

Decision 96-10-009 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority under Public Utilities Code Section 851 to Enter Into a Stipulated Judgment That Will Encumber Water Rights in the Mojave River Basin. Application 96-03-015 Filed March 6, 1996

OPINION

Summary

The long overdrafted Mojave River Basin is being adjudicated as to user water rights pursuant to a Stipulated Judgment adopted by the Riverside County Superior Court. That Judgment will progressively diminish allowances for all users over a period of years until a balance is achieved. If Southern California Edison Company (Edison) does not join the Stipulation, the Court may impose its provisions upon Edison. By this decision, to avoid further litigation Edison is authorized to enter the Stipulation for Entry of Judgment.

Statement of Facts

Edison is an investor-owned public utility engaged in the business of generating, transmitting, and distributing electric energy in portions of central and southern California.

Edison owns and operates four electricity generating units - two conventional boiler/steam turbines burning gas or fuel oil, and two gas turbines - on an Edison-owned 2,400-acre property known as the Cool Water Ranch just north of Highway 40 adjacent to the towns of Daggett, about 10 miles east of Barstow in San Bernardino County. The Edison Cool Water Ranch operation also includes a central receiver solar generating facility. In addition, Edison leases part of the property to Daggett Leasing,

Inc., which owns and operates two solar generating facilities on the Edison Ranch property. The open areas surrounding the generating facilities are leased to a farmer who grows alfalfa on the land. All water used on the ranch property is pumped from wells on site. The Edison property is situated in the Mojave River Basin. The Mojave River's source is in the San Bernardino Mountains where tributaries join at "The Forks" to form the river. The river then flows in a generally northeasterly direction through Victorville and Helendale, past Barstow to Afton, and thence to its termination in the Soda Lake area. Except during storm periods the flow is largely underground for much of its lower length. The flow is sequentially through five Basin subareas, with the outflow from one subarea the in-flow to the downstream subarea. The Edison facilities are located in the Baja Subarea, the furthest downstream of the five subareas. The Mojave River Basin, with a history of periodic water supply shortages, has long been in a state of overdraft with resources insufficient to meet the expanding needs of the communities, agriculture, and industry in the Basin. The Edison Cool Water generating station and other facilities, including the alfalfa farming on the Ranch, comprise the ninth largest water user in the Basin. In 1959 the Legislature created the Mojave Water Agency (MWA) with broad powers to ensure that sufficient water would be available in the MWA's 4,800-square mile jurisdiction. MWA also has a contractual entitlement to 50,800 acre feet (AF) annually of State Water Project water.

Edison owns and operates four electricity generating units - two conventional boiler steam turbines burning gas or oil, and two gas turbines - on an Edison-owned 8,400-acre property known as the Cool Water Ranch just north of Highway 40. Edison has filed Application 95-105020 seeking Commission authorization in part, for Edison to sell to Daggett Leasing, the property it presently leases to Daggett. The proposed sale affects the usage and charge for water, but does not otherwise relate to the magnitude of Edison's water rights or the relief requested herein. The Commission approved the sale in D.96-07-047.

Over the years since 1966 MWA has initiated legal actions against some of the larger users with the objective of adjudicating water rights. However, as costs rose and consensus faded, the suit was dismissed. In May of 1996, the City of Barstow, joined by Southern California Water Company, seeing their water supply diminishing and unable to get MWA to exercise its State Water Project rights, filed suit in Superior Court against 150 upstream users and MWA, seeking a guaranteed annual flow to Barstow. In turn MWA cross-complained, seeking to expand the action into a comprehensive adjudication of all water rights in the entire Basin. Named in the cross complainant were all entities that annually pumped over 10 AF of water. Edison was included as one of the over 2,000 defendants in the proceeding.

In 1991, an Adjudication Committee was formed from amongst the litigants. Edison participated on this Committee. The Committee drafted a Stipulated Judgment, which a majority of the litigants signed before submitting the Stipulated Judgment to the Superior Court for approval in September 1993. On an interim basis the Court implemented the Stipulated Judgment. In February 1995 the Court proceeded with a trial to address issues raised by the minority of those not supporting the Stipulated Judgment. On January 2, 1996, the Court issued a Statement of Decision which in essence agreed with the Stipulated Judgment. The Court's Judgment issued on January 10, 1996 adopted the Stipulated Judgment in all material respects.

As a physical solution to achieve an approximate safe annual level of water extraction for the Basin, the stipulated Judgment, in brief would:

- 1. Calculate a Base Annual Production amount (an initial water allocation) for each extractor of over 10 AF of water per year;
- 2. Establish an annual Free Production Allowance (an annual water allocation) for each party, based on the Base Annual Production amount. This allowance would be

- 3. Establish a mechanism to ensure upstream water users provide a historic flow of water to downstream users;
- 4. Impose fees on users to cover administrative expenses, protect biologic resources, and purchase additional water for importation into the Basin if a user uses more than its Free Production Allowance;
- 5. Appoint the MWA to act as the Watermaster for the Basin; and
- 6. Allow for the transfer of Free Production Allowances.

The provisions of the Stipulated Judgment will reduce the amount of water that would be available at no cost for Edison, as well as for all other users in the Basin. But the five-year gradual reduction in the Free Production Allowance will allow Edison to plan for the reduced supply. Edison anticipates that the Free Production Allowance by about year 2003 will be insufficient to

2. Water at Edison's Cool Water Ranch is used for both industrial and agricultural purposes. Based on the largest annual use between 1986 and 1990, MWA determined that Edison's Base Annual Production amount was 10,423 AF. This divides 4,565 AF industrial and 5,858 AF agricultural. These amounts will be Edison's Free Production Allowance for the first year under the Stipulated Judgment.

At the end of five years, Edison's annual Free Production Allowance would reduce to 8,338 AF (3,652 AF industrial and 4,686 AF agricultural). And it is likely that Edison's allocation will be reduced further after the end of five years, because the Baja Subarea is calculated as experiencing a greater overdraft than can be alleviated in only five years. However, water may be transferred under the Stipulated Judgment from agricultural to industrial use, but conversion requires a 50% reduction to the agricultural quantity. Between 1986 and 1994, the average annual industrial use at Edison's Ranch was 2,735 AF.

cover the requirements of its generating station. However, MWA is committed to provide additional water for users needing more than provided by their Free Production Allowances, but at a cost. Thus, Edison will be required to pay for some of its future requirements under the provisions of the Stipulated Judgment.

In that the reduced water availability provided for in the Stipulated Judgment would be an encumbrance upon Edison's ability to use its existing water rights at the generating station, Edison by the present application is seeking Commission authorization pursuant to Public Utilities (PU) Code § 851, to encumber these existing water rights by entering the Stipulated Judgment. Edison points out that should Edison not be authorized to enter the Stipulated Judgment, Edison will be forced to defend its actions at the Court. In this latter event, it is likely that Southern California Water Company, the City of Barstow, the MWA and such other parties as have chosen to participate will ask the Court to impose the judgment upon Edison.

There was notice of the filing of the application in the Commission's Daily Calendar of March 8, 1996. No protests have been received. On April 12, 1996, the Division of Ratepayer Advocates advised Administrative Law Judge John B. Weiss that the Division had no position on the application.

Discussion

As applicable here, PU Code § 851 provides that no public utility other than a common carrier by railroad may encumber the whole or any part of its property or rights necessary or useful in the performance of its duties to the public without first having secured from the Commission an order authorizing it to do so.

The Mojave River Basin is an interconnected groundwater storage area, with surface and subsurface flow percolating into the groundwater system as they flow downstream. California Water Law recognizes the rights of the owners of property overlying the percolating groundwater to the use of this water within the area

groundwater basin. But this right extends only to the amount of water that can be reasonably and beneficially used on the land, and the right is a correlative right as among overlying owners. The principle of reasonable and beneficial use was proposed, adopted by the Legislature, and approved by the people in a 1928 constitutional amendment. Today, all water use is governed by the provisions of Article X, Section 2 of the California Constitution, and all use must conform to the standard of reasonable use. The courts have concurrent jurisdiction with the State Water Resources Control Board to enforce this constitutional mandate.

Edison acquired the Cool Water Ranch property in 1963 as a result of its merger with California Electric Power Company (CEPC 287), and thereby also acquired the latter's priority of right to extract water. The Mojave River Basin has been in a state of overdraft for over 40 years. Property owners who believe they possess a priority of right may file an action to protect this priority. However, in an overdraft basin, a court may under the doctrine of equitable apportionment establish a safe yield for the basin and establish each owner/user's proportionate share based on reasonable and beneficial uses (City of Los Angeles v. City of San Fernando (1975), 14 C3d 199). No water right affords entitlement to water in excess of the constitutional limitations. The overdraft of an entire, interrelated water basin cannot be held to be a reasonable use of water, and there is no property right in an unreasonable use (Jolin v. Marin Munic. Water Dist. (1967), 67 C2d 132-140). The substantial interrelationship of groundwater and surface water in the Mojave River Basin requires that rights in both are correlative. Once having determined that an overdraft exists and that this overdraft amounts to an unreasonable use, a court has authority to draft and impose a physical solution which requires all users to share equally in the cost and reduction of use to a safe yield (Los Angeles v. San Fernando, supra; Pasadena v. Alhambra

(1945) 333 C2d 708; Rancho Santa Margarita v. Vail (1938) 011 C2d 501). In the present Mojave River Basin proceeding (Riverside County Superior Court Case No. 208568, City of Barstow, et al. v. City of Adelanto, et al. and Mojave Water Agency v. Anderson, et al.) the Court in 1961 ordered a litigation standstill to give the litigating parties time to negotiate a settlement and develop a solution to the overdraft. What followed was the Mojave Basin Adjudication Committee which resulted in a stipulated interlocutory order and judgment. Nonstipulating parties requested trial and at trial less than 20 parties (none from the Baja Subarea where Edison is located) opposed the terms of the Judgment. Pursuant to, but super stipulations, the Court found that the physical solutions provisions for groundwater and stream water are fair and equitable and are supported by reasonable engineering data and assumptions.³ To eliminate continued overdraft it sets Free Production Allowance in each subarea and allots it to producers. If a party takes water in excess of that allowance, a replacement assessment will be imposed based on the costs of supplemental water. After gradually lowered allowances over five years, further adjustments might be made based on engineering studies. The Court will continue its jurisdiction and can make these adjustments. The Stipulated Judgment provides flexibility to allow the Watermaster and the Court to consider any and all relevant factors to determine Free Production Allowances.

³ The Base Annual Production figures were based on civil engineering analysis in which 6,800 production facilities were identified, 2,700 reviewed, and 1,400 facilities included in the adjudication. The Court concluded that the determinations for the various producers were conducted on a fair, equitable and comprehensive basis.

Of particular interest to Edison, located as it is in the Baja Subarea, the last or lowest subarea, is that flows to downstream subareas will be maintained either by supplemental water through the river and conveyance facilities, by purchase of transferred water by the Watermaster, or by reductions in consumptive use. Transfer of Free Production Allowances within the Basin area only are allowed, subject to the evaluation of the Watermaster as to the consumptive use impact with the subareas involved. On balance, there is an incentive to conserve by reducing overall demands and avoiding payments for additional charges on imported supplemental water, but where additional water is required, there is a mechanism created to ensure that future demands will be met. A further public interest is also served by creation of the \$1 million Biological Resource Trust Fund under the Watermaster's administration to protect and restore habitat along the river should future water extractions adversely impact that habitat. The Stipulated Judgment provides a process to properly manage the scarce water resources of the Basin which, if left unmanaged, could result in a greater hardship to Edison and its ratepayers. As we similarly concluded in the Southern California Water Company, Decision 94-10-025, participation in the Stipulated Judgment in this Mojave River Basin adjudication is in the best interest of Edison, its ratepayers, all other participants, and the general public.

to consider any and all relevant factors to determine Free Production Allowances.

3 The Base Annual Production figures were based on civil engineering of the MWA state project contract amount of 50,800 AF annual entitlement is available to MWA on an average annual basis. And in wet years, the project has surplus water available and MWA has underground storage space to store large quantities of surplus water.

Findings of Fact

1. Edison is an electric public utility providing service in portions of central and southern California.

2. The water supply to Edison's Cool Water Ranch generating facilities and associated facilities is extracted from wells and drawing from groundwater sources which are part of the Mojave River Basin resources.

3. While situated in the Baja Subarea of the Mojave River Basin, the most downstream of the Basin's five subareas, Edison is the 9th largest extractor of water in the Basin.

4. The Mojave River Basin's water resources have been overdrafted for many years.

5. In 1959 the Legislature created MWA with broad powers to ensure that sufficient water would be available in its jurisdiction for all users. MWA also has a contractual entitlement to an annual allocation of State Water Project water.

6. MWA since 1966 has unsuccessfully attempted to obtain adjudication of water rights in the Basin.

7. In 1990 the City of Barstow and the Southern California Water Company initiated a lawsuit to secure a guaranteed annual flow to the Barstow area, this in the face of diminishing flow reaching the area, and concerns over future water supplies.

8. MWA counter-complained, expanding the Barstow Southern California Water Company suit into an action for a comprehensive adjudication of all water rights in the Basin.

9. A Litigant Adjudication Committee drafted a Stipulated Judgment adopted by the majority of the litigants which, after submission to the Court, was implemented on an interim basis pending trial of issues raised by a minority not supporting the Stipulation.

10. In January of 1996 the Court's Judgment after trial adopted the Stipulated Judgment in all material respects.

11. The Stipulated Judgment provides a Free Production Allowance for all Basin extractors taking over 10 AF annually, which allowance diminishes over five years in an effort to attain a Basin's safe yield status, establishes a mechanism to ensure the historic flow of water downstream, provides for purchase of imported water if the Free Production Allowance is insufficient, and allows water transfers.

12. The Free Production Allowance in the future is anticipated to be less than Edison's requirements, but additional water will be available at cost to Edison through MWA.

13. The Stipulated Judgment is in the best interests of Edison, its ratepayers, all other participants, and the general public.

14. The courts have authority to draft and impose physical solutions in overdraft areas to require all users to equally share in the cost and reduction of use to safe yields.

15. If Edison does not join the Stipulated Judgment, the Court may impose its provisions upon Edison.

16. Edison requires Commission authorization to join in the Stipulated Judgment.

17. There has been no opposition expressed to a Commission order authorizing Edison to join in the Stipulated Judgment.

Conclusions of Law

1. There is no need for a public hearing.

2. Edison should be authorized to enter into the Stipulated Judgment.

3. Approval should be expedited to allow Edison to enter the Stipulated Judgment without delay.

10. In January of 1996 the Court's Judgment after trial adopted the stipulated judgment in all material respects.

ORDER

IT IS ORDERED that Southern California Edison Company is authorized to enter the Stipulation for Entry of Judgment in City of Barstow et al. v City of Adelanto et al., Case No. 208 568, Riverside County Superior Court, which Stipulated Judgment serves to encumber Edison's water rights in the Mojave River Basin.

Application 96-03-011 is closed.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners