well, or wells, in the Ojai Basin is necessary and a feasible solution to its water supply problem, SCWC should so inform the Water Branch and should be allowed to file an advice letter requesting authority to recover its costs associated with the additional well, or wells, and associated transmission line after the facilities have been placed in service. As part of its advice letter filing, SCWC should delete the purchase water cost from the revenue requirement as authorized in D.90-12-118 for SCWC's Ojai District. SCWC should also be required to substantiate that the drilling of a well, or wells, is a necessary solution to its water supply problem. SCWC's customers should be given notice of any such advice letter filing.

To provide SCWC adequate time to replace its CMWD water supply, SCWC should be authorized to implement its requested water moratorium on new service and service extension from the date of this order for a maximum of six months. SCWC should be required to notify the Commission's Water Branch in writing of the date that the moratorium is lifted, within ten days after the moratorium is lifted. SCWC should not seek any extension of time to comply with the moratorium being approved by this order or an expansion of the moratorium under Rule 43 of the Commission's Rules of Practice and

Procedure. A new application should be filed. Because of CMWD's water shortage and resolution passed in April 1990, this order should be effective on the date signed.

Water Branch Recommendations

Water Branch's recommendation to require SCWC to provide water service to those parties denied service, to require SCWC to work cooperatively with CMWD to develop a long-range plan to resolve the Ojai groundwater basin's problem and to drill two new wells with authority to obtain rate base offset through an advice letter filing has been addressed and need not be discussed further.

Water Branch's recommendation to require SCWC to include in SCWC's WMP, SCWC's projected water demands, customer growth, and water supply needs for the current time period, five years and ten years into the future is moot. This is because D.90-08-055 already requires SCWC, and other water utilities, to work closely with the Water Branch as the water utilities develop their WMP. Therefore, Water Branch's recommendation should not be adopted.

Section 311 Comments

The ALJ's proposed decision on this matter was filed with the docket office and mailed to all parties of record on February 5, 1991, pursuant to Rule 77 of the Commission's Rules of Practice and Procedure.

Comments to the ALJ's proposed decision were received from SCWC. Rule 77.3 provides that comments to the ALJ's proposed decision shall focus on factual, legal, or technical errors in the proposed decision. Comments that did not comply with Rule 77.3 were not considered. However, to the extent that the comments addressed factual, legal, or technical errors they were carefully considered. Clarification of specific matters addressed in the comments have been included in the appropriate place of the decision. These comments did not result in any substantive changes to the ALJ's proposed decision.

Findings of Fact

1. SCWC's Ojai District serves the City of Ojai and adjacent unincorporated territory in Ventura County.
2. The District's water supply is obtained from four private company-owned wells and from purchases of water from CMWD.
3. SCWC seeks authority to establish a moratorium on new services and extension of services in its Ojai District.
4. SCWC's request is the result of a moratorium resolution passed by CMWD's Board of Directors.
5. CMWD's customers may, without penalty, use more water than they have used in the past.
6. If SCWC fails to abide by CMWD's moratorium and provides water to new services or extension of services, SCWC will be severely penalized by CMWD.
7. A CMWD penalty would result in an excessive financial hardship to SCWC.
8. CMWD's sole water supply is Lake Casitas.
9. CMWD's water rights license allows it to withdraw no more than 28,500 acre-feet of water per year from the lake.
10. CMWD's safe annual yield to draw from the lake is approximately 22,000 acre-feet.
11. CMWD has no authority to manage the Ventura River Basin or the Ojai Basin groundwater supplies or to assure that demands on these basins do not exceed available yields.
12. No entity has control over the use of Ojai Basin water.
13. CMWD declared a water shortage emergency pursuant to California Water Code § 350 through 352.
14. CMWD has a water surplus of approximately 520 acre-feet a year in Lake Casitas.
15. The Ojai Basin which holds approximately 68,000 acre-feet is currently at the 41,000 acre-foot level.
16. Approximately 43% of the Ojai Basin water is used by SCWC.

17. The Ojai Basin has a water surplus of approximately 500 acre-feet per year.

18. There has been a drop in Ojai Basin storage of about 400 acre-feet in less than nine months due to CMWD's public information program encouraging Farmers to increase pumping water from the Ojai Basin.

19. The Ventura River Basin's water level is at a historical low with the current demand exceeding water supply by 433 acre-feet.

20. California Water Code § 357 requires any distributor of water supply subject to Commission regulation to secure Commission authority prior to imposing any regulation or restrictions adopted as a result of a water shortage emergency condition.

21. CMWD required SCWC to comply with its resolution or be assessed penalties irrespective of Water Code § 357.

22. SCWC purchases only 580 acre-feet of its yearly 2,230 acre-feet of water requirement from CMWD.

23. SCWC pumps its remaining 74% of water requirement from the Ojai Basin.

24. There is no emergency relative to water shortage in the Ojai Basin.

25. SCWC's existing wells can satisfy SCWC's customers water demands on an annual basis. However, SCWC cannot satisfy its customers peak demands or summer-time demands without CMWD water.

26. In November 1989, SCWC proposed to CMWD to enter into a water exchange program.

27. The City of Ojai's slow growth policy has little impact on water demand.

28. SCWC implemented CMWD's water moratorium without Commission authority and with knowledge that it needed Commission authority before it could implement the moratorium.

29. SCWC denied at least eight requests for water service during the period April 11, 1990 to August 27, 1990.

30. SCWC did not notify the customers denied water service that they have a right to protest SCWC's denial to Commission.

31. Water Branch notified SCWC that SCWC could not impose the moratorium without Commission approval.

32. Ventura's long-term demand for CMWD water will be reduced making Ventura County's share of CMWD water available for other CMWD customers.

33. The Water Branch concurs that there is no water shortage in the Ojai Basin.

34. Water conservation was an issue in SCWC's generic rate proceeding, A.90-02-059.

35. SCWC agreed to reduce its 1991 water demand by 10% in the 1991 test year, the reduction of which reduced its pumped water and purchased water requirement.

36. Water Branch believes that if SCWC drilled two additional wells in the Ojai Basin, SCWC would not need CMWD water.

37. SCWC violated GO 103 by refusing to provide water service without Commission authority.

38. SCWC violated California Water Code § 357 by refusing to provide water service without Commission authority.

39. CMWD has not acted on SCWC's proposal to initiate a water exchange program.

40. CMWD failed to provide Late-Filed Exhibit 5.

41. CMWD is not subject to Commission regulation.

42. CMWD represented to SCWC that SCWC would be assessed penalties if SCWC did not impose the water moratorium on new services and extension of existing services retroactive to April 11, 1990.

43. SCWC does not seek authority to impose CMWD's moratorium retroactive to April 11, 1990.

44. SCWC was lax in filing its application.

45. D.90-08-055 reiterated Commission policy to SCWC that water utilities should not be allowed to initiate or terminate water rationing plans on their own.

46. PU Code § 2107 provides penalties to be imposed on utilities that fail to comply with Commission rules.

47. SCWC revised its requested relief during hearings for authority to impose CMWD's moratorium until SCWC installs and puts into service two new wells in the Ojai Basin and necessary transmission lines.

48. SCWC, CMWD, and Water Branch agree that the Ojai Basin does not have a water shortage.

49. Property owners in CMWD's service territory pay for the construction and operation of CMWD's dam through mandatory assessments on their property bills.

50. D.90-08-055 already requires SCWC to work closely with Water Branch in developing its WMP.

51. SCWC is dependent on CMWD water.

52. SCWC's fire flow availability would be dramatically reduced without CMWD water.

53. A water emergency exists for SCWC as outlined in § 350 of the Water Code.

Conclusions of Law

1. SCWC should be assessed the maximum penalty permitted by PU Code § 2107 for each of its eight documented violations of GO 103 for denying water service without Commission authority.

2. SCWC should offer to provide water service to each person or entity previously denied water service without Commission authority.

3. SCWC should provide a copy of this order to each person or entity denied water service without Commission authority.

4. The moratorium on new services and service extensions should not be granted on a retroactive basis, and should be made effective on the date of this order.

5. A moratorium on new services and service extensions should be granted for a maximum time period of six months.
6. SCWC should determine and pursue its legal right to CMWD water.
7. SCWC's WMP should be the appropriate place to address the management of water sources in the Ojai Basin and adjacent territory as it impacts SCWC's Ojai District.
8. This order should be effective on the date signed because of CMWD's water shortage and moratorium resolution passed in April 1990.

O R D E R

IT IS ORDERED that:

1. Southern California Water Company (SCWC) is denied authority to impose a moratorium on new services and service extensions prior to the effective date of this order. SCWC shall so inform each person or entity denied water service without Commission authority and provide them a copy of this order. SCWC shall provide service to any of these persons or entities that request service.
2. SCWC is authorized to file for and subsequently to impose a moratorium on new services and service extensions in its Ojai District for a maximum six-month time period beginning from the effective date of this order. SCWC shall file a revision to its tariff to include such moratorium with the Water Branch within 10 days of the effective date of this order. The tariff shall be effective on the date filed. Any request for an extension of time to impose or extend the moratorium granted shall be made by the filing of a new application.
3. SCWC is fined the maximum penalty of two thousand dollars (\$2,000), as provided by Public Utilities Code § 2107, for each of its eight documented failures to comply with the provisions of

General Order 103, for an aggregate penalty of sixteen thousand dollars (\$16,000).

4. Unless paid voluntarily within 45 days of the effective date of this order, the Commission's General Counsel is ordered to bring and prosecute to final judgement an action to recover the \$16,000 penalty required by Ordering Paragraph 3 in the name of the people of the State of California in Superior Court, Ventura County.

5. SCWC shall determine and pursue its legal right to CMWD water. SCWC shall report periodically on its efforts on a schedule determined by Water Branch.

6. SCWC shall obtain alternative water supplies to replace CMWD water until the CMWD ban on new services and service extensions is lifted. If SCWC determines that a new well, or wells, is necessary and feasible, SCWC shall so inform the Commission's Water Branch and shall be authorized to file an advice letter requesting authority to recover its costs associated with the additional well, or wells, and associated transmission line after they have been placed in service. As part of such advice letter filing, SCWC shall request a change in its revenue requirement calculated by deleting the cost of purchased water approved in Decision 90-12-118 for SCWC's Ojai District.

7. SCWC's water management program to be addressed in SCWC's Application 91-02-057 pursuant to Investigation 89-03-005, Commission's investigation into measures to mitigate the effects of drought on regulated water utilities, their customers, and the

general public, is the appropriate place to address the Ojai Basin water supply and adjacent territory's water management as it relates to SCWC's Ojai District.

This order is effective today.

Dated April 10, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

G. MITCHELL WILKINSON

JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

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

NEAL J. GOODMAN, Executive Director