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Decision 92-05-032 May 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
and Suspension on the Commission's)
own motion of tariffs filed by)
Advice Letter No. 52 of Alco Water)
Service, Salinas District, in)
Monterey County.)

(I&S)
Case 91-08-004
(Filed August 7, 1991)

In the Matter of the Investigation)
and Suspension on the Commission's)
own motion of tariffs filed by)
Advice Letter No. 1201 of Califor-)
nia Water Service Company, Salinas)
District, in Monterey County.)

(I&S)
Case 91-08-005
(Filed August 7, 1991)

Robert T. Adcock, for Alco Water Service,
and Francis S. Ferraro, for California
Water Service, applicants.

Andrew F. Bender and Mel Vercoe, for
themselves.

Izetta Jackson, Attorney at Law, and Robert
E. Penny, for the Commission Advisory
and Compliance Division.

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O P I N I O N

1. Summary

Longstanding problems of groundwater overdraft and saltwater intrusion plague the Salinas Valley on the Central Coast of California. Five years of drought have exacerbated the situation. This order authorizes two utilities serving the City of Salinas to impose mandatory conservation intended to reduce water use by 20%, a measure that is part of a county-wide conservation effort. However, since urban use of water constitutes only 5% of water pumped in the Salinas Valley, as compared to more than 90% pumped for agricultural purposes, and since an imminent water emergency has not been shown, the utilities' request for economic rationing is denied.

2. Procedural History

California Water Service (Cal Water) and Alco Water Service (Alco)¹ in June 1991 filed advice letters and tariff sheets that, for each utility, would implement a Rule 14.1 Mandatory Conservation/Rationing Plan for their customers in Salinas. These tariffs would set a 20% reduction in water use from 1987 levels and would authorize economic penalties for those who use more than their prescribed water allotment.² Cal Water has

1 Alisal Water Corporation (U 206 W) does business as Alco.

2 The economic rationing plan is similar to those approved by the Commission for 11 other Cal Water districts. Conservation restrictions in the tariffs prohibit nonessential water uses, such as washing buildings and sidewalks, filling decorative fountains unless the water is recycled, using hoses without an automatic shutoff, and irrigating lawns outside of times decreed by the city. Rationing requirements establish allocations equal to 80% of a customer's 1987 use and 90% for certain businesses, with provisions for individual adjustments and appeal. Customers who use water in

(Footnote continues on next page)

approximately 20,000 connections in Salinas. Alco has approximately 4,000. Between them, they provide virtually all water service for the city's 112,000 residents.

Cal Water and Alco in June 1991 conducted a public meeting and declared a water shortage emergency condition, in compliance with requirements of the California Water Code, §§ 350-358. The utilities represent that filing by advice letter is authorized by our Decision (D.) 90-08-055, issued on August 8, 1990.³

The Commission on August 7, 1991, suspended the utilities' proposed tariffs pending investigation and hearing. It did so on the recommendation of the Water Utilities Branch (Branch) of the Commission Advisory and Compliance Division. Branch agrees that more water is being pumped from underground aquifers in the lower Salinas Valley than is being replaced. It also agrees that saltwater intrusion into the aquifers continues to approach Salinas from the coast. However, it adds:

"Branch believes this long-standing problem to be the result of the area's failure to augment and manage its limited water supply, and not the result of drought conditions. Further, the

(Footnote continued from previous page)

excess of their allocation would be penalized \$2 per 100 cubic feet for residential use, and \$4 per 100 cubic feet for business use. Both Alco and Cal Water tariffs contain "banking" provisions that permit customers to avoid or recover penalty payments by using less than allotted water on a cumulative basis.

3 D.90-08-055 is an interim decision in our ongoing Investigation 89-03-005, which was initiated on the Commission's own motion to investigate measures to mitigate the effects of drought on regulated water utilities, their customers, and the general public.

Branch does not believe [the utilities] to be in danger of being unable to provide water for human consumption, sanitation, and fire protection. Therefore, Branch believes that conditions do not exist that would justify emergency water use regulation and restriction allowed by the Water Code, and that [the utilities'] request[s] by advice letter for Commission approval to regulate and restrict water use in [the] Salinas District under the authorization of D.90-08-055 is improper."

On August 22, 1991, the assigned administrative law judge (ALJ) consolidated these two cases pursuant to Rule 55 of the Rules of Practice and Procedure.

A public participation hearing was conducted on November 4, 1991, in the Salinas City Hall. Approximately 45 persons attended, and 19 made statements. A number of individuals stated their opposition to the form of rationing proposed by the utilities, suggesting instead that rationing be tied to a moratorium on new water connections or that it be implemented based on the number of individuals in each household.⁴ However, the majority of those attending the public meeting supported the utilities' rationing plans. Supporters included Salinas Mayor Alan D. Styles, on behalf of the City of Salinas; City Councilwoman Phyllis Meurer, on behalf of the Council's City Water Committee; the Monterey County Water Resources Agency; the Salinas Valley Water Advisory Commission; the Salinas Valley Builders Exchange,

⁴ Earlier, the Commission received 65 letters from Salinas ratepayers, the majority of whom opposed the plan to base 20% rationing on 1987 use levels. At hearing, a witness for the city stated that a percentage cutback system was preferred over a per-capita allocation because it can be implemented more quickly, does not require a census of households, and is less expensive to operate.

representing 450 construction firms; and the League of Women Voters of Salinas.⁵

Four days of evidentiary hearings were conducted in Salinas from November 5 through November 8, 1991. Branch, the two utilities, and two residents⁶ filed appearances. Eleven witnesses appeared and testified, and 25 exhibits were received into evidence. The matter was deemed submitted for Commission decision upon filing of final briefs on January 8, 1992.⁷

In accordance with Public Utilities (PU) Code § 311 and Rule 77.1 of the Rules of Practice and Procedure, a draft decision prepared by the assigned ALJ was issued on February 4, 1992. Before the Commission acted on the draft decision, Branch filed a petition to set aside submission and reopen the proceedings for

5 The League of Women Voters qualified its support for economic rationing by requesting that rationing be limited to the current drought, that the water companies expand their efforts to inform the public of the saltwater intrusion problem, that the utilities adopt the recommendation of Branch to deal with saltwater intrusion in water management programs filed with the Commission, and that the utilities participate in county and city agency efforts for area solutions to the water problems.

6 Salinas residents Andrew P. Bender and Mel Vercoe, each of whom has studied the community's water problems, entered appearances on behalf of themselves, testified, and conducted limited examination of other witnesses. Bender in his testimony opposes rationing unless it is accompanied by a moratorium on increased water use and mandatory metering of agricultural wells. (Ex. 21.) Vercoe in his testimony favors rationing as a means of alerting residents to the county's water problems.

7 Branch on December 23, 1991, filed a motion for leave to extend time for filing of its opening brief by seven days, because of illness of counsel and of Branch personnel. On December 30, 1991, Branch requested an additional day for filing its opening brief. These motions for leave to file late are unopposed. The motions are granted.

receipt of new evidence, specifically, the Water Committee Report of the Monterey County Grand Jury for 1991. The report had been issued on December 31, 1991, and Branch had learned of its existence on February 13, 1992. By ALJ ruling, Cal Water and Alco were directed to respond to Branch's petition, and a hearing on the petition was conducted on March 12, 1992. At the hearing, Branch's petition was granted, and the ALJ took official notice of, and received into evidence, the Water Committee Report of the Grand Jury (Exhibit 26) and the response to the report filed by the Monterey County Water Resources Agency (Exhibit 27). This matter again was submitted for Commission decision effective March 12, 1992.

3. Background

The Central Coast of California has entered its sixth year of drought. The entire Salinas Valley, including the City of Salinas, faces a longstanding threat to its water supply because of the extensive pumping necessary for agriculture and because of saltwater intrusion into the underground aquifers. Saltwater intrusion occurs when pumping exceeds the rate of replenishment in an aquifer and seawater moves in to fill the vacuum.

Virtually all of the water used in the Salinas Valley is groundwater, supplied through pumping. Total water use in the valley is about 500,000 acre-feet per year, with 90% of it for

farming.⁸ The groundwater basin is replenished by the slow percolation of water from the surface of the ground.⁹

Falling groundwater levels led to the construction of two reservoirs, the Nacimiento in 1957 and the San Antonio in 1965. Operated by the Monterey County Water Resources Agency,¹⁰ the reservoirs, each with a capacity of 350,000 acre-feet of water, store winter and spring runoff that would otherwise flow into Monterey Bay. This stored water then is released during dry summer and fall months to augment percolation of the groundwater basin.

4. Increased Overdraft

In recent years, Salinas Valley has had an average annual overdraft from its aquifers of some 50,000 acre-feet of water. That is, pumping takes out 50,000 acre-feet more than is replenished through the process of rainfall, release of water from the reservoirs, and percolation of water applied to crops. Matthew Zidar, principal hydrologist for the Monterey County Water Resources Agency, testified that the annual overdraft in 1990 increased to 300,000 acre-feet, or six times the average. In 1991, he testified, the overdraft was an estimated 150,000 acre-feet.

8 Agriculture is the primary industry in the Salinas Valley. Approximately 195,000 acres are devoted to farming, and sales of agricultural products in the Salinas Valley exceeded \$1.3 billion in 1990. (Ex. 12, Agricultural Water Conservation Program 1991, prepared for the Monterey County Water Resources Agency.)

9 About 50% of this replenishment occurs from the bed of the Salinas River and its tributaries. In nondrought years, another 40% occurs from rainfall and deep percolation of water applied to crops. The remaining 10% is underground flow from the foothills surrounding the valley.

10 Previously, this was the Monterey County Flood Control and Water Conservation District. The name was changed effective January 1, 1991, to recognize the agency's broad responsibility for the county's water resources. (Monterey County Water Resources Agency Act, Stats. 1990, Chap. 1159.)

Because less fresh water is recharging the aquifers, the intrusion of saltwater from the sea is advancing inland at a faster rate. For the aquifer at the 180-foot level,¹¹ seawater moved toward the City of Salinas at the rate of 1,050 feet per year for the period 1985-1990, as compared to average movement of 340 feet per year in the period 1965-1981. Estimates of when saltwater will contaminate that portion of the aquifers serving the City of Salinas range from ten to 20 years, depending on the drought and the community's efforts to reduce the overdraft of the groundwater basin.

While acknowledging that drought is a factor in the recent increase in overdraft, Branch's witnesses testified that they cannot say that drought is the primary factor because they do not know whether agricultural pumping has increased. Zidar testified, however, that the increase in overdraft in the past two years is attributable to the drought and to the lack of available water with which to recharge the underground formation. He presented evidence showing that, in 1989/1990, precipitation was 7.8 inches, about half the historic norm of 13.6 inches. In 1990/1991, precipitation was ten inches. Heavy rains in March 1991 brought the Nacimiento reservoir up to 123,000 acre-feet of stored water, about half its capacity, but release of the water to feed the underground aquifers had reduced that storage to 23,000 acre-feet by November 1991. The San Antonio reservoir reached only 27,000 acre-feet of water after the March rains, and that had dropped to 23,500 acre-feet by November 1991. Both reservoirs at time of hearing were near "minimum pool," or the point at which no further water can be released to help recharge aquifers.

¹¹ Water serving most of the City of Salinas is drawn from an aquifer 400 feet below the surface. There are two other aquifers, one at 180 feet and another at 900 feet. (Ex. 4, p. 4.)

Witnesses for Cal Water and Toro testified that use of water within the City of Salinas has actually decreased slightly during the past two years. Ted Mills, water conservation manager for the Water Resources Agency and coordinator of that agency's agricultural conservation efforts, testified that while agricultural wells are not metered, the county agency has found no indication that farming practices or irrigated acreage have changed to a degree that would account for the increase in overdraft in the groundwater basin.

Branch offers no evidence to rebut the showing that the drought and the resulting reduction in level of recharging are the principal causes for recent increases in overdraft.

5. Monterey County Conservation Efforts

Branch's witnesses state, and the evidence shows, that the county has been aware of the twin problems of overdraft and seawater intrusion since at least the early 1950s. Branch believes that it is not the drought but, rather, the area's failure to adequately address these problems that has led to any water crisis confronting Salinas Valley today.

County witnesses acknowledge that more could have and should have been done in the past. Since the beginning of the drought, however, the County Board of Supervisors and its Water Resources Agency have implemented a program to develop new water supplies, redistribute existing water supplies, and promote water conservation in the agricultural community.¹² Mills presented the county's water capital facilities plan, showing proposed conservation projects totaling \$454 million in cost.

¹² On November 8, 1991, the Monterey County Agricultural Water Conservation Task Force, which makes recommendations to the County Board of Supervisors, was honored by the California Local Government Commission for outstanding work in promoting water conservation. (Ex. 13.)

The conservation projects under consideration include widening of the Nacimiento and San Antonio spillways, construction of irrigation pipelines and water reclamation facilities, and construction of a new dam and conveyance canal. All of the projects have a lead time of at least four years, with the exception of urban and agricultural water conservation programs, which are now under way. (Ex. 7.)

When voluntary conservation efforts failed to achieve target goals, the County Board of Supervisors on March 5, 1991, proclaimed a local water emergency, stating that:

"...conditions of extreme peril to the health and safety of persons have arisen within particular areas of the Salinas Valley and Monterey Peninsula of said County caused by a continued drought situation entering its fifth year..." (Ex. 11; Resolution 91-119.)

At about the same time, the county took a number of other steps, including the following:

1. Required all growers dependent on the Salinas Valley groundwater basin to submit water conservation plans containing target plans to reduce irrigation water use by 20% in 1991. Mills testified that a total of 481 such plans, covering 173,000 acres, have been submitted, and that conservation efforts include setting aside acreage, changing to less irrigation-intensive crops, and implementing water-saving technology.
2. Drafted an ordinance (not yet approved at time of hearing) that would prohibit irrigation of any new acreage within the valley until reservoirs have reached at least 75% capacity.
3. Adopted Ordinance 3539 (April 20, 1991) instituting mandatory water conservation, with misdemeanor penalties for those determined to have wasted water. The ordinance also requires that homes be retrofitted with low-flow plumbing fixtures

upon change of ownership and that minimum-water landscaping apply to new development.

4. Required by resolutions (Resolutions 91-475 and 91-476) that the Water Resources Agency prepare ordinances with the precedent-setting requirement that the 2,000 wells in the county be metered and providing for a water allocation formula for agricultural interests in the valley. These ordinances had not been acted upon by the county at the time of hearing.

6. City of Salinas Conservation Efforts

The City of Salinas in May 1989 established a Water Conservation Committee comprised of representatives of the City Council, the agricultural industry, the Water Resources Agency, interest groups such as the League of Women Voters and the Chamber of Commerce, and interested citizens. Later, the city adopted the committee's recommendation for a three-phase approach to the community's water problems. First, the city sponsored an educational campaign, with printed materials in English and Spanish, to encourage voluntary conservation. Second, the city in February 1991 adopted an ordinance prohibiting wasteful water practices (hosing down sidewalks, watering lawns in the afternoon).¹³ On May 21, 1990, following a public meeting, the city adopted its Resolution No. 14141 urging Cal Water and Alco to seek Commission approval for 20% economic rationing.

Branch at hearing questioned whether economic rationing by Cal Water and Alco will, standing alone, make a difference. City of Salinas ratepayers use only 24,000 acre-feet of water

¹³ With a grant from the Regional Water Pollution Control Agency, the city also has sponsored a \$300,000 retrofit program in which some 12,000 low-flow showerheads and flushing devices have been installed. The city also requires builders to show that new construction will not increase use of water over previous uses of the property.

annually, compared to the 500,000 acre-feet pumped by the agricultural industry. Branch's witnesses testified that, in their judgment, the city has not given enough time to its program of mandatory conservation, nor has it been aggressive in enforcing the program.¹⁴ Second, according to Branch, the city has not investigated alternatives to rationing, such as a moratorium on water connections. Finally, Branch states that since ratepayers in the city account for only 5% of water pumped, a 20% reduction in use will be only "literally a drop in the bucket" in resolving problems of overdraft and saltwater intrusion.

6.1 City's Position on Economic Rationing

Meurer, a member of the Water Committee and a newly appointed director of the Monterey County Water Resources Agency, testified as to the reasons the City Council endorsed economic rationing by the city's two utilities:

"Q. As I understand it, the City was looking for a 10 percent cutback in water consumption in 1990 and 20 percent for 1991?

"A. Right.

"Q. Have those goals been met?

"A. No.

"Q. Is that a major reason why the City supports a movement to a rationing plan?

"A. There are two major reasons. That is one of them. We have not met our goals.

"Second, as elected officials, the entire City Council has become aware that there was very uneven compliance with the mandatory

¹⁴ While the city has issued warning notices to residents, it had not at time of hearing imposed penalties on those alleged to have wasted water.

[conservation] and that there were some constituents of ours who were doing their fair share and others who simply were not, who were not conserving water.

"As elected officials, equity is one of the things we are looking for, and that was one of the reasons that we considered a rationing program to be a more equal burden among all of the members of the community." (Tr. 316.)

Meurer acknowledged that the city's mandatory conservation program has resulted in reduced consumption of about 12% through November 1991. A Cal Water witness testified that, in the utility's experience, economic rationing generally is necessary to accomplish water use reduction in excess of 10 or 12%.

6.2 City's Position on Moratorium

Meurer also recounted the city's position on instituting a moratorium on new water connections:

"Q. Do you feel that a moratorium on new building hookups would be as effective in reducing water consumption as the utilities' proposed rationing plan?

"A. No.

"Q. Can you explain why?

"A. Several reasons. Number one, you do not do anything to address the [existing] water issue by instituting a building moratorium. Second, we already have in the City of Salinas a rather severe situation of overcrowded housing. By that I mean that housing units are occupied by more individual people than is considered appropriate for meeting health and safety standards.

"What we have found in this community is that when new housing is not available at an affordable rate, families just simply double up or triple up. People will live in garages, et cetera, and are still using the same amount of water." (Tr. 320-312.)

As to Branch's criticism that rationing in the city will have little effect without similar efforts by the agricultural industry, Meurer testified that the City Council endorsed economic rationing only after the county took steps to reduce growers' use of water. She testified that the city is dependent upon agriculture, that it seeks to cooperate in conservation programs, and that it wants to avoid any finger-pointing "we-them" controversy in addressing common water problems. Moreover, Meurer testified, a 20% reduction in city water use is not insignificant. It would save an estimated 4,800 acre-feet¹⁵ of water annually without capital cost. By contrast, three proposed county projects intended to save 19,400 acre-feet annually (Castroville irrigation pipeline, water reclamation, and Fort Ord/Marina water supply project) would require a capital cost by taxpayers of \$102 million. (Ex. 7, p. 5.)

7. Grand Jury Report

This proceeding was reopened to receive into evidence the Water Committee Report of the 1991 Monterey County Grand Jury. Branch states that the report was filed with the Monterey County Superior Court effective December 31, 1992. County offices reported upon by the Grand Jury are to comment on the report within 60 days, and the governing body of any public agency reviewed by the jury are to comment within 90 days. (Exhibit 26, p. iv.) At the time this matter was submitted to the Commission, only the comments of the Monterey County Water Resources Agency had been received by the court. Those comments were received into evidence (Exhibit 27) with the Grand Jury report.

¹⁵ An acre-foot is 325,900 gallons. Generally, an acre-foot of water is considered enough to meet the needs of five people for a year.

Branch offers the Grand Jury report to corroborate its conclusion that the major problem facing the Salinas Valley is seawater intrusion, and that urban rationing will have little effect on that problem.

The Grand Jury report is critical of the county's failure to get "dirt moving" and to begin construction of plants, dams, and other facilities to stop seawater intrusion. Its recommendations urge that the Water Resources Agency devote less time to conservation and more time to construction projects. As to urban rationing, the report states:

"Mandatory water rationing is a popular suggestion. Everyone is delighted if they can curb urban use by 25%. At 25%, if all urban use in the county is cut that much, the most that would be saved is 4,500 acre-feet a year. This is a drop in the bucket when looking at the 120,000 acre-feet annual overdraft.

"Nothing worthwhile is accomplished by urban water rationing other than public relations."
(Ex. 26, p. 73.)

The report also questions the wisdom of water conservation in the agricultural community "(s)ince Monterey County depends on agriculture for much of its economy...."

The Water Resources Agency in its response supports most of the recommendations of the Grand Jury report. However, it challenges the statements on conservation, contending that "(w)ater conservation is an important component in the water resource management program." Among other things, the agency states, the construction projects urged by the Grand Jury cannot go forward under the California Environmental Quality Act until governing agencies establish, through environmental reports, that "conservation and efficient, un-wasteful use of the existing water supply" have taken place. (Ex. 27, p. 7.)

Alco and Cal Water argue that the Grand Jury conclusions should be given no weight in this proceeding, since they are by

definition the product of secret deliberations, confidential testimony by witnesses not subject to cross-examination, and hearsay information.¹⁶ Cal Water states: "Absent testimony which identifies witnesses and their statements, the Report's findings and recommendations cannot be substantiated nor can they serve as the basis of a Commission decision."

We agree that the Grand Jury report should be considered in this proceeding as an opinion by a body of concerned citizens, rather than as factual evidence. We note also that the jury's final recommendation was a call for cooperation and action in dealing with water issues:

"All project proposals should be carefully considered with an open mind. It is imperative that all 'sides' work together.

"Since decisions on County water projects cannot be unilateral, state and federal officials and agencies are involved in the project approval. We call on Monterey County's State Legislators and Congressional Representatives to be equally as cooperative--looking for solutions rather than reasons to reject any proposal." (Ex. 26, p. 83.)

8. Discussion

8.1 Issues

Branch raises two issues to be decided in this proceeding. First, it argues that Cal Water and Alco have failed to show an immediate water shortage emergency condition, since supplies will be available for at least the next ten years. Second, it maintains that 20% economic rationing forces urban

¹⁶ The Grand Jury is a secret tribunal, convened annually to consider criminal matters and, under the supervision of the Superior Court, selected matters of civic concern. (See, generally, 20 Cal. Jur. 3d Criminal Law §§ 2656-2694.)

ratepayers to shoulder a disproportionate burden in addressing the area's water problems. Branch Engineer Martin R. Bragen testified:

"Agriculture is by far the predominant consumer of water in the Salinas Valley, using about 95%. If CWS and Alco did ration at the 20 percent level, water consumption in the Salinas Valley would only be reduced by 1 percent. Utilities must be required to show that some reasonable purpose would be achieved by imposing rationing on the [24,000] customers in these two water utilities." (Ex. 1, p. 4.)

Branch modified its position after hearing the testimony of county and city officials on efforts now underway to try to deal with the overdraft and seawater intrusion. Branch Supervisor Robert E. Penny testified that, in view of the concerted efforts by both agricultural and urban water users, Branch will support a tariff filing by the utilities for mandatory conservation in the City of Salinas, but not for mandatory rationing.

Mandatory conservation, which is authorized as part of a utility's filing of Tariff Rule 14.1, prohibits nonessential uses of water and authorizes sanctions for violations. It requires customers to use automatic shutoff valves on hoses, to limit irrigation of lawns, and to promptly repair water leaks. Restaurants are prohibited from serving water to patrons except on request. After one written warning of violation to a customer, a utility is authorized to install a flow-restricting device on the customer's water service and to impose a charge for its removal.

8.2 Immediacy of Water Shortage Emergency Condition

The provisions of the Water Code do not support the contention of Branch's witness that a utility's declaration of a

water shortage emergency condition is improper unless there is an "immediate" threat of insufficient water for consumers.¹⁷

Sections 350 through 358 of the Water Code provide the statutory basis for utility declarations of water shortage emergencies.¹⁸ Water Code § 350 provides that:

"The governing body of a distributor of a public water supply, whether publicly or privately owned and including a mutual water company, may declare a water shortage emergency condition to prevail within the area served by such distributor whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection."

Water Code § 350 has been judicially interpreted to allow water shortage emergency condition declarations to be made and conservation programs implemented in advance of an actual water

17 We note that this contention was not advanced in Branch's briefs.

18 Water Code § 350 permits, but does not require, utilities to declare water shortage emergency conditions. Water Code §§ 350 - 358 provide one way for utilities to pursue water rationing and conservation program. However, regulated utilities are also free to apply to the Commission for permission to implement such programs. Water Code §§ 350 - 358 do not limit the Commission's authority, and the Commission is free to approve utility rationing or conservation plans, declare water shortage emergencies, and take any other appropriate action to ensure that the utilities under its jurisdiction do not run short of water. Naturally, due process considerations require notice and a public hearing before any rate increase or restriction in service is implemented.

shortfall.¹⁹ Therefore, the fact that water will be available for a number of years does not preclude Alco and Cal Water from declaring a water shortage emergency condition.

The existence of a lawful water shortage declaration does not, however, assure implementation of the utilities' water rationing proposals. The Water Code requires regulated utilities which make such declarations to adopt regulations and restrictions on the delivery and consumption of water to conserve the water supply for the greatest public benefit. (Water Code § 353.) Water shortage regulations and restrictions adopted by distributors of water who are subject to the Commission's regulation must be approved by the Commission before they become effective. (Water Code § 357.) Thus, regulated utilities cannot implement or terminate water rationing without Commission approval. (See, e.g., Drought OII D.90-08-055, 37 CPUC 2d 196, 217; and D.91-04-022, 39 CPUC 2d 507, 512.)

The Commission's approval of such regulations is based upon the Commission's traditional standard of review; in other words, the regulations must be "just and reasonable." The utility proposing such regulations has the burden of proving the justness and reasonableness of such regulations.

We note that Water Code § 358 provides that any court of competent jurisdiction may review water shortage emergency regulations and restrictions adopted by a utility on the ground that any such action is fraudulent, arbitrary, and capricious.

¹⁹ Swanson v. Marin Municipal Water District (1976) 56 Cal. App. 3d 485; Building Industry Association of Northern California v. Marin Municipal Water District (1991); (1991) 235 Cal. App. 3d 1641. Both cases involved municipal water district moratoriums on new water service connections which were reviewed under the looser "fraudulent, arbitrary, or capricious" standard used by the courts pursuant to Water Code § 358, rather than under the "just and reasonable" standard applied by the Commission.

This "fraudulent, arbitrary and capricious" standard of review does not apply to the Commission, since the Commission is not named in § 358. If the Legislature had intended that standard to apply to the Commission's review of water shortage emergency regulations, it presumably would have said so, instead of providing for Commission review in one section and judicial review in another. Thus, water shortage emergency regulations adopted by privately owned water companies subject to the Commission's jurisdiction are theoretically subject to review by both the courts and the Commission, under two standards of review.

PU Code § 1759, however, states that no court except the Supreme Court shall have jurisdiction to review, reverse, correct or annul any order or decision of the Commission or to interfere with the Commission in the performance of its official duties. Under § 1759, once the Commission acts in a regulated area, the lower courts are without jurisdiction to interfere. But since the current version of Water Code § 358 was adopted one year after the current version of PU Code § 1759, it could be interpreted as a legislative limitation on the Commission's independence to review water shortage emergency regulations under the later section. Fortunately, Water Code § 358 and PU Code § 1759 can be easily harmonized.

While nothing in the Water Code appears to mandate such a result, the courts review water shortage emergency declarations and regulations of municipal water companies, while the Commission has reviewed water shortage emergency actions taken by Commission regulated utilities. Thus, the potential for conflicting review by the courts and the Commission does not seem to have created much of a problem in the real world.

8.3 Reasonableness of Economic Rationing

We turn then to what we regard as the gravamen of Branch's complaint. Since agriculture uses 90 to 95% of Salinas Valley water, and urban residents use only about 5%, Branch asks

whether it is reasonable to restrict urban use, and impose monetary penalties on ratepayers who use more than their allotted share of water, when no identical restrictions or penalties for excess use are in place for the agricultural community.

Not even the proponents of urban rationing suggest that a 20% reduction in water use by Cal Water and Alco ratepayers will have more than a minimal effect on reducing the overdraft or halting seawater intrusion. Branch estimates that no more than a 1% reduction in area water use can be anticipated by urban rationing, and that estimate is not challenged. We observe here that even this 1% savings is based upon 1987 usage and does not reflect efforts which have already been taken by Salinas residents to reduce consumption.

The evidence is clear that the county and the city have belatedly embarked on an effort to conserve water and to reduce the overdraft. The City of Salinas implemented voluntary conservation and mandatory conservation. The county has required growers to submit water conservation plans intended to reduce water use by 20%. Unfortunately, no concrete steps have been taken to actually implement any plans which would lead to reduced water usage by agriculture, and even the proposed ordinances introduced in this proceeding in October have yet to be enacted. We cannot find that an emergency exists because this is a long-term problem about which little has been done.

We turn now to whether or not equity would be served by economic rationing. As Meurer testified, most city residents already are conserving. Alco ratepayers have reduced consumption by 20%; Cal Water ratepayers are at about 12%. The evidence suggests that economic rationing at a 20% level will have little impact on those who already conserve, but it might encourage conservation among those who now are wasting water. Meurer testified that the City Council's endorsement of 20% rationing was

intended to encourage the more equitable objective of ensuring that all customers conserved.

Our record reflects the failure of this region to deal effectively with water resources in the past, and we can understand the frustration expressed by the Water Committee of the Monterey County Grand Jury. However, to the extent the jury suggests that conservation efforts be curtailed, it may not have focused (as we are required to do) on whether urban rationing is a reasonable action by the utilities in view of the water emergency facing the city and the county.

The imposition of economic rationing is a serious measure. In our experience we have encountered deep-seated resentment to fines imposed by utilities. We have also experienced substantial complaints over the allocation mechanisms. As Meurer testified, residents of Salinas will often double-up or triple-up when housing is relatively expensive. Yet, these are the very households which will likely have fines imposed upon them. We cannot find this equitable when no other users of the water basin are being forced to even conserve water.

We are not persuaded that such action is reasonable. First, we do not believe that economic rationing will have any impact beyond a drop-in-the-bucket. Second, the mandatory conservation effort urged by Branch is more equitable. The residents have made great strides toward conserving water without the threat of penalties from the utilities. Third, we do not see evidence indicating significant movement to reduce water consumption by the agricultural community. Before we can agree to impose our most severe water use control measure on the city residents we will need to see some movement elsewhere. Finally, no immediate water emergency exists. This situation has existed for over 40 years, and the water table can be expected to provide for ten more years of reliable service. This is not an emergency as we

interpret the term. It is a tragedy of resource management, but not an emergency.

Conservation can have an impact on the county's overdraft problem. Like the Grand Jury, we do not believe that these steps will solve the larger problem of seawater intrusion. Without proper management of its existing water, however, the county may be unable to justify the construction projects that it has scheduled to follow the conservation phase of its water resources plans.

Against this background, mandatory conservation by city ratepayers falls into place as an important part of the entire Salinas Valley effort to address the problem of a diminishing water supply exacerbated by drought.

8.4 Conclusion

We conclude that Cal Water and Alco have not met their burden of proving the reasonableness of their tariffs implementing rationing in the City of Salinas.

9. Comments on ALJ's Proposed Decision

In accordance with PU Code § 311 and Rule 77.1 of the Rules of Practice and Procedure, the draft decision prepared by the assigned ALJ was issued on March 20, 1992. Timely comments were filed by Branch.

We agree with Branch that the utilities' burden in this proceeding is to justify rationing tariffs under the Public Utilities Code, and we have deleted a reference to the Water Code in § 8.5 (Conclusion) to make that clear. However, we do not agree with Branch that the decision shifts the "burden of proof" from applicants. "Burden of proof," a term of art,²⁰ is nowhere mentioned in the decision. Applicants have the burden of proof to

20 "Burden of proof" is defined by the Evidence Code as the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact. (Evidence Code § 115.)

justify their application, and that burden does not shift. We have found that applicants have not met that burden, so this issue is moot.

Similarly, Branch is mistaken in stating that no previously authorized rationing plan has considered the depletion of the groundwater basin (as opposed to a situation where cutbacks have been ordered by a water supplier like Metropolitan Water District). Resolution W-3569 authorized rationing in Cal Water's Stockton District in large part because of declining groundwater levels, overuse of well supplies, and a concern about seawater intrusion. (Tr. 526-27; Ex. 25.) Since this does not change our decision to reject economic rationing this is also moot.

Branch's other comments, for the most part, reargue positions taken in brief and are disregarded, pursuant to Rule 77.3.

Findings of Fact

1. Cal Water serves approximately 20,000 service connections and Alco serves approximately 4,000 service connections in the City of Salinas.

2. Pursuant to California Water Code § 351, Cal Water and Alco jointly held a public hearing on June 10, 1991, in Salinas.

3. Pursuant to California Water Code § 352, Cal Water and Alco published a notice of the public hearing in the Salinas Californian newspaper on May 30, June 4, and June 7, 1991.

4. At the public hearing on June 10, 1991, ratepayers had the opportunity to be heard with respect to the declaration by Cal Water and Alco of a water shortage emergency condition justifying imposition of economic rationing.

5. Cal Water and Alco declared a water shortage emergency condition and filed Rule 14.1 Mandatory Conservation/Rationing tariffs for approval by the Commission, in conformance with California Water Code § 357.

6. The Central Coast of California and the Salinas Valley have entered their sixth year of drought.

7. In 1989/1990, precipitation in the Salinas Valley was 7.8 inches, about half the historic average of 13.6 inches. In 1990/1991, recorded precipitation was ten inches.

8. Virtually all of the water used in the Salinas Valley is groundwater, supplied through pumping.

9. Total water use in the valley is about 500,000 acre-feet per year, about 90% of it for agricultural purposes.

10. Agriculture is the primary industry in the Salinas Valley and the major industry supporting the City of Salinas. In 1990, sales of agricultural products in the area exceeded \$1.3 billion.

11. Water taken from underground aquifers in the Salinas Valley is replenished by the slow percolation of water, or recharging, from the surface of the ground.

12. About 50% of recharging of Salinas Valley aquifers occurs from the bed of the Salinas River and its tributaries. In non-drought years, another 40% occurs from rainfall and deep percolation of water applied to crops. The remaining 10% is underground flow from the foothills surrounding the valley.

13. The Monterey County Water Resources Agency operates two reservoirs, the Nacimiento and the San Antonio, each with a capacity of 350,000 acre-feet of water. The reservoirs collect water during the rainy season, and this water then is released during dry summer and fall months to augment recharging.

14. The Nacimiento Reservoir was at 23,000 acre-feet and the San Antonio Reservoir was at 23,500 acre-feet in November 1991. These levels are near "minimum pool," or that point at which no further water can be released to help recharge aquifers.

15. Salinas Valley for many years has pumped some 50,000 more acre-feet of water from underground aquifers than has been replaced through recharging.

16. In 1990, this overdraft of water was 300,000 acre-feet, or about six times the historical average.

17. The overdraft in 1991 is estimated to be about 150,000 acre-feet, or three times the average.

18. Because less fresh water is recharging the aquifers, the intrusion of saltwater from the sea is advancing inland at a faster rate.

19. Seawater moved from the coast toward the City of Salinas at the rate of 1,050 feet per year during the period 1985-1990, compared to an average movement of 340 feet per year in the period 1965-1981.

20. Estimates of when saltwater will contaminate that portion of the aquifers serving the City of Salinas range from ten to 20 years, depending on the duration of the drought and the area's efforts to reduce the annual overdraft.

21. Use of water within the City of Salinas has decreased slightly in the past two years. There is no evidence that use of water has increased substantially in the agricultural community during that time period.

22. Monterey County and the City of Salinas have been aware of the problems of overdraft and saltwater intrusion since at least the early 1950s.

23. Apart from construction of the two reservoirs, the Salinas Valley community has not until recent years embarked on a comprehensive program to develop new water supplies and to promote water conservation.

24. The County Board of Supervisors and its Monterey County Water Resources Agency are considering water conservation projects totaling \$454 million in cost. These include construction of a new dam, widening of existing dams and building of new irrigation pipelines, and water reclamation facilities.

25. The County Board of Supervisors on March 5, 1991, proclaimed a local water emergency and implemented a program of mandatory conservation to discourage inefficient water uses.

26. In 1991, all growers in the Salinas Valley Groundwater Basin were required by the county to submit water conservation plans showing efforts by growers to reduce irrigation water use by 20%.

27. Salinas Valley growers have submitted a total of 481 water conservation plans covering 173,000 acres.

28. The Monterey County Agricultural Task Force has recommended, and the County Board of Supervisors is considering, ordinances that would (a) prohibit irrigation of new acreage until reservoirs are at 75% capacity; (b) require metering of all new agricultural wells, and (c) require metering of the 2,000 existing wells in Salinas Valley. The Board of Supervisors has not enacted any of these proposed ordinances.

29. The City of Salinas in May 1989 established a Water Conservation Committee comprised of urban and agricultural representatives.

30. The Water Conservation Committee recommended, and the City of Salinas adopted, a three-phase program, beginning with education to encourage voluntary water conservation, moving next to mandatory conservation to discourage wasteful water practices, and, finally, recommending economic rationing by Cal Water and Alco, the city's two primary water utilities.

31. Voluntary conservation and mandatory conservation programs by the City of Salinas have failed to accomplish a target of 20% reduction in water use, though Alco has achieved the 20% reduction.

32. The City of Salinas has issued warning notices but has not imposed misdemeanor penalties on residents alleged to have engaged in wasteful water practices.

33. The City of Salinas considered but rejected a moratorium on new water connections, in part because of a concern that without affordable housing, poorer families will double-up or use illegal housing and there would be no reduction in water use.

34. The city's Water Conservation Committee did not recommend, and the City Council did not adopt, a resolution urging Cal Water and Alco to impose rationing until after the Monterey County Water Resources Agency confirmed that steps had been taken to reduce water use by the agricultural community.

Conclusions of Law

1. Section 357 of the California Water Code provides that regulations and restrictions proposed by a regulated utility in response to a water shortage emergency condition are subject to the approval of the Commission.

2. Imposition of mandatory conservation plan by Cal Water and Alco in their Salinas service area is not reasonable and should be denied.

3. Because the City of Salinas has already imposed mandatory conservation in Salinas, no further action is needed by the Commission to impose mandatory conservation.

O R D E R

IT IS ORDERED that:

1. Alco Water Service (Alco) Advice Letter No. 52 (June 11, 1991) to implement a Tariff Rule 14.1 Mandatory Conservation/Rationing Plan for ratepayers in the City of Salinas is denied.

2. California Water Service (Cal Water) Advice Letter No. 1201 (June 13, 1991) to implement a Tariff Rule 14.1 Mandatory Conservation/Rationing Plan for ratepayers in the City of Salinas is denied.

3. This order closes Case 91-08-004.

This order is effective today.

Dated May 8, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

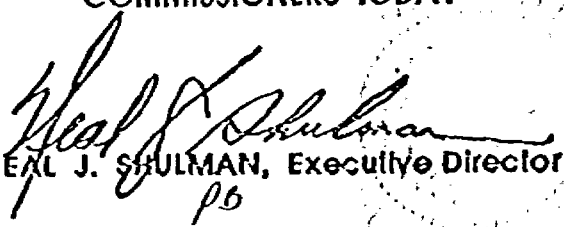
JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

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


NEAL J. SHULMAN, Executive Director
pb