

Decision No. 87715 AUG 16 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 Decision No. 86807 for appearances.)

Additional Appearances

Dinkelspiel, Pelavin, Steefel & Levitt, by David M. Wilson, for California-American Water Company, respondent.

Harold James Boudreau, for Monterey Peninsula Water Management Agency; and Jeffrey A. Dennis-Strathmeyer, Attorney at Law, for Lot Owners Without Benefit of Land or Water; interested parties.

TENTH INTERIM OPINION

Petitions for Modification of Decisions in Case No. 9530

The Board of Directors of the Monterey Peninsula Water Management Agency (WMA) at a public meeting held on April 13, 1977 by unanimous vote carried a motion to petition the Commission for modification of the water rationing plan established by the Eighth Interim Opinion herein, Decision No. 86987, for the Monterey

Peninsula District of California-American Water Company (Cal-Am). On May 11, 1977 WMA filed its petition, which asks the Commission to allow WMA to authorize, in addition to the per person allocation now prescribed for residential users, a basic household allocation of 50 gallons of water per day for single-family homes, with concomitant authority to withdraw the allocation if required. The petition also requests the deletion from the rationing plan of the restriction which prohibits all nonresidential outside watering except by gray water.

Earlier, on April 8, 1977, Lot Owners Without Benefit of Land or Water (Lot Owners)^{1/} had filed a petition requesting that the Seventh Interim Opinion herein, Decision No. 86807, be modified by eliminating from Ordering Paragraph 4 the condition that Los Padres Reservoir shall be filled to overflow as a condition precedent to acceptance of service applications from individual owners of residential lots by Cal-Am. On May 26, 1977, following the filing of WMA's petition, Lot Owners filed an amendment that correlated their petition with that of WMA.

Public hearings limited to the issues raised in the petitions were held before Administrative Law Judge James F. Haley in Seaside on April 13 and 14, 1977. The petitions were taken under submission on the latter date.

WMA's Petition

WMA points out that under this rationing plan each household has a basic water requirement that is not related to the number of residents in the home. According to WMA, large families

^{1/} Lot Owners Without Benefit of Land or Water is an unincorporated association organized by owners of lots zoned for single-residential use, service to which is effectively banned by the Commission's order. The association has 283 members.

are experiencing less difficulty with the rationing program than the smaller households. WMA states that a large number of personal hardship cases have been identified among single-occupant households under the present Phase 2, 50-gallon-per-person daily allocation and that these hardships would become intolerable if the rationing program were to enter one of its more restrictive phases. WMA proposes that the requested household allocation track any phase changes, e.g., in a Phase 3 situation the household allocation would drop to 44 gallons daily, the same as the per person allocation.

WMA estimates that, if each of the 18,600 single-family households served by Cal-Am's Monterey Peninsula District were to use the full 50-gallon proposed daily allowance, the additional system usage per day would be 2.85 acre feet. Experience since the rationing plan went into effect in February shows an average system usage of 20.10 acre feet per day. WMA uses this as a base figure to derive an estimated usage of 22.95 acre feet per day, which it compares to the present Cal-Am well production capability of 28.33 acre feet per day.

WMA also requests that the Commission delete from the rationing program Mandatory Nonresidential Restriction No. 1, which reads:

"All outside watering prohibited except by gray water or treated effluent (subject to health restrictions), except school and public agency athletic and play fields."

WMA contends that this restriction has produced the following undesirable results:

1. There has been a significant economic impact on the landscaping industry of the Monterey Peninsula.
2. Many commercial establishments such as office buildings have relatively small inside usages of water but they have extensive outside landscaping. According to WMA the restriction has resulted

in enforcing a 75 to 80 percent reduction for such establishments. This is considerably greater than the current overall percentage reduction of 20 percent otherwise provided for commercial establishments under the rationing program.

3. The prohibition against outside watering for nonresidential use is inconsistent in relation to the fact that golf courses and nurseries are specifically authorized to use water for outside irrigation.

4. The overall allocation of water for nonresidential use is based on a percentage reduction of last year's water consumption, which included outside watering. It was WMA's recommendation, in formulating the rationing plan, that outside watering by non-residential users be allowed to the extent permitted by their reduced allocation.

Lot Owners' Amended Petition

Lot Owners base their request for modification of Decision No. 86807 on substantially the following grounds:

1. The level of water in Los Padres Reservoir is not a valid measure of the availability of water on the Monterey Peninsula under present conditions, and its use as a condition for implementing modification of the ban on new service applications for lots zoned for single-family residential use is not justified.

2. The additional water requirement that would be imposed by granting Lot Owners' petition is insignificant when compared with the increased demand which would result from a granting of WMA's petition.

3. The ban should be modified immediately because the prerequisite condition has been satisfied, i.e., that, based on WMA's showing that the supply is adequate to meet significant additional demand, the modification could be instituted without jeopardizing the water supply to existing customers.

4. The ban has created a narrow and special class of persons who are being severely injured by being deprived of the use of their land. Lot Owners contend there can be no justification for continuing this deprivation when water service is being provided to both commercial and residential customers who are building new structures and expanding existing ones.

5. Lot Owners are suffering extreme personal and economic hardship and these hardships are becoming more aggravated with the passage of time. Lot Owners contend that simple equity requires that the Commission grant their request for relief.

Cal-Am's Position

Cal-Am stated at the outset of the hearings that it had assumed a neutral stand and that it would not take a position with respect to either petition. Instead, Cal-Am undertook to develop a factual record with respect to water supply and water requirements so as to permit the Commission to adjudicate the issues raised in the petitions.

Position of the Commission Staff

The Commission staff engineer testified that there is currently adequate capacity to provide the additional water requirement that would be imposed upon the system by a granting of the two petitions. He sounded the warning, however, that there is no assurance that the capacity will remain at an adequate level and that it might decrease far below that level.

The staff recommended that both petitions be granted, with the 50-gallon-per-day household allowance being limited to homes of four or fewer persons. The staff recommended that neither petition be approved if the Lot Owners' petition were denied. The basis for the latter recommendation is that approving a four plus acre feet

liberalization of the rationing program for existing customers but denying relief to Lot Owners would be inequitable in view of the small additional usage that relaxing the ban on service connections to Lot Owners would entail.

Discussion

Cal-Am introduced into evidence Exhibits 119 and 125 which show projected water availability and system use for the period June 1977 through May 1978, under the assumption of a minimum annual rainfall of eight inches occurring throughout the November to March wet season. Cal-Am's figures indicate that with three new wells coming into production during the remainder of this year, the system could probably sustain an increase in usage of 4.5 acre feet per day over the estimated usage under the present rationing program throughout the next 12 months. This 4.5 acre feet per day figure closely approximates the sum total of the estimated increased daily requirements of the 2.85 acre feet^{2/} from the proposed 50-gallon daily household allowance and the 1.75 acre feet from the deletion of Nonresidential Restriction No. 1.

Unfortunately, we are not at all assured that the forthcoming wet season will produce an eight-inch rainfall. Moreover, there is, in this record, the convincing testimony of Mr. John Logan, an engineering geologist who is a highly qualified expert on the local water supply. The thrust of his testimony, which must be given considerable weight, is that the water supply of the

^{2/} The 2.85 acre feet per day figure is a "worst case" number derived by multiplying the total number of single-family homes (18,600) by 50 gallons. There is no likelihood that all of the homes would increase their usage by 50 gallons per day if the proposed increased allocation were authorized.

Monterey Peninsula would be jeopardized and imperiled through over-pumping by a granting of WMA's petition. He recommends an increased allocation of 25 gallons per day for households of one resident, with no increase for those having more than one resident.

The record presents another significant problem with respect to granting WMA's petition. The estimate of 1.75 acre feet per day increased usage from deleting Nonresidential Restriction No. 1 is virtually an unsupported figure. It was derived in Lot Owners' Exhibit 121 by multiplying 11,400 customers by 50 gallons per day. While this figure was not directly contested, the record does not support it. None of the other parties--Cal-Am, WMA, or the Commission staff were able to quantify the effect of deleting the restriction. The increase could conceivably be considerably greater than 1.75 acre feet per day.

We do not find in this record the assurances necessary for us to grant the full request of WMA. We will authorize an increase of 25 gallons per day for single-family households of one person. At this time we are not able to authorize an increase in allocation for households of more than one person. Nor are we able, based on this record, to delete from the rationing program Nonresidential Restriction No. 1. We would recommend to WMA that, for the time being, it utilize the variance procedure of the rationing program for alleviating extreme circumstances where significant loss of investment would otherwise be sustained by commercial establishments not having a supply of gray water.

As to the Lot Owners' petition, the record shows that the additional usage which would be imposed upon the system by a granting of their petition would be de minimis. There are approximately 1,500 vacant lots of record. Assuming a build-out rate of ten percent

per year and an average completion time of six months, the increased water usage during this year would be significantly less than 0.1 acre foot per day. All facets of the situation as it now exists being considered, it is not conceivable that a granting of Lot Owners' petition would perceptibly affect present water users.

Findings

1. Undue hardship is being imposed upon single persons living alone by the 50-gallon-per-day allocation for such households.
2. The water supply of Cal-Am's Monterey Peninsula District has not been demonstrated to be capable of safely sustaining a granting of the request of WMA beyond the authorization of an increase of 25 gallons per day for households of one person.
3. The small increase in water usage which would result this year from a granting of Lot Owners' petition would have no significant effect on present users.

TENTH INTERIM ORDER

IT IS ORDERED that:

1. California-American Water Company shall, within ten days after the effective date hereof, file a modification to its Rule 11-A to reflect an increased allocation of 25 gallons of water per day for Phases 1, 2, 3, and 4 for single-family households where only one person resides. In all other respects Rule 11-A shall remain unchanged.

2. The phrase "commencing at such time as Los Padres Reservoir shall be filled to overflow" is deleted from Ordering Paragraph 4 of Decision No. 86807.

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

Dated at San Francisco, California, this 16th day of AUGUST, 1977.

Robert Bateman
President
William A. ...
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Commissioners