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APR 21 1977

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Estate of)
 Miriam E. Conlin (Executor)
 Danny Conlin), an Individual)
 Proprietorship doing business)
 as Conlin-Strawberry Water)
 Co., for authority to extend)
 water service to include that)
 portion of Tract 39 south of)
 the South Fork of the)
 Stanislaus River, a contiguous)
 area, and to Establish Rates)
 for Water Services to this)
 area, approximately 30 miles)
 East of the City of Sonora,)
 County of Tuolumne, State of)
 California.)

Application No. 57139
(Filed March 10, 1977)

Gary L. Ashton, Attorney at Law, for Conlin-
 Strawberry Water Co., applicant.
Fred H. Aulwurm, for the Department of Fish
 and Game, and James R. Jones, for himself,
 interested parties.
James T. Quinn, Attorney at Law, for the
 Commission staff.

O P I N I O N

By this application Danny Conlin as Executor of the Estate of Miriam E. Conlin, an individual proprietorship doing business as Conlin-Strawberry Water Co., seeks authority to provide water service to that portion of Tract 39 which is south of the South Fork of the Stanislaus River, an area which is contiguous to its present service area. Applicant also requested that the restriction contained in Ordering Paragraph 7 of Decision No. 66037 dated September 17, 1963 in Application No. 44688 be removed. The additional area applicant seeks authority to serve consists of approximately 122 acres with an estimated maximum of 50 building lots.

After due notice public hearings in this matter were held before Administrative Law Judge Tomita on August 22 and 23, 1977 at Sonora. The matter was submitted subject to receipt of two late-filed exhibits. The final late-filed exhibit relating to applicant's water rights was received on July 8, 1980. The matter is now ready for decision.

Background

Applicant was granted a certificate of public convenience and necessity to operate a public utility water system in an area of Tuolumne County by Decision No. 66037 dated September 17, 1963. Ordering Paragraph 7 of the decision restricted applicant from extending service outside of the certificated area without further authorization of the Commission. The certificated area known as the Conlin and Strawberry subdivisions had been receiving water service for more than 60 years from a system constructed by applicant's predecessors in interest and therefore was old and did not comply with the Commission's General Order No. 103 regarding construction materials and water pressures at which water was supplied to customers.

On October 11, 1968 applicant filed Application No. 50608 requesting authority to extend its water system to a noncontiguous area of approximately 155 acres, the nearest point of which is located 1.3 miles from the initial service area. The Commission authorized applicant's request subject to the developer's contributing back-up facilities totaling \$42,330, which was subsequently increased to \$50,995.87 by Decision No. 84368. Applicant testified that of the 272 lots in this area only 23 homes had been built as of August 1977.

Although applicant has no firm timetable for development of the area, it seeks to have the restriction contained in Ordering Paragraph 7 of Decision No. 66037 dated September 17, 1963 against

further expansion without Commission authorization lifted in order that it may serve the area without undue delay when the area is ready for development. Of the total 122 acres of additional service area sought, 114 acres are owned by Danny Conlin and the remainder by third parties. Before the area can be developed environmental approval would have to be obtained from the County Planning Commission. In connection with the environment, the staff comments that development of the proposed area will result in an increase in the value of nearby parcels and acreage not owned by the Forest Service as homes are built and that it is anticipated that little or nothing of historical or aesthetic value will be destroyed although some trees will be harvested.

Staff Position

The staff witness testified that applicant has an adequate supply of water and storage facilities and recommended that applicant be authorized to extend service into Tract 39 and to install the facilities necessary to provide services; that applicant be required to install at least 252,000 gallons of storage facilities; that applicant place the two new wells rated at 25 and 40 gallons per minute into service; and, finally, that the restriction contained in Ordering Paragraph 7 of Decision No. 66037 be lifted. The staff witness further recommended that an interim order be issued granting applicant authority to serve the requested service area which would be made final when an Environmental Impact Report (EIR) is approved by the County Planning Commission.

The staff introduced, as an exhibit, a letter from the acting district ranger of the U.S. Forest Service indicating that the Herring Creek Reservoir upon which applicant chiefly relies on for its water source is managed to support recreation, timber harvesting, livestock grazing, fish and wildlife resources, and not as a domestic water supply reservoir. The U.S. Forest Service letter recommended that since the water company is dependent upon the reservoir management of

an entity it does not control, it may be to the water company's advantage to have an adequate alternate supply source should the Forest Service management practices not coincide with the needs of the water company. The Forest Service in its letter further states that the Special Use Permit issued to applicant is only for occupancy or use of National Forest lands and no rights to the beneficial use of water should be construed from such permit.

Department of Fish and Game

The Department of Fish and Game's concern relates to the maintenance of stream flow for aquatic life below applicant's diversion on Herring Creek. It recommended the development of alternative sources of water if the service area for applicant is expanded.

Discussion

Although applicant seeks authorization to extend services outside of the area now served, the record indicates that there is no definite plan for development of such service area, nor any pressing plans for such development in the period subsequent to the hearings on August 22 and 23, 1977, as indicated by the delays requested to file late-filed Exhibit 6.

Applicant also requests that the restriction contained in Ordering Paragraph 7 of Decision No. 66037 permitting no extensions without prior Commission authorization be removed. Applicant requested at the hearing on August 23, 1977 that it be permitted to file, as a late-filed exhibit, any documents available in its former attorney's (Mr. Hardin, Jr.) files relating to its water rights. After several extensions for filing, applicant filed on July 10, 1980 a copy of a mini-memo from the Department of Water Resources indicating that it has no record of the rights claimed, that it is likely that a right could be supported to the extent of past use, and that the only way anyone would ever know with certainty is to obtain a court decree defining the various rights.

While we are aware that the staff had no objections to granting applicant's request to extend service outside of its present service area or to the request to remove the restrictions for extending service without Commission authorization, we are not convinced that applicant has made an adequate showing to grant the authorization requested. It appears that applicant's request is premature in that no definite plan for development has been formulated; therefore, no strong showing of public convenience and necessity has been made. Furthermore, since applicant must obtain environmental approval from the county prior to construction of a project, a filing of an application after plans have been developed should not result in any undue delay in the processing of an application for extension of service area absent any water supply problems. We also note from the staff exhibit that the U.S. Forest Service appears to have some concern with regard to ownership or rights to take water from Herring Creek; the staff recommends that these concerns should be resolved between applicant and the U.S. Forest Service.

Finding of Fact

1. There is no timetable for development of the area and parcels in question.
2. Applicant's request is premature and applicant has not justified its request to extend service into Tract 39 to remove the restrictions set forth in Ordering Paragraph 7 of Decision No. 66037.

Conclusion of Law

- Application No. 57139 should be denied without prejudice to refiling when definite plans for actual development are known.

O R D E R

without prejudice ✓
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IT IS ORDERED that Application No. 57139 is denied.

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

APR 21 1981

Dated _____, at San Francisco, California.

John E. Canyon
President

Richard D. ...

Leonard ...

Robert ...

Priscilla C. ...
Commissioners