

ORIGINAL

Decision 82 06 013 JUN 2 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
ELECTRIC COMPANY and the GIBBS)
RANCH WATER COMPANY for an order)
authorizing the former to sell)
and convey to the latter certain)
water distribution facilities)
in accordance with the terms of)
an agreement dated March 3, 1980.)

Application 60121
(Filed December 5, 1980)

(Water)

Daniel E. Gibson and A. Kirk McKenzie,
Attorneys at Law, for Pacific Gas
and Electric Company; and William G.
Polley, Attorney at Law, for Gibbs
Ranch Water Company; applicants.
James M. Barnes, for the Commission staff.

O P I N I O N

In this joint application, Pacific Gas and Electric Company (PG&E) and Gibbs Ranch Water Company (Gibbs Ranch) seek an order authorizing PG&E to sell to Gibbs Ranch certain water facilities located on PG&E's Tuolumne water system.

The Sonora District of PG&E's Tuolumne water system consists of approximately 79 miles of canals and ditches, together with seven regulating and standby reservoirs, situated in the western portion of Tuolumne County between the South Fork of the Stanislaus River and the North Fork of the Tuolumne River. As of December 31, 1979, the system supplied water to 3,880 customers.

Gibbs Ranch is a public utility corporation. Its system consists of a water treatment plant, storage facilities for treated and untreated water, and water distribution facilities. As of September 30, 1979, the system supplied treated water to 342 customers.

On March 3, 1980, PG&E mailed to Gibbs Ranch a proposal for sale of the Racetrack pipeline to Gibbs Ranch for \$7,500. Harrison L. Gibbs, president and owner of Gibbs Ranch, accepted the proposal in writing on March 17, 1980.

Racetrack pipeline follows an irregular course for about one mile and serves untreated water to a rural area between Sonora and Columbia. (See rough diagram later in opinion.) For the 12-month period ending February 1979, PG&E supplied untreated water service from the pipeline to 27 customers (the present number is 25; see Exhibit 3) and derived a gross annual revenue of \$3,262.

The body of the proposal reads:

- "a. PGandE will sell and Gibbs Ranch Water Company (Gibbs) will purchase PGandE's Racetrack pipeline for a sum of \$7,500. The pipeline is described in Exhibit A, attached.
- "b. PGandE will transfer and Gibbs will accept and provide firm water service to all existing customers on the Racetrack pipeline under Gibbs' rules and rates as authorized by the California Public Utilities Commission (CPUC). Gibbs will accept future customers in accordance with such rules and rates.
- "c. PGandE agrees to sell and deliver to Gibbs at a point of delivery as shown on Exhibit A, up to 40 miner's inches of untreated water on a firm basis under PGandE's filed rules and rates. The presently effective rate is Schedule No. 6 - Resale Service.
- "d. PGandE agrees to provide Gibbs water to flush the Racetrack pipeline not more than twice each year in mid-spring and in mid-winter subject to PGandE's discretion. Water delivered for this purpose will be at no cost to Gibbs.

- "e. PGandE agrees to deliver to Gibbs when and if available, as determined by PGandE and as requested, non-firm untreated water. Such water will be over and above firm water delivered under c. above and will be measured by separate metering device at the existing point of delivery and at a rate of flow not to exceed the capacity of Racetrack pipeline. The rate for this non-firm water will be the lowest priced block rate of Schedule No. 6 as it is from time to time in effect. Gibbs will construct a reservoir capable of impounding non-firm water delivered under this paragraph. Non-firm water is defined herein as water in excess of the then existing demands of PGandE's firm customers including Gibbs. Non-firm untreated water to be supplied under this paragraph shall be on a 'best-efforts' basis. 'Best-efforts' is defined to mean that when Gibbs requests water under this subparagraph (e) during non-peak periods, PGandE will use its best efforts, without curtailing firm customers, to supply the water to Gibbs within a reasonable time.
- "f. Gibbs agrees to expand its treated water service area boundary to include (1) the area surrounding the Racetrack pipeline and, (2) the area between PGandE's treated water service area boundary and Gibbs' service area boundary. The expanded area will be as shown on Exhibit A.
- "g. PGandE and Gibbs agree to file a joint application with the CPUC requesting authorization of a special contract including, but not limited to, the above terms. The special contract will not be effective unless and until CPUC authorization is obtained.
- "h. PGandE agrees to contact each of its Racetrack pipeline customers and inform them of the proposed special contract filed with the CPUC."

Pursuant to paragraph (h), PG&E notified the Racetrack ditch customers of the filing of the application. A member of the Hydraulics Branch of the Commission staff contacted some of the customers by telephone and found that some of them opposed

the transfer. Therefore, a hearing was held before Administrative Law Judge (ALJ) Meaney on the afternoon and evening of January 28, 1982 in Sonora. Certain late-filed exhibits, discussed below, were received on February 25. Racetrack ditch customers were notified of the hearing by letter (Exhibit 1).

Customers who appeared at the hearing either to testify or to ask questions were concerned about water supply and rates. Essentially, there were three issues which were the subject of the testimony:

1. Will the proposed transfer affect the water supply?
2. Will the proposed transfer affect present rates?
3. What will occur if, in the future, the pipeline is used for treated rather than untreated water?

Kirk McKenzie, attorney for PG&E, explained that under the agreement, assuming the Commission approves the sale, PG&E will furnish Gibbs with more firm water - up to 40 miner's inches (mi) of untreated water rather than the 15 mi it now receives, as well as nonfirm (interruptible) untreated water. (See paragraphs c and e of proposal, above.)

Harrison L. Gibbs, president of Gibbs Ranch, answered questions and testified concerning the reason for the sale. He said he wished to take over the pipeline to obtain more water for his domestic (treated water) system, and as part of the agreement he has agreed to build a reservoir to impound the additional water for treated domestic use. (See proposal, paragraphs e and f, and the application, Section VI.)

Gibbs stated that the transfer itself did not call for a rate increase. Customers questioned the ALJ concerning possibility of a rate increase under law and Commission policy.

He replied that while the proposed transfer did not include a rate increase, the Commission could not guarantee freedom from higher rates in the future, and this is true whether the transfer is approved or denied.

From the questions of the customers, their fears of a future rate increase mostly concerned Gibbs' possible intention to convert the ditch to a carrier of treated water, which would increase costs. The customers presently use the ditch for agricultural and livestock purposes. The staff report presented by J. M. Barnes of the Hydraulic Branch (Exhibit 2) summarizes the problem as follows:

"PG&E provides service to this area under Tariff Schedules Nos. T-11, T-12 and T-13. T-11 is metered service for untreated water. T-12 is an untreated flat rate residential schedule based on lot size. T-13 is an untreated irrigation schedule, whereby customers contract for seasonal water on a miners inch basis. Decision No. 92064 dated July 29, 1980, in Application No. 54199 (Ordering Paragraph 8c) ordered PG&E to withdraw and cancel all tariff schedules, which refer to untreated or unpotable water. Since PG&E must continue to serve these customers untreated water until treated water is available, it was authorized to retain these rates but limit these schedules to existing customers. As a result, customers receiving untreated water prior to May 13, 1981, continue to receive service under the T-11, T-12 and T-13 schedules. No new customers have been added since May 13, 1981, in compliance with Decision No. 92064. There are approximately 28 customers now receiving untreated water service from the Racetrack Ditch Pipeline.

"The Hydraulic Branch staff has contacted 16 of the customers to be affected by this transfer and all are opposed to it. Twelve of the customers contacted fear they will

lose the affordable untreated irrigation water they are now receiving under PG&E's T-13 tariff schedule. All the customers contacted were concerned about paying higher rates for treated water under Gibbs Ranch's current tariffs. Under PG&E's T-13 tariff schedule, the customers contract for untreated irrigation water by the miner's inch. If PG&E is relieved of its public utility obligations it intends to cancel those contracts and transfer the aggregate contract amounts to Gibbs Ranch. Essentially, the existing customers want to be assured that they will continue to receive the same contract amount of untreated irrigation water at present rates regardless of what utility provides it. None of the persons contacted indicated they wanted treated water from Gibbs Ranch. For domestic use, they either treat the raw ditch water themselves or have their own wells.

"This is a rural area where most of the residents own parcels of land ranging from one-half to 165 acres. Thirteen customers reportedly use the irrigation water for raising cattle, sheep, horses, hay, orchards and vegetable and floral produce. Many of the customers stated they are retired and use their land and irrigation water to maintain their way of life. For many, it is a supplement to a fixed income.

"Exhibit D of Application No. 60121 is the agreement between PG&E and Gibbs Ranch. Paragraph (f) of that exhibit states:

'Gibbs agrees to expand its treated water service area boundary to include (1) the area surrounding the Racetrack pipeline and (2) the area between PG&E's treated water service area boundary and Gibbs' service area boundary. The expanded area will be as shown on Exhibit A.'

"Paragraph (b) states:

'PG&E will transfer and Gibbs will accept and provide firm water service to all existing customers on the Racetrack pipeline under Gibbs Rules and rates as authorized by the California Public Utilities Commission (CPUC). Gibbs will accept future customers in accordance with such rules and rates.'

"Gibbs Ranch's filed tariffs are limited to two schedules for water service. Schedule No. 1, Metered Service, provides for residential treated water. Schedule No. 3LM, Limited Measured Irrigation Service, provides for untreated water for irrigation. The agreement between PG&E and Gibbs Ranch does not specify which tariff will be applied to the customers upon transfer."
[Emphasis added.]

"It is the staff's position that Gibbs Ranch should adopt the three tariff schedules that are now being applied to the Racetrack pipeline customers. It should be clearly understood, however, that Schedules T-11, T-12 and T-13 are to be restricted to those present PG&E customers. Also, those customers now having contractual rights such as the T-13 schedule provides, should be guaranteed those rights from Gibbs Ranch. Gibbs Ranch, as per Paragraph (b) of the agreement, has agreed to extend treated water service to all new customers in the Racetrack pipeline area in accordance with its filed tariffs (Rule No. 15). Decision No. 92064 essentially ordered PG&E not to add new customers under its untreated water tariff schedules, and it appears reasonable that the same condition be applied to Gibbs Ranch concerning the Racetrack pipeline area."

Gibbs emphasized that he had no plans to convert the ditch to a treated water system. In answer to one user, he testified (Tr. 20):

"The detail of the staff recommendation was that at such time as someone wanted treated water, that they would apply to my system under Rule 15

which is the main line extension agreement, and it is no different than PG&E's, and they would pay their fair share for this extension, and receive a rebate for the cost of that extension over a period of what will now be 40 years.

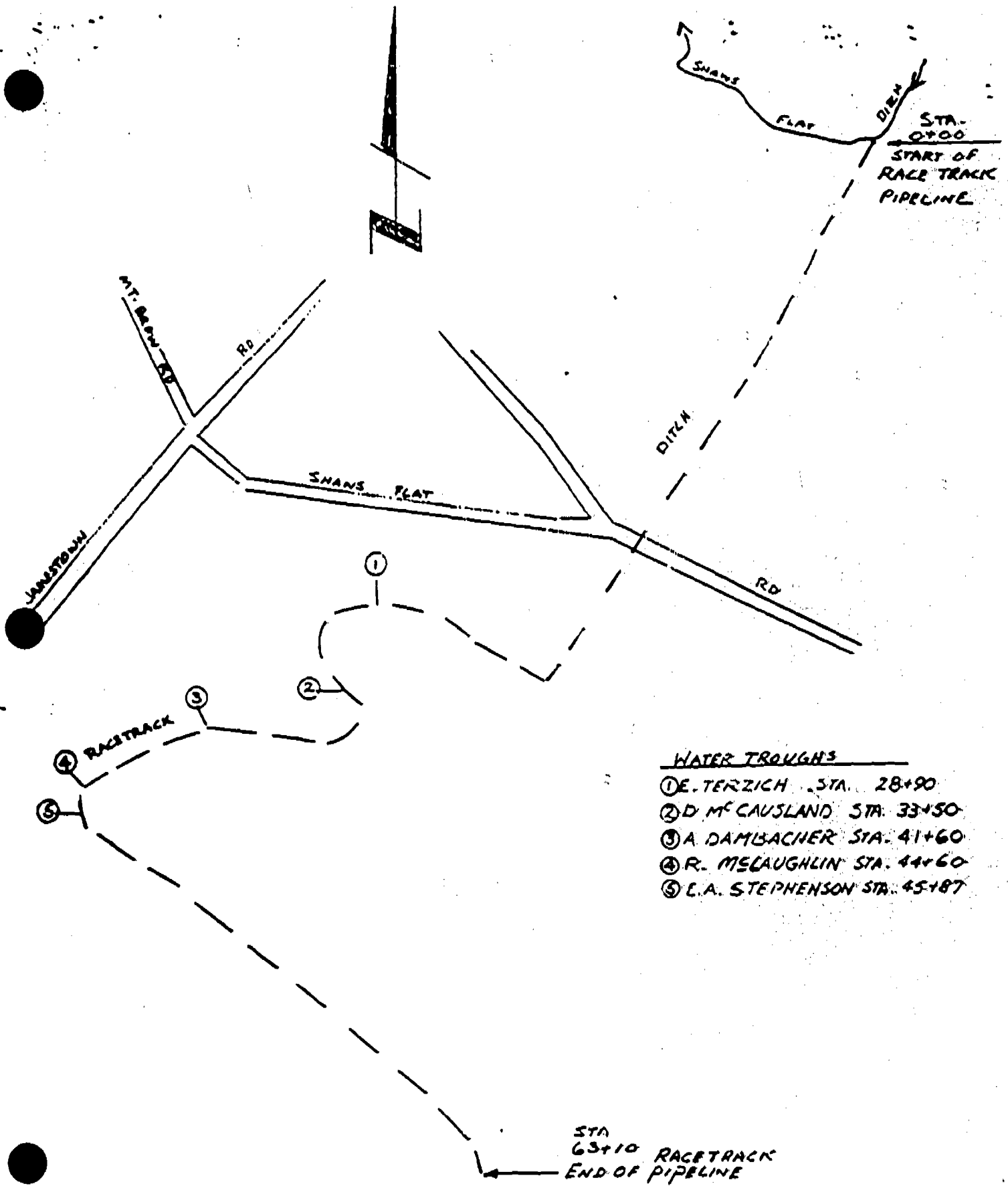
"So, to answer your question, no, that is not my intent, to go and change the service to a domestic treated water service."

Because there was some confusion regarding the exact number of present ditch customers, the ALJ ordered the applicants to check records. In response, PG&E introduced Exhibit 3, containing 25 names and addresses. We regard this document as the most authoritative information on who is entitled to untreated ditch water. Neither the proposal nor the staff report state whether the successors of those individuals are also entitled to the same access to untreated water under the tariffs. It would be unusual for us to consider eligibility for the untreated water tariff as personal to the named individuals only, and we do not understand this to be the intent of either Gibbs Ranch or PG&E. We will require that eligibility extend to subsequent owners or occupiers of the properties now owned or occupied by those listed on Exhibit 3.

One additional problem came to light during the hearing. A few of the users were permitted to install watering troughs along the ditch. Permission was given many years ago and PG&E records do not indicate the exact dates or how many such troughs were initially permitted. The ALJ ordered PG&E to locate the existing troughs, since one owner requested that our order make clear that the transfer would not terminate their use. The rough map which follows is part of late-filed Exhibit 4 and shows the approximate location of the troughs. Those at locations 1 and 3 are not in use and apparently abandoned. The remaining

troughs are also shown in photographs (late-filed Exhibits 5, 6, 7, and 8). They consist of bathtub-shaped water vessels with a float valve. Those which are still operational are located as follows:

<u>Location</u>	<u>Ditch Station</u>	<u>Present User</u>
2	33+50	D. McCausland
4	44+60	R. L. McLaughlin
5	45+87	E. A. Stephenson



WATER TROUGHS

- ① E. TERZICH STA. 28+90
- ② D. M'CAUSLAND STA. 33+50
- ③ A. DAMBACHER STA. 41+60
- ④ R. MCLAUGHLIN STA. 44+60
- ⑤ E.A. STEPHENSON STA. 45+87

Gibbs stated he did not object to continued use of the remaining troughs if (1) they do not leak, (2) the float valve works, and (3) the water is used exclusively for livestock watering. There was some discussion about whether the supply to these troughs should be interruptible in case of drought conditions. It is our opinion that such interruption should be allowed but that what constitutes "drought conditions" should be specified in an appropriate tariff. Lastly, we believe that (contrary to Gibbs' recommendation) these troughs should be available for use to the successors of the present users, unless such use is abandoned. ✓

Discussion

We believe that the proposed transfer is in the public interest. Gibbs Ranch will receive more firm water for its domestic system, and at least as much untreated water will remain available for the Racetrack ditch customers. While future rates will no doubt follow future costs, Gibbs Ranch does not intend to convert the ditch to a treated water system, and there is no reason to assume that untreated water available to the ditch customers would cost more in the future if supplied by Gibbs Ranch rather than PG&E. In either case, all the water supplied to the start of the ditch comes from PG&E's Shaws Flat ditch and ultimately from other parts of PG&E's system, above Shaws Flat ditch. //

We agree with the recommendations of the staff that Gibbs Ranch should adopt PG&E's tariffs T-11, T-12, and T-13, that service should be provided to present customers and subsequent owners or occupiers of the parcels now using untreated ditch water, and that such customers and subsequent owners or occupiers should retain rights to untreated water service under tariff T-13.

We will allow the three remaining livestock troughs to be used subject to the conditions recommended by Gibbs, and subject to a reasonable inspection provision. The tariff filed on this subject should define "drought conditions" with reasonable clarity.

Findings of Fact

1. Racetrack ditch, presently part of PG&E's public utility water system in Tuolumne County, follows an irregular course for about one mile and is located in a rural area in the vicinity of Sonora and Columbia. It presently serves 25 customers, as shown in Exhibit 3, with untreated water used for agricultural and livestock purposes.

2. Gibbs Ranch wishes to purchase, and PG&E wishes to sell, Racetrack ditch, in accordance with the terms and conditions of the proposal prepared by PG&E and approved by Gibbs Ranch, attached to the application as Exhibit D.

3. The transfer is in the public interest because it will provide more water for Gibbs Ranch's domestic system without interfering with the rights of the customers listed in Exhibit 3 to retain their present contract rights to untreated water under Tariff Schedule T-13.

4. The staff recommendations that Gibbs Ranch should file tariffs which allow the present ditch water customers (including future owners or occupiers of the same parcels) to obtain untreated ditch water and to retain their contract rights to such water under the same conditions as provided by PG&E tariffs T-11, T-12, and T-13 are reasonable.

5. Three watering troughs originally installed (or permitted to be installed) by PG&E remain in use, in the locations specified in the opinion section of this decision. It is reasonable to allow these to continue in use subject to the conditions specified in the order.

6. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

The application should be granted subject to the conditions in the order which follows.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1982, Pacific Gas and Electric Company (PG&E) may transfer its Racetrack ditch and other water distribution facilities referred to in the application to Gibbs Ranch Water Company (Gibbs Ranch), according to the terms in the application and subject to the provisions of this order.

2. On or before the date of transfer, PG&E shall refund any customer credit deposits which are subject to refund.

3. Gibbs Ranch shall assume any liability for refunds of main extension advances.

4. Within 10 days after transfer, PG&E shall write the Commission stating dates of transfer and deposit refunds, and date when Gibbs Ranch began operating the water system. A copy of the transfer documents shall be attached.

5. Upon compliance with this order, PG&E shall be relieved of its public utility obligation to the transferred system, and Gibbs Ranch shall assume such obligation.

6. As a condition of this grant of authority, Gibbs Ranch shall, at least 10 days prior to the transfer, file with this Commission, by advice letter, tariffs taking effect upon the date of transfer which will apply the same rates, rules, conditions and contract rights to those present PG&E customers listed in Exhibit 3, or to future owners or occupiers of the same parcels of land, subject to further order of the Commission. ✓

7. As a further condition of this grant of authority, Gibbs Ranch shall, at least 10 days prior to the transfer, file with this Commission, by advice letter, a tariff taking effect upon transfer and subject to further order of the Commission which will permit the 3 remaining watering troughs to continue to be used for the purpose of watering livestock by the present owners or occupiers of the parcels on which they are located, or by subsequent owners or occupiers of such parcels. The tariff should provide that the users shall maintain the troughs in working order, shall promptly repair leaks or other damage, and shall allow Gibbs Ranch reasonable access for inspection. The tariff may provide that service to the troughs is interruptible in drought conditions, but if that provision is included, the term "drought conditions" shall be defined with reasonable certainty. The tariff may further provide that upon abandonment of use for one year or more or upon voluntary removal, use may not be reinstated.

8. Ordering Paragraphs 6 and 7 are not intended to cover changed conditions resulting from future subdivisions. If any customer

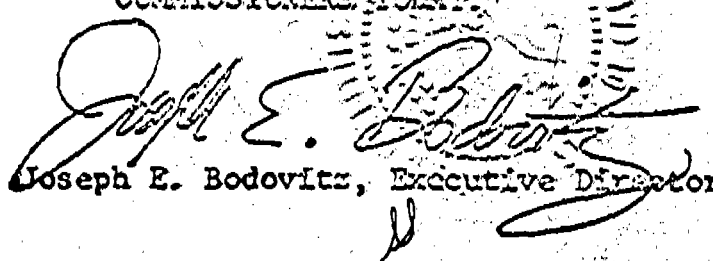
of the ditch subdivides his land; Gibbs Ranch may file a tariff by advice letter to reflect such changed conditions, and such tariff may include a date of termination for the contract rights to water or the use of the troughs.

This order becomes effective 30 days from today.

Dated JUN 2 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

55 Gibbs stated he did not object to continued use of the remaining troughs if (1) they do not leak, (2) the float valve works, ^{and} (3) the water is used exclusively for livestock watering. There was some discussion about whether the supply to these troughs should be interruptible in case of drought conditions. It is our opinion that such interruption should be allowed but that what constitutes "drought conditions" should be specified in an appropriate tariff. Lastly, we believe that (contrary to Gibbs' recommendation) these troughs should be available for use to the successors of the present users, unless such use is abandoned.

Discussion

We believe that the proposed transfer is in the public interest. Gibbs Ranch will receive more firm water for its domestic system, and at least as much untreated water will remain available for the Racetrack ditch customers. While future rates will no doubt follow future costs, Gibbs Ranch does not intend to convert the ditch to a treated water system, and there is no reason to assume that untreated water available to the ditch customers would cost more in the future if supplied by Gibbs Ranch rather than PG&E. In either case, all the water supplied to the start of the ditch comes from PG&E's Shaws Flat ditch and ultimately from other parts of PG&E's system, above Shaws Flat ditch.

We agree with the recommendations of the staff that Gibbs Ranch should adopt PG&E's tariffs T-11, T-12, and T-13, that service should be provided to present customers and subsequent owners or occupiers of the parcels now using untreated ditch water, and that such customers and subsequent owners or occupiers should retain rights to untreated water service under tariff T-13.

6. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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The application should be granted subject to the conditions in the order which follows.

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2. On or before the date of transfer, PG&E shall refund any customer credit deposits which are subject to refund.

3. Gibbs Ranch shall assume any liability for refunds of main extension advances.

4. Within 10 days after transfer, PG&E shall write the Commission stating dates of transfer and deposit refunds, and date when Gibbs Ranch began operating the water system. A copy of the transfer documents shall be attached.

5. Upon compliance with this order, PG&E shall be relieved of its public utility obligation to the transferred system, and Gibbs Ranch shall assume such obligation.

ss 6. As a condition of this grant of authority, Gibbs Ranch shall, at least 10 days prior to the transfer, file with this Commission, by advice letter, tariffs taking effect upon the date of transfer which will apply the same rates, rules, conditions and contract rights to those present PG&E customers listed in Exhibit 3, or to future owners or occupiers of the same parcels of land, subject to further order of the Commission.

7. As a further condition of this grant of authority, Gibbs Ranch shall, at least 10 days prior to the transfer, file with this Commission, by advice letter, a tariff taking effect upon transfer and subject to further order of the Commission which will permit the 3 remaining watering troughs to continue to be used for the purpose of watering livestock by the present owners or occupiers of the parcels on which they are located, or by subsequent owners or occupiers of such parcels. The tariff should provide that the users shall maintain the troughs in working order, shall promptly repair leaks or other damage, and shall allow Gibbs Ranch reasonable access for inspection. The tariff may provide that service to the troughs is interruptible in drought conditions, but if that provision is included, the term "drought conditions" shall be defined with reasonable certainty. The tariff may further provide that upon abandonment of use for one year or more or upon voluntary removal, use may not be reinstated.

8. Ordering Paragraphs 6 and 7 are not intended to cover changed conditions resulting from future subdivisions. If any customer