

L/ltq/nas

Decision 92-05-073 May 20, 1992

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)
authorizing it to increase rates for)
water service in its Desert District.)

ORIGINAL
Application 91-02-096
(Filed February 25, 1991)

In the Matter of the Application of)
the SOUTHERN CALIFORNIA WATER)
COMPANY (U 133 W) for an order)
authorizing it to increase rates for)
water service in its Metropolitan)
District.)

Application 91-02-097
(Filed February 25, 1991)

In the Matter of the Application of)
the SOUTHERN CALIFORNIA WATER)
COMPANY (U 133 W) for an order)
authorizing it to increase rates for)
water service in its Los Osos)
District.)

Application 91-02-099
(Filed February 25, 1991)

In the Matter of the Application of)
the SOUTHERN CALIFORNIA WATER)
COMPANY (U 133 W) for an order)
authorizing it to increase rates for)
water service in its Barstow)
District.)

Application 91-02-101
(Filed February 25, 1991)

OPINION GRANTING LIMITED REHEARING
AND MODIFYING D.92-01-025

Southern California Water Company (SoCalWater) and the Town of Apple Valley (Apple Valley) have filed applications for rehearing of Decision (D.) 92-01-025. California Water Association (CWA), a water company trade association, seeks to participate in rehearings on the litigation cost splitting issue. CWA's interests are basically identical to SoCalWater's.

Among other things, D.92-01-025 ordered that SoCalWater's share of the cost of water rights litigation undertaken jointly by SoCalWater and the City of Barstow (Barstow) be split equally between ratepayers and shareholders, and granted SoCalWater a rate increase for its Desert District. The decision also rejected an allegation by Apple Valley that an ex parte contact between SoCalWater and the Commission's Executive Director violated an ex parte ruling by the Administrative Law Judge (ALJ).

SoCalWater's Application for Rehearing; Apple Valley's Application for Rehearing on the Barstow Litigation

SoCalWater argues that D.92-01-025 violates ratemaking principles and precedent by denying full recovery of prudent expenses. SoCalWater cites statements by a staff witness from the Water Branch of the Commission's Advisory and Compliance Division (Branch) that the litigation is prudent, and represents what is likely to be the least cost solution to SoCalWater's Barstow District water supply problems. SoCalWater notes that no one argues that the Barstow litigation is imprudent. SoCalWater argues that Public Utilities Code § 728 requires the Commission to set rates that are "just, reasonable and sufficient." SoCalWater asserts that if rates do not reflect all necessary and prudent expenses, they are insufficient, and represent a confiscation of utility assets.

In response, Branch argues that simple fairness requires both ratepayers and shareholders to pay for litigation which benefits both groups. Branch claims that SoCalWater's shareholders should benefit from the litigation by avoiding the need to finance a \$50 million pipeline for a district with a \$10 million current rate base. Branch cites D.89-09-048, supra, in support of the Commission's decision to split the litigation costs.

In its own application for rehearing of D.92-01-025, Apple Valley states that the complaint in the Barstow water

litigation demonstrates that any ex parte contact regarding the treatment of litigation expenses was seriously improper. Apple Valley notes that the litigation may adversely affect consumers in Apple Valley, which is upstream from Barstow. Apple Valley states that SoCalWater should be required to maintain a memorandum account for the water litigation legal fees and expenses, at least until the litigation is further advanced. Apple Valley also states that it is aware of no precedent for making ratepayers pay for litigation intended to create a water resource asset.

Discussion

As a general rule, utilities are entitled to 100% recovery of prudently incurred expenses, including litigation expenses needed to protect a utility's water supply. Excessive and imprudent expenses are, of course, unreasonable, and thus may be disallowed. (See eg., Pacific Telephone & Telegraph Company v. Public Utilities Commission (1965) 63 C. 2d 634, 647; D.82-12-054 (1982) 10 CPUC 2d 82, 121-122.)

When we review the prudence of litigation expenses, we find it useful to determine whether litigation benefits shareholders more than ratepayers. If litigation primarily benefits shareholders, and only incidentally benefits ratepayers, it may well be imprudent. If there is truly no question that the litigation is necessary to meet ratepayer needs, then the fact that shareholders also receive benefits is less important.

Here, no one claims it is imprudent for SoCalWater to pursue the Barstow litigation instead of building the 44 mile, \$50 million pipeline from the State Water project aqueduct which SoCalWater contends is the alternative to the litigation. After further reviewing the record in response to the applications for rehearing, however, we have our own questions regarding the prudence of the litigation expenses. The \$1.5 million estimate seems high for litigation Barstow and SoCalWater expect to settle through the use of a water rights "facilitator." Assuming for

the sake of this discussion a billing rate of \$250 an hour, this sum would finance 6,000 hours of attorney time. Since the record contains no workpapers, it is hard to evaluate the reasonableness of the estimate. We also wonder why SoCalWater did not defend its water rights earlier, when litigation expenses would have been lower and the probability of deterring additional upstream development greater. Finally, we would like to know whether there were options other than litigation or a \$50 million pipeline.

We will allow SoCalWater to recover 100% of its prudent Barstow water supply litigation expenses recorded in its Barstow District water litigation memorandum account, pursuant to the mechanism set forth in the decision. Because of our prudence concerns, however, we will allow SoCalWater to recover these expenses only after a limited rehearing designed to evaluate thoroughly the prudence of the litigation and the associated expenses.

The limited rehearing will address the following issues:

1. Are the Barstow litigation expenses reasonable?
2. Was the timing of the Barstow litigation reasonable, or was SoCalWater imprudent in not defending its Barstow water supply earlier?
3. Are there any options for defending or expanding the Barstow District water supply other than litigation with an estimated cost of \$1.5 million or a pipeline with an estimated cost of \$50 million?

Prior to the limited rehearing, SoCalWater will be required to make a filing which addresses certain questions we have regarding the issues listed above. Branch, and other appropriate staff, will be given an opportunity to respond to SoCalWater's filing before the limited rehearing begins. The timing of the filing, response, and limited rehearing date will be left to the assigned ALJ.

We will now address Apple Valley's concerns. Apple Valley favors deferral of the allocation of litigation costs.

Apple Valley does not assert that the current treatment of litigation expenses constitutes legal error. As a practical matter, our decision to grant rehearing at least temporarily defers the recovery of litigation expenses and thus provides Apple Valley with a measure of the relief requested.

Apple Valley's question regarding the Commission's authority to require ratepayers to pay for litigation designed to create water resource assets seems misplaced, since the lawsuit primarily defends asserted water rights rather than seeks new ones. In any event, the Commission clearly has authority to require ratepayers to pay for prudent expenditures of whatever nature. No legal error has been shown.

Remaining Issues in Apple Valley's Application for Rehearing

In its application for rehearing, Apple Valley first asserts that the Commission errs in failing to provide findings and conclusions regarding Apple Valley's evidence that SoCalWater neglected the Victorville system at least between 1975 and 1989, and thus violated its Public Utilities (PU) Code § 451 obligation to maintain adequate, efficient, just, and reasonable service. Apple Valley also claims that D.92-01-025 does not address Apple Valley's request that the Commission reduce or deny SoCalWater's requested increase because of its failure to maintain the Desert District. Apple Valley claims the Commission erred by not making findings of fact and conclusions of law on all material issues.

Apple Valley also contends that D.92-01-025 mischaracterizes an Administrative Law Judge (ALJ) ruling prohibiting certain ex parte contacts and permits a violation of PU Code § 1706. Section 1706 states that a complete record of all proceedings and testimony before the Commission or any Commissioner in any formal hearing shall be taken down by a reporter. Apple Valley claims that a complete record cannot be taken down unless ex parte contacts are either prohibited or recorded.

The ALJ ruling at issue did not prohibit ex parte contacts with any Commissioner, Commissioner's advisor, or the presiding ALJ (ALJ Garde), but did require the initiating party to inform all other parties, in writing, within 24 hours of such contact, of the discussion that took place. Apple Valley complains that D.92-01-025 erred in concluding that one late reported contact between SoCalWater and the Executive Director did not violate the ex parte order.

D.92-01-025 found no violation since the ex parte ruling did not mention the Executive Director. Apple Valley contends the ruling required reporting of all ex parte contacts, whether or not specifically mentioned in the ruling. Apple Valley states that while it has no evidence that the Executive Director exerted influence over the ALJ, the fact that the Executive Director is the ALJ's employer and that Apple Valley's position was ignored in the decision creates an appearance of impropriety, and raises issues of due process and fundamental fairness.

SoCalWater correctly notes that Apple Valley primarily repeats arguments made in its brief, its petition to set aside submission, and its comments on the proposed decision.

Discussion

Apple Valley's contention that the Commission should have disallowed some or all of SoCalWater's current rate increase request to compensate for the utility's earlier failures should have been raised in previous proceedings designed to improve the poor quality of service in SoCalWater's Desert District. Yet none of the decisions initiating the current main replacement program mentions any request by Apple Valley that the Commission disallow investment or otherwise punish SoCalWater for not fixing its system sooner. (See D.89-01-043, (1989) 30 CPUC 2d 635 and D.90-02-020, (1990) 35 CPUC 2d 275.)

Apple Valley cannot sit out several proceedings which required system improvements designed to remedy past inaction and then, years later, successfully oppose a rate increase intended

in part to make those Commission-ordered improvements possible. Whether or not one believes SoCalWater formerly neglected the Victorville system, the imposition of a penalty at this time would merely impede SoCalWater's ability to make necessary improvements. Apple Valley persuades us, however, to amend the decision to address its arguments that SoCalWater should be denied a rate increase.

Apple Valley's ex parte argument fails because the ALJ's ex parte ruling simply does not prohibit contacts between the applicant and the Executive Director. If the ALJ had intended to prohibit such contacts, he would have done so. In addition, common sense suggests that the reporting requirement in the ALJ's ruling applies only to ex parte contacts contemplated by the ruling. Thus, SoCalWater's failure to report its contact with the Executive Director within 24 hours was not a violation of the ALJ's ex parte ruling. And as SoCalWater points out, even if the ruling did apply to this contact, SoCalWater's report on the contact, albeit belated, tends to mitigate any damage that might have resulted from the contact.

Apple Valley's concern that SoCalWater's contact with the Executive Director creates the appearance of impropriety and raises issues of due process and fundamental fairness shows a misunderstanding of the Executive Director's role at the Commission. The Executive Director has a managerial, rather than a decision-making function. The Executive Director's status as the employer of the ALJs does not influence their decisions. An ALJ and a Commissioner are assigned to each proceeding before the Commission. The ALJ drafts a proposed decision, which is then reviewed by the assigned Commissioner, altered, if appropriate, and then circulated to the full Commission. The Commission may adopt the proposed decision, or may reject all or part of that decision and draft one of its own. (PU Code § 311(d); see, Camp Meeker Water System, Inc. v. Public Utilities Commission (1990) 51 C. 3d 845, footnote 15 on 863.) The Commissioners as a whole are the ultimate decision-makers at the Commission. While the

Commissioners' advisors assist the Commissioners in making decisions, the Executive Director plays no role in the decision-making process. All actual decision-makers at the Commission are covered by the ALJ's ex parte ruling.

As Apple Valley concedes, it has no evidence of undue influence. Its suspicions regarding the coincidence that the contact occurred and that Apple Valley's position was ignored do not amount to a demonstration of legal error.

Apple Valley's PU Code § 1706 argument also falls short. Section 1706 states in pertinent part that "[a] complete record of all proceedings and testimony before the commission or any commissioner on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by an attorney." We find no precedent regarding interpretation of the phrase "on any formal hearing." The phrase could be read to require a record to be taken down only during a formal hearing, or to require a complete record in any proceeding in which there was a hearing. The former interpretation is most consistent with past Commission practice. In any event, the substance of this requirement is satisfied by the ALJ-mandated reports of the substance of the discussions that occurred during any of the covered ex parte contacts. D.91-07-074, __ CPUC 2d __, which proposed the Commission's current ex parte rules, explains the rationale behind these rules. (See also, D.91-10-049, __ CPUC 2d __, which adopted the proposed rules without modification.) The rules are not designed to prohibit all ex parte contacts, but merely to ensure that all parties have access to the substance of the information transmitted during such contacts. This, in essence, is the same thing the ALJ's ex parte ruling in the current proceeding was designed to accomplish. We find no legal error here.

In sum, Apple Valley has not demonstrated that the Commission committed legal error by failing to disallow all or part of SoCalWater's requested rate increase on the grounds that

it did not in the past properly maintain its Victorville system, or by failing to punish SoCalWater for its ex parte communication with the Executive Director. Apple Valley's application for rehearing will be denied. D.92-01-025 will, however, be amended to address Apple Valley's rate disallowance arguments and clarify a number of other minor issues.

CWA's Petition to Intervene in SoCalWater's Application for Rehearing

California Water Association (CWA), a water company trade association, seeks to participate in rehearings on the litigation cost splitting issue.

Because CWA's interests are basically identical to SoCalWater's, there is no reason to consider CWA's late request to intervene further. CWA's petition will be denied.

THEREFORE, for good cause appearing,
IT IS HEREBY ORDERED that:

1. Decision 92-01-025 is modified as follows:

(A) Lines 6 and 7 on page 8 are replaced by the following:

2. Desert District - Penalty for neglect.
3. Barstow District - Treatment of legal expenses.
4. Barstow District - Main replacement program."

(B) The following language is inserted above the section entitled "Barstow Litigation Cost" on page 38:

*Penalty for Neglect of Desert District

Apple Valley asserts that SoCalWater neglected the Victorville system in its Desert District at least between 1975 and 1989, and thus raised the cost of the broad system improvements finally ordered by the Commission in 1989. Apple Valley presented as a witness a former employee of SoCalWater's, who testified that he had

trouble getting his superiors to invest in the Desert District during this time frame. Apple Valley argues that SoCalWater should be penalized for this neglect by a denial of its request for a rate increase for the Desert District."

SoCalWater contends that its failure to make major system improvements earlier was the result of a deliberate decision to keep rates down by refraining from making expensive capital improvements in the small Desert District. SoCalWater claims it began making major improvements when urged to do so by the Commission. (See, D.89-01-043, (1989) 30 CPUC 2d 635 and D.90-02-020, (1990) 35 CPUC 2d 275.)

Discussion

The issue of a penalty for SoCalWater's past failure to make major system improvements in its Desert District should have been raised in previous proceedings designed to improve the poor quality of service in SoCalWater's Desert District. Yet none of the decisions initiating the current main replacement program mentions any request by Apple Valley that the Commission disallow investment or otherwise punish SoCalWater for not improving its system sooner. (*Id.*) If Apple Valley was unhappy with these decisions, it could have applied for rehearing and filed appeals. Apple Valley chose not to do so, and the time for such appeals has long since expired.

Apple Valley cannot sit out several proceedings which required system improvements designed to remedy past inaction and then, years later, successfully oppose a rate increase in part intended to make those Commission-ordered improvements possible. We will deny Apple Valley's request that we punish SoCalWater for its past failure to improve its Desert District by denying its current request for a rate increase."

(C) The second complete paragraph on page 42 is replaced by the following:

"Both shareholders and ratepayers will benefit equally from the Barstow litigation if it is successful. If we adopt SoCalWater's proposal for allocating litigation expenses, SoCalWater's ratepayers will pay 100% of SoCalWater's share of the litigation expenses in addition to the amount they pay as taxpayers through the City of Barstow's share of the expenses. Attributing a portion of the litigation expenses to the shareholders would create an incentive for SoCalWater to control and minimize litigation expenses.

Nonetheless, as a general rule, utilities are entitled to 100% recovery of prudently incurred expenses, including litigation expenses. Excessive and imprudent expenses will, of course, be disallowed.

When we review the prudence of litigation expenses, we find it useful to determine whether litigation benefits shareholders more than ratepayers. If litigation primarily benefits shareholders, and only incidentally benefits ratepayers, it may well be imprudent. If there is truly no question that the litigation is necessary to meet ratepayer needs, then the fact that shareholders also receive benefits is less important.

Here, no one claims it is imprudent for SoCalWater to pursue the Barstow litigation instead of building the pipeline. However, we have our own questions regarding the prudence of the litigation expenses. The \$1.5 million estimate seems high for litigation the utility expects to settle through the use of a water rights "facilitator." Since the record contains no workpapers for the estimate, it is hard to evaluate its reasonableness. We also wonder why SoCalWater did not defend its water rights earlier, when litigation expenses would have been lower and the probability of deterring additional upstream development greater. Finally, we would like to know whether there were options other than litigation or a \$50 million pipeline.

Although Branch did not question the details of the Barstow litigation, the Commission is,

of course, free to draw its own conclusions from the record. As we stated in D.82-12-054, (1982) 10 CPUC 2d 82, at 123, "This Commission may come to different conclusions than staff and disallow any expenses it finds unreasonable based upon its assessment of evidence in the proceeding." Furthermore, there is precedent for denying litigation costs that are necessary only because of a utility's past imprudent conduct. For example, in D.1391 (1914) 4 CRC 597, the Commission disallowed 100% of the litigation expenses on the grounds that the water company had had the opportunity to make sure it had adequately protected water rights before it commenced operations, and that ratepayers should not subsequently suffer for its failure to do so.

We conclude that SoCalWater's long delay in defending its water rights may well have been imprudent. When SoCalWater acquired the Barstow District in 1962, the Mojave River basin was already overdrafted. As upstream development continued, the situation worsened. According to SoCalWater's Report on the Barstow Water Supply (Exhibit 37), from 1930-31 through 1949-50 the average annual flow at the Barstow gaging station was 27,246 acre-feet. The average annual flow from 1950-51 through 1987-88 was 12,657 acre feet. This enormous reduction in average flow clearly did not occur all in one year toward the end of the last 40 years. We would have expected that SoCalWater would have noticed the continuing reductions in water flow, and seen the need to take action to protect its water supply. If SoCalWater had acted earlier, upstream development might have slowed, and the Barstow District might not be facing its current water supply problems. Unfortunately, since Branch did not question the details of the litigation, the record contains little to aid us in verifying whether SoCalWater's inaction was imprudent, and if so, in quantifying its impact.

We will allow SoCalWater to recover 100% of its prudent Barstow water supply litigation expenses recorded in its Barstow District water litigation memorandum account, pursuant to the mechanism set forth in the decision.

Because of our prudence concerns, however, we will allow SoCalWater to recover these expenses only after we evaluate thoroughly the prudence of the litigation and the associated expenses.

The following issues must be addressed before we can determine the prudence of the Barstow water supply litigation expenses:

1. Are the Barstow litigation expenses reasonable?
2. Was the timing of the Barstow litigation reasonable, or was SoCalWater imprudent in not defending its Barstow water supply earlier?
3. Are there any options for defending or expanding the Barstow District water supply other than litigation with an estimated cost of \$1.5 million or a pipeline with an estimated cost of \$50 million?"

(D) The last two sentences of the first complete paragraph on page 43 are deleted.

(E) The second complete paragraph on page 43 is replaced by the following:

"SoCalWater will not be permitted to recover its Barstow water supply litigation expenses until their prudence is established through the review outlined above. Once this prudence review is completed, we will ensure that SoCalWater recovers only the authorized amount of litigation costs by allowing SoCalWater to apply a limited-term surcharge on the quantity of water sold in the Barstow district. This surcharge will terminate when SoCalWater has recovered its prudent Barstow water supply litigation expenses. Until this prudence review is completed, SoCalWater should continue to record its expenses in the Barstow District water supply litigation memorandum account."

(F) Findings of Fact 50 a through 50 d are added after Finding of Fact 50. These new findings read as follows:

"50(a) Apple Valley asserts that SoCalWater neglected the Victorville system in its

Desert District at least between 1975 and 1989, and thus raised the cost of the broad system improvements finally ordered by the Commission in 1989.

50(b) Apple Valley argues that SoCalWater should be penalized for this neglect by a denial of its request for a rate increase for the Desert District.

50(c) SoCalWater contends that its failure to make major system improvements earlier was the result of a deliberate decision to keep rates down by refraining from making expensive capital improvements in the small Desert District. SoCalWater claims it began making major improvements when urged to do so by the Commission.

50(d) None of the decisions initiating the current main replacement program mentions any request by Apple Valley that the Commission disallow investment or otherwise punish SoCalWater for not improving its system sooner. If Apple Valley was unhappy with these decisions, it could have applied for rehearing and filed appeals. Apple Valley chose not to apply for rehearing of these decisions."

(G) Finding of Fact 51(a) is added after Finding of Fact 51, to read as follows:

"The \$1.5 million estimated cost of the litigation may be excessive for litigation Barstow and SoCalWater expect to settle through the use of a water rights 'facilitator.'"

(H) Finding of Fact 53 is amended by the addition of the following:

"SoCalWater's litigation expenses would undoubtedly have been lower if SoCalWater had defended its water supply earlier, when the Mojave River water system overdrafting was apparent, but before upstream development so markedly reduced the amount of water flowing to Barstow."

(I) Findings of Fact 53 (a) and 53 (b) are added after Finding of Fact 53. These new findings read as follows:

"53 (a) According to SoCalWater's Report on the Barstow Water Supply (Exhibit 37), from 1930-31 through 1949-50 the average annual flow at the Barstow gaging station was 27,246 acre-feet. The average annual flow from 1950-51 through 1987-88 was 12,657 acre feet. This enormous reduction in average flow clearly did not occur all in one year toward the end of the last 40 years.

53 (b) The record does not contain sufficient information to verify whether SoCalWater's inaction concerning the reduction in flow was imprudent, and if so, to quantify its impact."

(J) Finding of Fact 55 is replaced by the following:

"Both shareholders and ratepayers will benefit equally from the Barstow litigation, if it is successful."

(K) Finding of Fact 56 is replaced with the following:

"A direct or dollar-for-dollar recovery of SoCalWater's prudent litigation expenses will be the least expensive way for ratepayers to pay their share of the expenses."

(L) Conclusion of Law 10 is replaced by the following:

"SoCalWater should be allowed to recover 100% of its prudent Barstow water supply litigation expenses recorded in its Barstow District water litigation memorandum account, pursuant to the mechanism set forth in the decision. Because of our prudency concerns, however, SoCalWater should be allowed to recover these expenses only after a thorough evaluation of the prudence of the litigation and the associated expenses. The prudency evaluation should address the following issues:

1. Are the Barstow litigation expenses reasonable?

2. Was the timing of the Barstow litigation reasonable, or was SoCalWater imprudent in not defending its Barstow water supply earlier?

3. Are there any options for defending or expanding the Barstow District water supply other than litigation with an estimated cost of \$1.5 million or a pipeline with an estimated cost of \$50 million?"

(M) Conclusion of Law 11 is replaced by the following:

"SoCalWater should not be permitted to recover its Barstow water supply litigation expenses until their prudence is established through the review outlined above. Once this prudency review is completed, the Commission should ensure that SoCalWater recovers only the authorized amount of litigation costs by allowing SoCalWater to apply a limited-term surcharge on the quantity of water sold in the Barstow district. This surcharge should terminate when SoCalWater has recovered its prudent Barstow water supply litigation expenses. Until this prudency review is completed, SoCalWater should continue to record its expenses in the Barstow District water supply litigation memorandum account."

(N) The phrase "ratepayer's share of the" is deleted from Conclusion of Law 11.

(O) Conclusion of Law 19 is added; it reads as follows:

"Apple Valley's request that SoCalWater be punished for past poor quality service in its Desert District by a denial of its Desert District rate increase should not be granted."

(P) Ordering Paragraph 5 is replaced by the following:

"SoCalWater shall not recover its Barstow water supply litigation expenses until their prudence is established through the review outlined above. Once this prudency review is completed, SoCalWater shall be allowed to recover the authorized amount of litigation

costs through the application of a limited-term surcharge on the quantity of water sold in the Barstow district. This surcharge shall terminate when SoCalWater has recovered its prudent Barstow water supply litigation expenses. Until this prudence review is completed, SoCalWater shall continue to record its expenses in the Barstow District water supply litigation memorandum account."

(Q) Special Condition 1 in Appendix A-4 is deleted.

2. CWA's petition to intervene is denied.

3. Rehearing of D.92-01-025 is granted for the limited purpose of addressing the following issues:

Are the Barstow litigation expenses reasonable?

Was the timing of the Barstow litigation reasonable, or was SoCalWater imprudent in not defending its Barstow water supply earlier?

Are there any options for defending or expanding the Barstow District water supply other than litigation with an estimated cost of \$1.5 million or a pipeline with an estimated cost of \$50 million?

Prior to the limited rehearing, SoCalWater shall make a filing setting forth, at a minimum:

(a) The basis for the Barstow water supply litigation expenses estimate, including:

(1) The background and expertise of the law firm and attorney hired by Barstow and SoCalWater;

(2) The hourly billing rate of the attorneys, paralegals, expert witnesses, water rights facilitators, and other personnel who will be involved in the litigation on behalf of Barstow and SoCalWater;

(3) The specific types of legal filings the law firm anticipates making in this litigation;

(4) The number of hours each type of litigation employee is expected to work with regard to each phase of this litigation;

(5) The number of law firms and/or attorneys SoCalWater consulted with and or received estimates from before choosing a law firm, and the hourly billing rates of the law firms and attorneys not chosen;

(6) A comparison of the expertise and experience of the firm chosen with the expertise and experience of law firms and attorneys not chosen;

(7) A comparison of the hourly rates charged by experienced water rights attorneys, paralegals, expert witnesses, water rights facilitators and other litigation staff at the time SoCalWater first became aware of the overdraft with the rates charged by the law firm chosen; and

(8) Any other information SoCalWater believes relevant to the reasonableness of the litigation expense estimate;

(b) The basis for the timing of the water supply litigation, including:

(1) The date the Mojave River basin first became overdrafted;

(2) The date SoCalWater acquired the Barstow District;

(3) The date SoCalWater first became aware of the overdraft;

(4) The amount of water flowing past the Barstow gaging station during the year in which SoCalWater first became aware of the overdraft;

(5) The amount of water flowing past the Barstow gaging station in each subsequent year;

(6) The approximate number of upstream users on the date the Mojave River basin first became overdrafted, on the date SoCalWater first became aware of the overdraft, and on the date SoCalWater filed its Barstow water supply litigation;

(7) The impact of the overdraft on SoCalWater's Barstow District water supply, with a year by year quantification of this impact if possible;

(8) The reasons SoCalWater did not pursue litigation to defend its Barstow District water supply from upstream users sooner;

(9) The approximate per capita water usage by upstream water users;

(10) The potential impact of successful Barstow water supply litigation on the water needs of upstream users at present, and a comparison of this impact with the impact that might have occurred if water supply litigation had been successfully pursued at the time SoCalWater first learned of the overdraft and its potential impact on the Barstow District water supply.

(11) Any other information SoCalWater believes relevant to the issue of the timing of the Barstow water supply litigation.

(c) A description of any options for defending or expanding the Barstow District water supply other than litigation with an estimated cost of \$1.5 million or a 44 mile pipeline with an estimated cost of \$50 million, including:

(1) The type of option (eg., additional wells, a shorter pipeline to a water system with adequate water supplies, etc.);

(2) The estimated cost of each option listed above;

(3) The technical restraints or other problems, if any, associated with the option;

(4) The potential benefits associated with each option;

(5) The reason each option was rejected;

(6) Any other information SoCalWater believes is relevant to its decision to pursue litigation, beyond that which is included in Exhibit 37.

Branch, and other appropriate staff, will be given an opportunity to review SoCalWater's filing before the limited rehearing begins. The timing of the filing, response, and limited rehearing date will be left to the ALJ.

A.91-02-096, et al. L/ltq/nas

4. In all other respects, rehearing of Decision 92-01-025, as modified herein, is denied.

5. The Executive Director shall serve a copy of this decision on the appearances and state service lists for D.92-01-025 in A.91-02-096, A.91-02-097, A.91-02-099 and A.91-02-101.

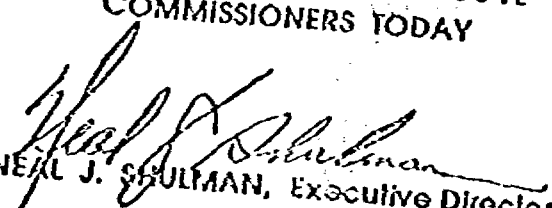
This order is effective today.

Dated May 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


NEAL J. SHULMAN, Executive Director

RB