

Decision No. 87431 JUN 7 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, service, equipment, facilities, rules, regulations, contracts, and water supply of the MONTEREY PENINSULA DISTRICT OF CALIFORNIA-AMERICAN WATER COMPANY, a corporation, and of RANCHO DEL MONTE DIVISION OF WATER WEST CORPORATION.

Case No. 9530
(Filed April 3, 1973)

(See Appendix A for appearances.)

NINTH INTERIM OPINION

Background

The Commission instituted this investigation of the Monterey Peninsula District of California-American Water Company (Cal-Am) "for the purpose of determining: (1) whether respondents' available water supply is adequate and sufficient to enable it to serve new customers in additional areas for which a certificate of public convenience and necessity is being sought or for other areas in which the water utility would normally serve, (2) whether respondents' presently existing water supplies are adequate to meet the normal continuing growth within areas heretofore certificated to it, (3) whether there are available additional sources of supply to meet future growth in the general Monterey County area and whether it is feasible for respondent to obtain such sources of supply".

During public hearings in this investigation various means of augmenting and improving Cal-Am's water supply were explored. Cal-Am proposed a project consisting of the construction of an iron and manganese removal plant (Begonia Iron Removal Plant) to treat water from certain wells in the Carmel Valley aquifer, installation of remote control devices at the wells, and the construction of a pipeline (Canada de la Segunda Pipeline) and appurtenances to transport treated water from the Carmel Valley to the distribution system at a connection in the Seaside area.

Need for Project

In previous decisions, the Commission has considered the need for this project and the manner of financing thereof. After public hearings and the submission of testimony and exhibits, the Commission found that Cal-Am had reached the limit of its capacity to supply water and that, with certain exceptions, no further consumers could be supplied from Cal-Am's Monterey District system without injuriously withdrawing the supply wholly or in part from existing customers^{1/}. Subsequently, the Commission also found and concluded that the Begonia Iron Removal Plant and Canada de la Segunda Pipeline Project is urgently needed to alleviate the present critical water supply situation, provided environmental considerations would permit its construction^{2/}.

The financing for the project was determined when the Commission authorized Cal-Am to execute a loan agreement and issue

1/ Decision No. 84527 dated June 10, 1975 in Application No. 53653 and Case No. 9530, Finding No. 9.

2/ Decision No. 86807 dated January 5, 1977 in Case No. 9530, Finding and Conclusion No. 10.

a master note to pay for the acquisition and construction of the project. The preliminary estimate of cost totaled \$4,038,000 of which \$3,000,000 would be for the pipeline, \$970,000 for the treatment plant, and \$68,000 for well improvements^{3/}.

Environmental Review

On August 4, 1975, Cal-Am filed a motion with the Commission to determine:

- (a) Which public agency is the "lead agency" with respect to said project, as that term is defined in California Environmental Quality Act (CEQA) Section 21067, Guideline Section 15030, and Rule 17.1(n)(9).
- (b) Whether either or both the treatment plant and pipeline are exempt from the requirements of CEQA as emergency projects pursuant to the terms of CEQA Sections 21084-21085, Guideline Sections 15071(c) and 15025, and Rule 17.1(e)(2)(B).
- (c) Who is the "proponent" of the project responsible for the payment of fees incurred in the preparation of any EDS or EIR which may be required. (Rule 17.1(e)(2)(F) and Rule 17.1(o).)

With respect to the issues raised by Cal-Am in its motion, the presiding examiner on October 8, 1975 ruled as follows:

- (a) That the Commission is the lead agency.
- (b) That the projects are not emergency projects and are not exempt from the provisions of CEQA, the Guidelines, and Rule 17.1.
- (c) That Cal-Am is the proponent of the project, and that Cal-Am should pay the deposit required by Rule 17.1(o) at or before the time it files its Environmental Data Statement (EDS).

^{3/} Decision No. 86850 dated January 11, 1977 in Application No. 56936

On October 2, 1975, Cal-Am filed a supplemental motion to its August 4, 1975 motion requesting that the Commission find, order, and declare that the Begonia Iron Removal Plant and its related well is not subject to the provisions of CEQA and that the August 4, 1975 motion be considered solely with respect to the Canada de la Segunda Pipeline.

On December 1, 1975, the presiding examiner ruled that, although Cal-Am received, prior to April 15, 1973, permission from the county of Monterey to construct and use the Begonia Iron Removal Plant and Begonia well, the action of the Commission on October 8, 1975, in assuming the role of lead agency over the entire project, involves a greater degree of control over the project than did the prior approval of certain elements of the project. He also ruled that an EIR was required, and that the EIR was required for the entire project, specifically including the Begonia well, the Begonia Iron Removal Plant, and the Canada de la Segunda Pipeline and denied Cal-Am's supplemental motion of October 2, 1975.

On April 1, 1976, Cal-Am filed with the Commission a motion for a Negative Declaration pursuant to Rule 17.1 Sections (e)(2)(E) and (f)(2). Cal-Am argued against the necessity for an EIR with respect to the Begonia Iron Removal Plant and Canada de la Segunda Pipeline Project. Concurrently with the filing of this motion, Cal-Am submitted its EDS as required by Rule 17.1(c) and (d) and paid the deposit required by Rule 17.1(o).

On May 6, 1976 the presiding examiner ruled that:

- (a) The Canada de la Segunda Pipeline and Begonia Iron Removal Plant Project proposed by Cal-Am may have a significant effect on the environment.
- (b) An EIR, rather than a Negative Declaration, is required.
- (c) The motion of Cal-Am for a Negative Declaration is denied.

The Commission staff, pursuant to Commission Rule 17.1, conducted its review including requests to Cal-Am to correct deficiencies in its EDS. The Commission staff also consulted all responsible agencies.

On October 1, 1976, a notice of completion of the Draft EIR was issued by the Executive Director of the Commission. The Draft EIR was prepared in accordance with the requirements of the CEQA of 1970 (Public Resources Code Section 21000, et seq.), as amended, the Guidelines for Implementation of CEQA promulgated by the Office of the Secretary for Resources (Title 14, California Administrative Code Section 15000, et seq.) (State EIR Guidelines), as amended, and the Commission's Rule 17.1 (Rules of Practice and Procedure) (Title 20, California Administrative Code, Article 4, Rule 17.1).

On October 6, 1976, the Office of Planning and Research, State Clearinghouse, acknowledged receipt of the Draft EIR. State Clearinghouse No. (SCH) 76101351 was assigned to this report.

Public Hearings

Public hearings on the Draft EIR began on December 6, 1976, after the required 60-day review period had elapsed. The hearings were held in the city of Seaside on December 6 through 9 and 13 through 16, 1976, January 3 through 6, 1977, and January 10 and 11, 1977. In addition to respondent and staff, testimony was received from the Monterey Peninsula Regional Park District on behalf of the Garland Ranch Regional Park; Monterey County Environmental Health Department; Monterey County Board of Supervisors, acting as the Board of Directors of the Monterey County Flood Control and Water Conservation District; Sierra Club, Ventana Chapter; Carmel Valley Property Owners Association; the Concerned Citizens for Water; and public witnesses appearing on their own behalf.

The matter was submitted for decision by the Commission on January 11, 1977, with interested parties being allowed until January 27, 1977 to submit comments on the testimony and exhibits.

Final EIR

On April 19, 1977, a Final EIR on the project was issued, consisting of:

- (a) The staff's Draft EIR on Cal-Am's Canada de la Segunda Pipeline and Begonia Iron Removal Plant Project (Exhibit 103) incorporated by reference.
- (b) Comments and recommendations on the Draft EIR (Exhibits 104, 105, 106, 107, 108, 109, 110, 111, 112) incorporated by reference.
- (c) A list of persons, organizations, and public agencies commenting on the Draft EIR (Chapter 4).
- (d) Responses to significant environmental points (Chapter 3).

All interested parties were given until May 10, 1977 to file exceptions to the Final EIR in accordance with Section (g)(3) of Rule 17.1. No exceptions were received.

Progress on Construction to Date

Pursuant to Ordering Paragraph 11 of Decision No. 84527, Cal-Am has filed with this Commission monthly reports on the status of financing and construction of the Begonia Iron Removal Plant and the Canada de la Segunda Pipeline Project. Based upon those reports the present status of this project is as follows:

- (a) On December 13, 1976, Cal-Am filed its application for authority to borrow up to \$4,000,000 for the construction of this project. By Decision No. 86850, issued January 11, 1977, that application was granted.
- (b) On March 16, 1977, Cal-Am, pursuant to Decision No. 86850, executed its loan agreement with the Bank of America.

- (c) On or about January 31, 1977, Cal-Am issued its invitation to contractors to bid on the project, and a number of acceptable bids were received and opened on March 16, 1977.
- (d) Cal-Am anticipates awarding construction contracts on or before May 15, 1977.

Based upon the foregoing, we understand that upon receipt of an order certifying the Final EIR on this project, Cal-Am is prepared to proceed immediately to construct the project.

Environmental Matters

A record on environmental matters was developed in this proceeding through public hearings, preparation of a Draft EIR by the Commission staff, and consultation with public agencies, all of which are elements in the EIR process culminating in the issuance of the Final EIR.

This decision includes, pursuant to Rule 17.1 of the Rules of Practice and Procedure, a series of findings based on the Final EIR's coverage of (1) the environmental impact of the proposed action, (2) any adverse environmental effects which cannot be avoided if the proposal is implemented, (3) mitigation measures proposed to minimize the impact, (4) alternatives to the proposed action, (5) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, (6) any irreversible environmental changes which would be involved if the proposed action should be implemented, (7) growth-inducing impact of the action, and (8) plans for future development.

This decision is to be considered a Statement of Overriding Consideration as required by the California Administrative Code, Title 14, Division 6, Section 15088 which states:

"15088. STATEMENT OF OVERRIDING CONSIDERATIONS

- "(a) Existing law requires public agencies to have reasons to support their decisions. Where agencies have taken action without preparing

written reasons to support the decision based on information in the written record, courts have invalidated the action.

- "(b) Where the decision of the public agency allows the occurrence of significant effects identified in the Final EIR, the agency must state in writing reasons to support its action based on the Final EIR or other information in the record. This statement need not be contained in the EIR.
- "(c) The reasons to support an action described in Subsection (b) may be set forth in a statement of overriding considerations. If such a statement is made, it should be included in the record of the project approval and may be attached to the Notice of Determination."

Other Considerations

The Commission, as a basis for making any order pursuant to the provisions of Section 762 of the Public Utilities Code relating to location of structures, is required to give consideration to, and include in its order findings upon, the following factors:

- {a} Community values.
- {b} Recreational and park areas.
- {c} Historical and aesthetic values.
- {d} Influence on environment.

These elements were treated in the Draft EIR, specifically in Chapter 2. Additional testimony and exhibits bearing on these elements were introduced during the public hearings aforementioned.

Community Values

As stated in the Draft EIR and undisputed during the public hearings, the primary community values that will be affected by this project relate to growth. Although there appears to be considerable nostalgia for the Carmel and Monterey of the past, population projections of compound growth rates from 1 to 5 percent are expected for the cities of Carmel, Del Rey Oaks, Monterey, Pacific Grove, and Seaside.

Recreational and Park Areas

Appendix C of the Draft EIR, "Excerpts from the California Coastal Plan", and pages 4-77 through 4-79 describe or discuss recreational and park areas. Additional testimony developed the wide-ranging extent and concerns of the Monterey Regional Park District. The recreational assets of the Monterey Peninsula attract many visitors and contribute substantially to the economy of the area.

Historical and Aesthetic Values

Elements of the factors comprising historical and aesthetic values can be found in the following sections of the Draft EIR:

<u>Page</u>	<u>Title</u>
4-51	Carmel Valley Groundwater Quality - Economic result and aesthetic effects (p. 4-52)
4-66	Cultural Resources
4-118	Improvement in the Quality of Delivered Water
4-120	Aesthetics
4-121	Archeological and Paleontological Sites

Taken by itself, the project will not cause deterioration or destruction of aesthetics or archeological and paleontological sites. Excavation along the pipeline route and at the storage tank sites will not cross areas of special significance and the storage tanks and treatment plant will not be prominently placed nor treated in other ways to mar the aesthetics of the area.

Findings

The Commission has considered the evidence on environmental matters contained in the Final EIR, and makes the following findings pursuant to Rule 17.1(j)(3) of its Rules of Practice and Procedure:

1. If constructed as proposed, significant effects on the environment will occur due to the project. These effects will be due to the growth in customers that the project will allow and to the draw down of the Carmel Valley aquifer.

2. The construction of the project will unavoidably cause some transient environmental effects from noise, dust, and disruption of vehicular traffic, but these impacts will not represent a significant adverse effect to local residents.

3. Because of the growth in the number of customers, the following adverse environmental impacts can be expected:

- a. Increased urbanization and changes in land use. Increased ground coverage and associated increase in impermeable surface will increase runoff and contamination of bays and estuaries and decrease the percolation surface available for recharge of aquifers.
- b. Reduction in the amount and distribution of open space on the Monterey Peninsula.
- c. Impacts on the scenic and recreational qualities of the area.
- d. Increased traffic.
- e. Increased wastewater.
- f. Increased community services such as police, fire, and health.
- g. Increases in air pollutant emissions.
- h. Decrease in natural vegetation and associated wildlife directly from construction and indirectly from the activities of people and their pets as well as from wildfires.
- i. Damage or loss to archeological sites due to construction or vandalism.

4. Water removal from the Carmel Valley aquifer will create a drier environment in the immediate vicinity of the wells and also downstream from the wells. For plants and animals near and below the wells, dry years will be drier and wet years less wet. This effect will be more pronounced because of its suddenness, i.e., it will not be a slow, successional process of decades or centuries, but instead will occur immediately upon completion of the project

producing effects on the assemblage of faunal elements characteristic of this wildlife habitat. Willows and cottonwoods in particular may be subjected to increased stress and may fail to survive if the project is implemented. This will enhance the potential for bank erosion.

5. No mitigation measures are proposed to minimize the significant effects of this project. Planning for growth is a local function and the allocation of a scarce resource, such as water, should be done through systemwide curtailment and rationing plans.

6. If the project is not built, the alternative would be rationing under the current procedures or under more stringent regulations if required. The moratorium on connecting new customers would have to be extended indefinitely.

7. This project will give Cal-Am a more reliable water supply system and an increased capacity to supply water to its customers. In the long-term it will also allow Cal-Am to continue to operate its Seaside wells without salt water contamination.

8. There will be no irreversible environmental effects of the construction and operation of the project.

9. The limiting factor to growth in Cal-Am's Monterey District service area has been water supply. Project authorization and implementation will enable Cal-Am to serve the equivalent of four to five thousand residential customers immediately, later, when facilities are built to extract Cal-Am's full share of the safe yield of the Carmel Valley aquifer, service may be extended to another six or seven thousand equivalent residential customers.

10. The Begonia Iron Removal Plant site is designed to allow, as a future development, a doubling of the design capacity of six million gallons per day. Existing wells may be improved and new wells drilled in the Carmel Valley to achieve a minimum safe yield of 11,000 acre-feet per year.

11. This project is consistent with Cal-Am's intermediate and long-range facilities plans. For future development several long-range options are available for consideration, including the construction of one or more dams on the Carmel River, wastewater reclamation, stabilization of water demands, and interbasin water transfers.

12. The project will, on balance, have a significant effect on the environment; however, the overriding considerations and reasons for authorizing the project are as follows:

- a. Cal-Am's available water supply is neither adequate nor sufficient to enable it to serve new customers in additional areas for which a certificate of public convenience and necessity might be sought or for other areas in which the water utility would normally serve.
- b. Cal-Am's presently existing water supplies are inadequate to meet the normal continuing growth within areas heretofore certificated to it.
- c. Cal-Am's proposed project will make available an additional source of supply to meet future growth in the general Monterey County area and that it is feasible for Cal-Am to obtain this source of supply.

13. There is urgent need for the prompt construction of the project proposed by Cal-Am described as the Begonia Iron Removal Plant and Canada de la Segunda Pipeline Project. The public safety, health, comfort, convenience, and necessity require the installation, maintenance, operation, and use of the project.

14. Except as set forth above, the construction of the proposed facility will not produce an unreasonable burden on natural resources, aesthetics of the area in which the proposed facilities are to be located, public health and safety, air and water quality in the vicinity, or parks, recreational, and scenic areas, or historic sites and buildings, or archaeological sites.

The action taken herein is not to be considered as indicative of amounts to be included in future proceedings for the purpose of determining just and reasonable rates.

The Notice of Determination for the project is attached as Appendix B to this decision, and the Commission certifies that the Final EIR has been completed in compliance with CEQA and the Guidelines and that it has reviewed and considered the information contained in the EIR.

Conclusion

Based on the foregoing findings and the prior decisions of this Commission concerning Cal-Am's operations, the Commission concludes that the Begonia Iron Removal Plant and Canada de la Segunda Pipeline Project and related facilities should be authorized in the manner and to the extent set forth in the following order.

NINTH INTERIM ORDER

IT IS ORDERED that:

1. California-American Water Company is authorized and directed to construct and operate the Begonia Iron Removal Plant and Canada de la Segunda Pipeline Project together with related facilities as finally proposed by California-American Water Company in this proceeding except where changes are required by competent authority, and as conditioned by the following:

- (a) Excavation of natural soil to bedrock at the site of the 1.5 million-gallon storage tank foundation.
- (b) Installation of pile foundations to support the 1.5 million-gallon storage tank if natural soil is excavated and if bedrock is not found.

- (c) Delivery of a record of the chlorine monitoring results to the city of Seaside after the chlorinated disinfection water has been discharged.

2. The Executive Director of the Commission is directed to file a Notice of Determination for the project, with contents as set forth in Appendix B to this decision, with the Secretary for Resources.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of JUNE, 1977.

Robert Batminal
President
William J. Quinn
Vernon L. Sturgeon
Richard W. Howell
Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondent: Dinkelspiel, Pelavin, Steefel & Levitt, by Lenard Weiss, Attorney at Law, and Richard Sullivan, for California-American Water Company.

Interested Parties: Graham & James, by Boris H. Lakusta and David J. Marchant, Attorneys at Law, Donald G. Hubbard, Attorney at Law, John M. Lotz, and James Saunders, for Standex International Corporation; Hebard R. Olsen, for Ord Terrace Water Quality Committee; Chickering & Gregory, by James E. Burns, Jr., Thomas J. Mellon, Jr., and David R. Pigott, Attorneys at Law, for Del Monte Properties Company; L. W. McIntyre, for the City of Monterey; Gary A. Tate, for Monterey Peninsula Regional Park District; Betty S. Davis and Rod Holmgren, for Ventana Chapter of the Sierra Club; Allan D. LeFevre, for Gallaway and Sons; John M. Moore, Attorney at Law, for Carmel Valley Limited; Dave Steward, for Monterey Pacific, Inc.; John Kramer, Attorney at Law, for Richard Meffley, Department of Water Resources; John Crivello, for the City of Seaside; Hal C. Green and Nancy Strathmeyer, for Monterey Board of Realtors and Carmel Board of Realtors; Ralph Games, Leo E. Thiltgen, Philip Nelson, and Tom Scardina, for Monterey County Building Trades Council and Monterey County Labor Council; Walter Wong, for Monterey County Environmental Health Department; Donald G. Hubbard, A. David Parnie, Jr., Boris H. Lakusta, and David J. Marchant, Attorneys at Law, for Lot Owners Without Benefit of Land or Water; William C. Marsh, Attorney at Law, for Urban Renewal Agency of the City of Monterey; Mike Johnson, for California Department of Fish and Game; Frank W. Langham, Jr., for Monterey Peninsula Water Management Agency; David M. Hollingsworth, Attorney at Law, for Henry Yamanishi and the Monterey Bay Landscaping Association; Finnly F. Sutton, for Redevelopment Agency of the City of Seaside; and Loren E. Smith, Edwin B. Lee, Melvin J. Vercoe, Glen Chang, Anne Van Kleeck, Robert Greenwood, David Logan, Frances Strachwitz, and Thomas Collins, for themselves.

Commission Staff: Lionel B. Wilson, Attorney at Law, and John Dutcher, Professional Engineer.

APPENDIX B

NOTICE OF DETERMINATION

TO: Secretary for Resources
 1416 Ninth Street, Room 1311
 Sacramento, CA 95814

County Clerk
 County of _____

FROM: (Lead Agency)
California Public Utilities
Commission
350 McAllister Street
San Francisco, CA 94102

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title Canada de la Segunda Pipeline and Begonia Iron Removal Plant	
State Clearinghouse Number (If submitted to State Clearinghouse) 76101351 (CPUC Case No. 9530)	
Contact Person Phillip E. Blecher, Executive Director	Telephone Number (415) 557-3938
Project Location Monterey County	
Project Description Order directing California-American Water Company to construct, operate, maintain, and use the Canada de la Segunda Pipeline and Begonia Iron Removal Plant Project in Monterey County, California.	

This is to advise that the California Public Utilities Commission
 (Lead Agency)
 has made the following determinations regarding the above-described project:

- The project has been approved by the Lead Agency.
 disapproved
- The project will have a significant effect on the environment.
 will not
- An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Negative Declaration is attached.
- A statement of overriding considerations is a part of the Lead Agency's decision approving the project.

Date Received for Filing

Signature
 Executive Director

Title

Date