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Decision 95-07-018 July 19, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and Investigation on the Commission's own motion of tariff filed by Advice Letter No. 938-W of Southern California Water Company, Santa Maria District, in San Luis Obispo County and Santa Barbara County.

ORIGINAL

O'Melveny & Meyers, by Patricia A. Schmiege, Attorney at Law, and Floyd Wicks and Daniel A. Dell'Osa, for Southern California Water Company, respondent. Jon S. Seitz, Attorney at Law, for Nipomo Community Services District, protestant. Peter Fairchild, Attorney at Law, for the Division of Ratepayer Advocates.

OPINION

1. Summary of Decision

This decision authorizes Southern California Water Company (SCWC) to extend the service territory of its Santa Maria District to serve up to 88 new customers. The protest of Nipomo Community Services District (NCSO) is denied, and SCWC's proposal to serve 19 customers in the Mesa Royale development is approved.

2. Background

On June 23, 1994, under Advice Letter 938-W, SCWC filed tariff sheets to extend the existing service areas of the Orcutt and Vista systems, both of which are within its Santa Maria District. The Orcutt system is located in Santa Barbara County, and a small portion is within the City of Santa Maria. The Vista system is located in the Nipomo Mesa area of San Luis Obispo County. SCWC proposed the extensions to serve housing developments for which developers had requested service. Two developments, Mesa Verde and Oak Glen, are contiguous to the Orcutt system.

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development known as Lauringson Enterprises is contiguous to the Vista system. The Mesa Royale development assertedly is.

NCSO and Division of Ratepayer Advocates (DRA) protested the advice letter filing. NCSO alleged that the proposed extension of the Vista system is within its sphere of influence as determined by the San Luis Obispo County (Local Agency Formation Commission (LAFCO)) and that LAFCO prefers that NCSO, not SCWC, serve this area. NCSO's concern is in the area of Nipomo bound on the west by Tefft Street, on the north by Orchard Road, on the east by Division Street, and on the south by Hazel Lane. This area encompasses the Mesa Royale development.

The advice letter indicated a water deficiency in each system at full build-out. SCWC explained that the deficiencies would be met by additional wells, and noted that it had an entitlement to purchased water from the State Water Project and was negotiating to participate in the Coastal Aqueduct Project. DRA contended that the addition of new wells to an overdrafted groundwater basin would exacerbate a bad situation. DRA further contended that the availability of State Water Project water was questionable since Decision (D.) 93-03-066 and D.93-07-018 denied SCWC authority to participate in the Coastal Aqueduct Project. DRA recommended that Advice Letter 938-W be rejected, and that the requested service area extensions be addressed only after the utility identifies an acceptable source of supply for full build-out.

In response to the protests, the Commission concluded that the effective date of the tariff sheets should be postponed, pending investigation, hearing, and decision. It instituted this investigation to determine whether the tariff sheets filed by SCWC under Advice Letter 938-W are unreasonable or unlawful, and to issue any order or orders in the exercise of its jurisdiction in the matter. In accordance with Public Utilities Code § 455, the tariffs filed under Advice Letter 938-W were suspended until

January 30, 1995 or further Commission order. By D.95-01a-009 dated January 5, 1995, the Commission further suspended the tariffs for a period of up to six months beyond January 30, 1995.

The parties are SCWC, NCS, and DRA. Prehearing conferences were convened in San Francisco on September 29 and October 20, 1994. Telephonic conferences were held on November 17 and November 30, 1994. Two days of hearings were held before the Administrative Law Judge (ALJ) Wetzell on February 7 and 8, 1995. The matter was submitted April 21, 1995 with the filing of concurrent reply briefs. No comments on the ALJ's proposed decision were received. We confirm and adopt its findings and opinion and order as follows:

NCS confirmed at hearing that its opposition to the Vista System extension does not involve the Lauringson Enterprises development. NCS's only objection is to the Mesa Royale extension. DRA's protest is limited to water supply issues. DRA takes no position on the Mesa Royale extension.

3. Adequacy of Supply  
SCWC presented testimony updating their advice letter filing. SCWC's request to extend the service area of the Orcutt System now involves a projected 60 new customers in phases 5-7 of the Mesa Verde development (41 acres divided into 60 lots). This is a reduction from the 120 customers projected in the advice letter. The projection of 28 new customers in the Vista System (11 acres divided into 9 lots for Lauringson Enterprises and 21 acres divided into 19 lots for Mesa Royale) is unchanged from the advice letter.

SCWC reduced the scope of the proposed extension of the Orcutt System to reflect (1) deletion of the Oak Glen housing development due to inactivity of the developer and (2) redesignation of Phases 1-4 of the Mesa Verde development from "Service Area Added by the Filing of This Map" to "Existing Service Area." After submitting the advice letter, SCWC determined that Phases 1-4 of the Mesa Verde development are already part of the

Orcutt System. As revised, the proposed extension encompasses Phases 5 & 7 of the Mesa Verde development.

Based on reduced estimates of vacant or unserved lots in both of the existing systems, an increase in estimated available supply, and the reduced scope of the Orcutt System extension, SCWC revised the supply forecasts that were submitted with the advice letter. As described below, SCWC now projects water surpluses in each system. SCWC concludes that it has sufficient water to serve the proposed service area extensions. Based on its forecasts through the year 2010, SCWC believes there is no change in need to purchase state water to meet demands in the Santa Maria area, regardless of the impact of groundwater management plans under consideration for the Santa Maria Basin.

SCWC's total supply available to meet maximum day demand in the Orcutt System is presently 14,600 gallons per minute (gpm) without participation in the Coastal Aqueduct Project. This amount is obtained exclusively from 15 wells and from storage in SCWC projects that at full build-out, including the proposed extension, the Orcutt System will have 11,915 customers. The required supply for 11,915 customers is 14,298 gpm. Thus, there is an excess supply of 302 gpm. Additionally, SCWC notes, the proposed addition of 60 customers accounts for 72 gpm, or 0.5% of total maximum day demand. SCWC considers this to be an insignificant increase in demand. SCWC concludes that there is an adequate supply of water with adequate fire flow to meet the requirements of all existing customers, the anticipated growth in the system at full build-out, and the fully developed Mesa Verde subdivision.

SCWC's total supply available to meet maximum day demand in the Vista System is obtained exclusively from 7 wells and from storage, is 2,060 gpm. SCWC projects that at full build-out, including the proposed extensions, the Vista System will have 1,545 customers. The supply required for 1,545 customers is 1,854 gpm. Thus, there is an excess supply of 206 gpm in the Vista System.

Phases 1-4 of the Mesa Verde development are already part of the

The proposed addition of 28 customers' accounts for 34 gpm of the 1,854 gpm demand. As with the Orcutt System, SCWC considers this 1.8% increase in total maximum day demand to be insignificant.

SCWC concludes that there is an adequate supply of water for the Vista System with adequate fire flow to meet the requirements of all existing customers, the anticipated growth in the system at full build-out and the fully developed Lauringson Enterprises and Mesa Royale subdivisions.

SCWC's uncontested testimony regarding the projected supply of and demand for water in the Orcutt and Vista Systems demonstrates that it has sufficient supplies to serve the proposed service area extensions without the need for new wells or DRA participation in the Coastal Aqueduct Project. Moreover, SCWC's testimony affirms that the proposed extensions will not increase rates or charges or cause the withdrawal of service. DRA appears to agree that SCWC has enough water to serve the reduced size Orcutt extension and it explicitly concurs that SCWC has sufficient water to serve Lauringson Enterprises. As noted, DRA takes no position with respect to the contested Mesa Royale extension.

We conclude that the supply issues raised by DRA in its protest have been resolved by SCWC's testimony. We will approve SCWC's uncontested proposals to extend the Orcutt System to serve Phase 5-7 of the Mesa Verde subdivision and to extend the Vista System to serve Lauringson Enterprises. We address SCWC's proposal to serve the Mesa Royale development in the following section.

However, our finding that SCWC has adequate supply to serve the proposed extensions applies to this portion of the Vista extension as well.

**4. Mesa Royale Extension**

**4.1 SCWC's Position**

SCWC contends that the Commission should not deny its proposed extension on the ground that the annexation of the 19-lot

(Footnote continues on next page)

Mesa Royale development to NCS D. may someday occur. SCWC contends that annexation to NCS D is speculative. As a demand for service, SCWC is currently providing water service to several lots in the Mesa Royale development. The developer approached SCWC in 1989 with a request for service. SCWC honored the request, believing that as a public utility it had an obligation to serve those customers. The developer invested about \$80,000 for the installation of distribution pipelines to serve the area. SCWC will reimburse the developer over a forty-year period under the Commission's Rule 15. SCWC has reimbursed the developer \$8,677,400 to date.

**4.2 NCS D's Position**

NCS D is a public agency which provides water, sewer, drainage and lighting services in the Nipomo area of San Luis Obispo County. NCS D's current water service area is adjacent to but does not include the disputed Mesa Royale area. Its sphere of influence<sup>1</sup> as determined by the LAFCO fully encompasses the disputed area, and in fact encompasses a significant portion of the currently authorized Vista System.

NCS D expects that the Mesa Royale development will be annexed to NCS D at some time in the future. Several property owners have written to LAFCO to express their approval of annexation to NCS D. SCWC provides only water service but NCS D

Phase 2-V of the Mesa Verde subdivision and to extend the Vista System to serve the proposed extension.

<sup>1</sup> NCS D's witness explained that its sphere of influence establishes the boundaries for determining which agency should ultimately provide services to the designated area.

<sup>2</sup> NCS D submitted a declaration with its brief purporting to show that after the hearings, residents of the proposed Vista System extension filed annexation petitions with LAFCO. However, the first of two attachments to the declaration appears to be a copy of an undated petition (although an accompanying "Environmental

proposed extension on the ground that the annexation of the 19-lot (Footnote continues on next page)

provides both water and sewer service. Since NCSD has a policy of not providing sewer/water service alone, the property owners prefer annexation to NCSD so that they can obtain sewer as well as water service. This will allow them to subdivide their properties.

According to NCSD, allowing SCWC to extend its Vista System to serve the Mesa Royale development is not in the best interest of the residents of the area because they are seeking annexation to NCSD. Additionally, NCSD and LAFCO object to the proposed Vista System extension to the area because the affected residents negotiated the purchase of SCWC.

If the Vista System extension is approved, NCSD is concerned that when the expected annexation occurs, it will have to condemn and pay just compensation to SCWC for the affected area.

Just compensation could include loss of future profits, and the owners might have to negotiate a buyout of SCWC's interest at a greater than the present fair market value without Commission to

of the development. The Mesa Royale development will not be authorized until it is also outside of SCWC's service area as reflected in the map on file with the Commission, yet SCWC is actually providing water service to approximately 10 customers within the development. In such disputes the Commission weighs the potential

alternatives in terms of service quality and economic. (Footnote continued from previous page) Assessment Form is dated January 17, 1995 and one of three annexation approval notices is dated January 19, 1995 by property owners for annexation to NCSD of three parcels near Hazel Lane and Tefft Street which are not within the proposed Vista System extension. The second attachment is a copy of a March 7, 1995 letter to LAFCO from a civil engineering firm which appears to have transmitted copies of two maps of a proposed annexation to NCSD and copies of petitions for annexation by area property owners. The second attachment to the declaration includes copies of two maps which indicate a proposal to annex the disputed area to NCSD, but it does not include copies of the referenced petitions for annexation. Neither attachment to the declaration shows that a formal petition or application for annexation of the Mesa Royale development to NCSD has been submitted to LAFCO. Under the circumstances we can give no weight to the declaration or either of its attachments.

approval of the extension. NCSO is also concerned that public sewer service will not be available if SCWC is the ultimate water purveyor. SCWC stipulated that if the proposed Vista System extension is either denied or approved on an interim basis only, it would continue to serve affected Mesa Royale customers (unless otherwise ordered) until NCSO provides water service. Noting this, NCSO proposes to maintain the status quo for an 18-month period while the affected residents negotiate the purchase of SCWC's interest in improvements at their current market value.

4.3 Discussion

This is a dispute over which water purveyor, a public agency, should serve the Mesa Royale development. The development is within NCSO's sphere of influence, but NCSO lacks authority to serve the development and will not do so until authorized. The Mesa Royale development is also outside of SCWC's service area as reflected in the tariff map on file with this Commission, yet SCWC is actually providing water service to approximately 10 customers within the development.

In such disputes the Commission weighs the potential alternatives in terms of service quality and economics. A publicly-owned system is not entitled to any preference, and its service is not presumed to be superior even if the disputed area is within its sphere of influence as defined by a LAPCO. (Great Oaks Water Company (City of San Jose) (1991) 39 CPUC 2d 339, 344 citing Cal. Water Service (City of Bakersfield) (1986) 20 CPUC 2d 643.) Several criteria for weighing the alternatives have been established and refined over the years: managerial ability, financial capability, adequacy of supply, water quality and environmental factors, proximity and natural service territory, rates and economic efficiency, adequacy and costs of planned extension, benefits of extension to existing customers, preference.



of developer, and first to file (utility vs. utility proceedings only) as Id.

In this case, the parties generally do not question each other's water supply or quality, or financial or managerial ability to provide water service. Neither party has claimed that its existing customers will benefit from its serving the disputed area or that its water system is the more logical or natural provider in terms of system configuration or proximity. Neither purveyor claims that its rates are lower. Although the developer originally contacted SCWC with a request for service and entered into a Rule 15 agreement, it now favors annexation and presumably service by NCSD. But even the "developer preference" criterion provides little basis for resolution of this case. The developer's preference for NCSD came about years after it successfully approached SCWC for service. And while the Mesa Royale developer and some other property owners in or near the Mesa Royale development approve annexation to NCSD, it has not been established that all owners do. SCWC's witness understood that not all property owners were in favor of annexation. As discussed below, the one criterion that comes most into play is adequacy and cost of the planned extension to SCWC.

This record provides little basis for deciding this case on the above-described criteria. Moreover, while a decision in favor of NCSD might appear to result in availability of sewer service which would in turn allow owners of one-acre lots to subdivide their properties to four lots per acre, this Commission is not responsible for local land use decisions such as the density of development. Our decision cannot turn on whether a particular land use policy will be favored thereby. In any event, our decision cannot prevent the availability of sewer service at most it might impact the cost of annexation to NCSD if it occurs. Finally, our resolution of the case cannot turn on the premise that, in the event of annexation and condemnation, just

compensation will result in unreasonably high costs to the level of condemnor. Accordingly, we decide the question essentially as it was framed by the parties: if annexation of the Mesa Royale development to NCSD is imminent, we should defer to the request of NCSD to maintain the status quo until annexation is accomplished; or otherwise, we should approve SCWC's request. If there is clearly substantial interest in annexation to NCSD among several property owners and/or residents in or near the Mesa Royale development. However, that interest has not matured into the form of a formal petition or application to LAFCO for annexation, and there is no assurance that a request will be filed. Once a request is submitted, there is an extensive evaluation process, and there is no foregone conclusion that it will be granted. The timing of any grant that might be forthcoming cannot be predicted with certainty. Approval of an earlier annexation application before LAFCO took three years. If approval for an annexation is secured from LAFCO, NCSD's board must also approve any annexation. Again, NCSD board approval is not a foregone conclusion. Assuming it is obtained, the property owners must then agree to pay significant fees and other costs of annexation which would include compensation to SCWC. All of these factors make the possibility and timing of annexation quite uncertain.

During hearings, NCSD questioned whether the Mesa Royale development is contiguous to the Vista System. As shown in the company's currently-filed and proposed service area maps, its current service area in the vicinity of the proposed extension is bounded on the north by Hazel Lane. SCWC provides service to customers on the north side of Hazel Lane, and their property extends a thousand feet further north of Hazel Lane. As shown by SCWC's testimony, its present service area includes the properties of those customers, which in turn are adjacent to the Mesa Royale development. We find that the Mesa Royale development is contiguous to SCWC's current service territory.

We conclude that NCS is not capable of providing water service to the Mesa Royale development at present time nor will it be for an indefinite period. SCWC on the other hand is ready, willing, and able to provide water service and in fact is doing so to approximately 10 lots. Due to the degree of uncertainty regarding whether and when NCS might annex the Mesa Royale development, an interim order maintaining the status quo and providing more time to perfect the annexation process is warranted in our opinion. SCWC has been serving the contiguous Mesa Royale development since 1989. Its proposal to file a revised service area map which includes this development will be approved.

5. Reinstatement of Service Area

SCWC has discovered that the service area it now seeks to add to the Orcutt System was formerly part of its authorized service territory. As shown in Exhibit 8, when SCWC acquired California Cities Water Company (Cal Cities) in 1978, the proposed extension of the Orcutt System was fully within Cal Cities authorized service area. In 1984, SCWC filed Advice Letter 676-W with a map showing only that portion of the Orcutt System to which SCWC was then delivering water. It thereby erroneously deleted the exact area to which it now proposes to extend service.

DRA recommends that the proposed Orcutt System extension be declared moot. SCWC points out, however, that the service area map now on file with the Commission does not show the proposed extension to be within its service area. Thus, as a procedural matter, SCWC requests that it be allowed to file a new tariff map. We will grant this request.

Findings of Fact

As revised, SCWC's request to extend the service area of its Santa Maria District involves 60 new customers in the Orcutt System and 28 new customers in the Vista System.

2. SCWC deleted its request to serve the Oak Glen housing development due to inactivity of the developer.

3. Phases 1 & 4 of the Mesa Verde development are already part of the Orcutt System...

4. The proposed extension of the Orcutt System encompasses Phases 5-7 of the Mesa Verde development...

5. At full build-out including the proposed extensions, the Orcutt System will have 11,915 customers and the Vista System will have 1,545 customers...

6. SCWC has estimated excess supplies of 302 gpm in the Orcutt System and 206 gpm in the Vista System to meet maximum day demands at full build-out including the proposed extensions...

7. There are adequate supplies of water with adequate fire flow, to meet the requirements of all existing customers and anticipated growth in the Orcutt and Vista systems at full build-out, and the fully developed extensions of those systems...

8. Based on its forecasts through the year 2010, SCWC believes there is no chance it will need to purchase state water to meet demands in the Santa Maria area, regardless of the impact of existing groundwater management plans under consideration for the Santa Maria Basin...

9. SCWC asserts that the proposed service area extensions will not increase rates or charges or cause the withdrawal of service...

10. The water supply issues raised by DRA in its protest have been resolved by revised water supply analyses presented by SCWC...

11. The Mesa Royale development is within NCSD's sphere of influence but outside of NCSD's authorized service area...

12. NCSD will not serve the Mesa Royale development until it is authorized to do so.

13. The Mesa Royale developer and other property owners in or near the Mesa Royale development approve annexation to NCSD, but it has not been established that all property owners seek for approval...

14. NCSD is not presently capable of providing water service to the Mesa Royale development, and whether and when it will be is uncertain due to the number of events which must occur before the Mesa Royale development is annexed to NCSD.

15. The Mesa Royale development is outside of SCWC's service area as reflected in the tariff map on file with this Commission, but it is contiguous to the current service area and

16. SCWC is ready, willing, and able to provide water service to the Mesa Royale development and is doing so to approximately 10 lots.

17. The service area extension proposed to serve Phases 5-7 of the Mesa Verde development was acquired by SCWC in 1978, and was inadvertently deleted from the map of the Santa Maria District, Orcutt System, which accompanied Advice Letter 676-W, Sheet 2708-W in 1984.

#### Conclusions of Law

1. SCWC's request to file revised service area maps of its Orcutt System to reinstate that portion of the Mesa Verde development that was deleted in 1984, and of its Vista System to serve Lauringson Enterprises, should be approved.

2. Since annexation of the Mesa Royale development to NCSD is uncertain, and SCWC is capable of serving the development now, we should approve SCWC's request to file a revised service area map which includes the Mesa Royale development.

3. Since SCWC revised its proposed Orcutt System extension after filing Advice Letter 938-W, Tariff Sheet 3800-W which was filed under the advice letter should be rejected in favor of the tariff sheet set forth in Exhibit 1 under Tab B.

4. This decision resolves all issues in this proceeding, and the investigation should be closed.

5. Since the suspension of Advice Letter 938-W expires six months after January 30, 1995, this order should be made effective on the date it is signed.

... is not present... to the Mesa Royale development, and whether and when it will be... **IT IS ORDERED that:**

1. Tariff Sheet 3800W filed by Southern California Water Service Company (SCWC) under Advice Letter 938-W is rejected.

2. SCWC is authorized to file revised tariff sheets incorporating the proposed service area extensions set forth in Exhibit 1, Tab B and C. Such filings shall comply with General

Order 96-Aix as to the Mesa Royale development and is doing so to approximately

3. This investigation is closed.

This order is effective today. The service area of the... of the Vista System, which accompanied Advice Letter 68-W, Sheet 2708-W, inadvertently deleted from the map of the Santa Maria District, and was dated July 19, 1995 at San Francisco, California.

DANIEL Wm. FESSLER  
President

P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.

HENRY M. DUQUE  
Commissioners

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

*Wesley Franklin*  
Acting Executive Director

3. Since SCWC revised its request to file a revised service area map after filing Advice Letter 938-W, which includes the Mesa Royale development, and SCWC is capable of service now, we should approve SCWC's request to file a revised service area map which includes the Mesa Royale development, and SCWC is capable of service now, should be approved.

4. This decision resolves all issues in this proceeding, and the investigation should be closed.

5. Since the suspension of Advice Letter 938-W expires six months after January 30, 1995, this order should be made effective on the date it is signed.