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Decision 97-12-097 December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CITIZENS
UTILITIES COMPANY OF CALIFORNIA for
authority to increase rates and charges for water
service in its Montara District. (U-87-W)

Application 91-11-010
(Filed November 12, 1991)

ORIGINAL

Case 92-01-026
(Filed January 13, 1992)

Joan E. Briody,

Complainant,

vs.

Citizens Utilities of California,

Defendant.

Peter Dekker,

Complainant,

vs.

Citizens Utilities Company of California,

Defendant.

Case 92-01-045
(Filed January 21, 1992)

Gary H. Warhaftig,

Complainant,

vs.

Citizens Utilities,

Defendant.

Case 92-02-031
(Filed February 11, 1992)

Beverly R. Garrity, Ronald F. Garrity,

Complainants,

vs.

Citizens Utilities,

Defendant.

Case 92-02-033
(Filed February 11, 1992)

Point Montara Fire Protection District,

Complainant,

vs.

Citizens Utilities Company of California,

Defendant.

Case 92-02-045
(Filed February 26, 1992)

Lewis V. Mickelon, Jr.,

Complainant,

vs.

Citizens Utilities,

Defendant.

Case 92-03-010
(Filed March 6, 1992)

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E. Garth Black, Attorney at Law, and Lawrence D'Addio, for Citizens Utilities Company of California, applicant and defendant.
Gary H. Warhaftig, for himself and Montara-Moss Beach Water Improvement Association, complainant in C.92-02-031;
Beverly R. and Ronald F. Garrity, complainants in C.92-02-033; Barry E. Johnson, Fire Chief, for Point Montara Fire Protection District, complainant in C.92-02-045; Joan E. Briody, for herself, complainant in C.92-01-026; and Peter Dekker, for himself, complainant in C.92-01-045, and for Lewis J. Michelin, Jr., complainant in C.92-03-010.
George F. Irving, District Administrator, for Montara Sanitary District, intervenor.
Monica McCrary, Attorney at Law, and Sazedur Rahman, Project Manager, for Large Water Branch.

O P I N I O N

Statement of Facts

Background History

Citizens Utilities Company of California is a wholly owned subsidiary of Citizens Utility Company, a public utility holding company headquartered in Connecticut. With both telephone and water utility operations in California, the Montara District, the focus of our decision here (Citizens hereafter) is one of five separate districts or water subsidiaries in California collectively operated as a Class A water utility. If considered separately, with 1,600 connections, the district would be a Class C utility.

Serving the unincorporated communities of Montara, Marine View, Farallone City, Moss Beach, and adjacent areas in San Mateo County, the district, 20 miles south of San Francisco, occupies a narrow strip of land adjacent to the Pacific Ocean with elevation variations from nearly sea level to 450 feet, with six pressure zones in the system.

The Water System

Water supply is ultimately derived from rainfall within the Montara-Moss Beach hydrographic area. Average annual rainfall ranges from 20 inches in the service area to 45 inches at Montara Peak. About 80% of the hydrographic area's subsurface

consists of Montara granite, with the remainder alluvium and terrace deposits in the relatively flat area in the airport vicinity. Water is obtained from a combination of surface water and groundwater sources.

The surface water is diverted from Montara Creek; the quantity varies between 35 gpm (normal dry season flow) and 100 gpm (wet season flow). The diversion dam at 520 feet elevation pipes water to a 100,000-gallon raw water settling reservoir which feeds the adjacent Alta Vista Water Treatment Plant, now operating at its 75 gpm design capacity. The treated water is then stored in a 462,000-gallon tank before release into the distribution system.

The groundwater supply (September 1996 maximum reliable capacity 270.5 gpm) is obtained from 10 wells; the three producing the highest quality water are in the airport area south of the district while the other seven are in the northeast area along Montara Creek (two of these seven can only be used in high demand periods because their iron/manganese content requires blending).

Storage capacity (762,000 gallons) is the raw water tank (100,000 g.), and three distribution system tanks: The Alta Vista tank (462,000 g.), the Schoolhouse tank (100,000 g.) near the mouth of Montara Creek near midpoint of the district (which also acts as a large wet well for the booster station and sustains pressure in the lower Moss Beach and airport pressure zones), and the Portola Estates tank (100,000 g.) at elevation 560 feet.

There are over 138,000 feet of two- to eight-inch pipeline although much of the older pipe has reached the end of useful life and is being replaced. The system has 1,600 meters, 103 fire hydrants, and 15 pressure regulation valves.

New connection moratoriums followed the 1976 Commission investigation into continued inadequacy of water supplies. Decision (D.) 86193 imposed a new connection moratorium, ordered a well testing program, and ordered Citizens to

acquire new well sources capable of producing an additional 200 gpm.¹ In a series of intervening orders between 1976 and 1986, as new wells were placed in service and others failed or produced at a fraction of original capability, and the Alta Vista tank was added (1976), some connection relief was obtained through use of limited moratoriums. In 1986, with 1,569 connections (400 over 1976), Citizens was still unable to locate new well sources capable of the additional 200 gpm ordered in 1976. With certain exceptions, a moratorium was continued. It is still in effect today.

Population growth between 1980 and 1990 increased from 3607 to 5554 (annual average 4.4%). Development is restricted by the County's Local Coastal Program (LCP) limit of 125 building permits per year for the mid-coast area of which the district is a part, until both sewer and water services are capable of providing for more.² If significant additional water sources are not obtained, allowing for the few exceptions under the LCP limit, few additional water connections can be added, and overall district demand in the 1995-2005 period would increase only to meet the anticipated household density increase not met by private wells.

Located in California's coastal zone, land use development is subject to California Coastal Commission approval. That agency's regulatory jurisdiction encompasses construction of utility facilities in the area.

¹ Interestingly, in the 1976 proceeding, staff contended that within the entire Montara-Moss Beach hydrological aquifer area, the total additional water that could be extracted without permanently lowering the ground water table would be 400 acre-feet per year. This would equal approximately four wells pumping 60 to 75 gpm all year. This total would have to be shared by all producers including a Coastsides Water District, agricultural users, and Citizens.

² The Montara Sanitation District discharges to the Sewer Authority Mid-Coastside (SAM) treatment plant in Half Moon Bay. Since 1989 insufficient capacity at the plant forced a sewer connection moratorium (a California Regional Water Quality Control Board cease and desist order) until that plant is renovated and expanded. This work is underway and will be completed in December of 1998 removing the sewer connection moratorium.

The Present Application and Complaints

The captioned application was one of five filed by Citizens in 1991 for its California water districts and subsidiaries under the Rate Case Plan established by 37 CPUC2d 175 (1990).³

While there were no formal protests to the application, shortly after filing of the rate increase application, the six captioned complaints were filed by local organizations and individuals; in part complainants were inspired to file in response to critical local newspaper coverage which focused on Citizens' service problems. The complaints concerned low pressure, leaking mains, the system's need for more storage capacity, fire flow and hydrant problems, and asserted lack of cooperation with the local fire protection district.

The then assigned Administrative Law Judge (ALJ), Victor D. Ryerson, consolidated the six complaints with the application.

The 1992 Hearings

Following a staff conducted public meeting in Montara (November 25, 1991), two public participation hearings in Montara (March 4, 1992 and March 30, 1992), and a prehearing conference (April 13, 1992), there were five days of evidentiary hearings held in San Francisco (May 11-15, 1992), one of which was exclusively to hear consumer testimony. The record obtained indicated that despite years of effort and 15 hydrological reports, Citizens had difficulty in trying to attain the 1976 ordered 200 gpm increase in well supplied water, partially ascribable to the period's drought, but also experienced repeated water quality degradation and possibly was violating fire flow standards. It appeared that the results of hydrant tests were uncertain. The utility's service level was asserted to be "deficient relative to the expected level of service." The

³ Citizens' last general rate application prior to the captioned application was filed in 1981. The rates current at the time of the filing of the captioned application were authorized by Advice Letter 211, the final step-rate increase made effective May 15, 1983 pursuant to D.83-05-011, the decision in the 1981 application.

utility and the Division of Ratepayer Advocates (DRA)⁴ agreed that development of a comprehensive Master Plan addressing specific improvements would be the best way to address the long-standing concerns. DRA and Citizens offered a Settlement Agreement resolving most of the rate case issues, and DRA proposed deferment of the rate increase until a Master Plan was adopted, or if the rate increase was not deferred, that a reduced rate of return be ordered.

Interim D.93-04-027 (April 7, 1992)

The interim decision adopted a Citizens-Staff stipulation relating to the rate increase application, and authorized Citizens to file advice letters to implement the authorized step rate increases, but having concluded that the fire flow tests were flawed, deferred filing of the initial advice letter until after Citizens completed a Commission-validated fire flow test. The decision also directed Citizens to develop a short- and long-term comprehensive Master Plan for improvements, including in the criteria the Health Department drinking water standards, GO 103 requirements, capital expenditure guidelines, and prior Commission directives relating to water supply. Citizens was to take into account potential savings through combining projects with other public entities, and to afford opportunity to participate through comment on the Master Plan.

Flow Tests

As allowed under Section VIII of GO 103, in 1985 Point Montara Fire Protection District (PMFPD) adopted local standards less than those of the GO. By June 1993, Citizens conducted fire flow tests, using a staff-approved methodology, in cooperation with PMFPD. The tests indicated that 17% of Citizens' customers were located in areas where the test flows failed even to meet the PMFPD-reduced standards.

⁴ The duties of the Commission's advocacy staff, formerly assigned to DRA, are now assigned to its successor division, the Office of Ratepayer Advocacy (ORA). However, advocacy staff participating in water proceedings formerly assigned to DRA were reassigned early in 1996 to the Large Water Branch of the Water Division (Water Division).

Citizens conceded the fact, but on June 23, 1993, made a "compliance filing," clearly relying upon Section I(1)(a) of GO 103, the "grandfather" clause that provides that inadequate mains need not be replaced until expiration of their economic utilization.⁵

In September 1983, DRA petitioned, seeking modification of D.93-04-027 to provide for deferment of the rate increase until Citizens and the complainants could together formulate an equitable resolution with regard to the fire flow levels to be recommended as an acceptable precondition for Citizens to meet before it filed an Advice Letter to implement the increase authorized under D.93-04-027.

D.93-10-041 (October 6, 1993)

Over Citizens' objections, the Commission found an ambiguity in D.93-04-027 regarding its intentions: whether the intent was merely to complete satisfactory fire flow tests before implementation of the rate increase, or whether it intended to require plant improvements to meet GO 103 standards before the increase. The Commission noted that where inadequate service results from reliance upon the GO 103 "grandfather" clause, the Commission has authority to order replacements before expiration of economic utilization of facilities in use. It remanded the proceedings to ALJ Ryerson for additional evidence, but to take into account the costs of immediate replacements and who would bear the cost. Implementation of the D.93-04-027 rate increase was deferred pending further proceedings; and Citizens was again directed to proceed on the Master Plan.

⁵ Section I(1)(a) of GO 103 provided:

"The standards herein prescribed are intended as minimum standards applicable after adoption and continued full utilization of existing facilities is contemplated. Nothing contained in any of the rules herein promulgated shall be construed to require the replacement or abandonment prior to the expiration of economic utilization of facilities in use at the time of adoption of these rules unless the Commission, after hearing, shall enter an order directing the abandonment or replacement of particular facilities found to be inadequate for the rendition of proper public utility service."

The December 1993 Citizens Draft Master Plan

After Citizens' consultant Montgomery Watson completed a draft Master Plan (August 1993), it was submitted for review by the public and Commission staff, with a public meeting October 4, 1993, for comments.⁴ The draft Master Plan concluded that the only certain method to obtain the 210 gpm additional supply to meet the Commission's orders would be to build a desalination plant; it noted that the well alternatives cannot produce enough, some potential sources are not available, and that to increase the Montara Creek source yield would involve investigations of spring sources and possible expansion of the Alta Vista plant for treatment. After modification based on comments, including those of the Department of Health Services, a December 1993 Master Plan was filed on December 20, 1993, with copies to all parties to this consolidated proceeding. As filed, the Master Plan generally addressed the D.93-04-027 requirements, setting forth both specific short- and long-term programs or projects to accomplish improvements needed for full compliance with GO 103, including a time table, funding, and rate impacts. While other options as to sources for additional supplies were discussed, including a desalination plant, the Master Plan settled upon the well option as the most feasible, even though it still resulted in a maximum day shortage of supply.

The May 10, 1994 Evidentiary Hearing

In February, an evidentiary hearing on the December 1993 Master Plan was set for May 10, 1994. On March 16, 1994, Citizens petitioned to modify D.93-10-041 to provide immediate rate relief, pointing out that rate relief had been delayed for more than 14 months beyond the date contemplated by the Commission's regulatory lag plan, and that the Commission-adopted results of operations showed that absent the relief, Citizens would earn 3.9% for 1993; and that the delay had cost Citizens over \$350,000 in revenues. This petition was protested by DRA and complainants.

⁴ Despite notice and publicity, only 14 people (including a newspaper reporter) attended.

The noticed evidentiary hearing on May 10, 1994, was attended by all parties except for three nonactive original complainants.⁷ The participating parties offered an agreement titled "Stipulation—A.91-11-010 and Consolidated Matters," dated May 11, 1994, as well as testimony from Citizens, DRA, complainants' consultant, and complainant Warhaftig.⁸ The hearing was then adjourned to permit the parties to file their motion for acceptance of their stipulation. This was done on May 31, 1994. While all affected interests were served by the stipulations offered, and a mechanism was provided whereby Citizens could implement the long-deferred rate increase, paragraph 7 provided specific requirements for further Commission hearings addressing water quality and sources of supply.

D.94-10-049 (October 26, 1994)

The decision conditionally accepted the stipulation agreement as the order of the Commission, provided that each participating party in writing accepted deletion of offending paragraph 7. The Commission stated that the paragraph contravened prior D.93-04-027 as well as Rule 51.1's proscription against inclusion in a settlement of substantive issues which might come before the Commission in other or future proceedings. When all participating parties filed timely consents to the deletion,⁹ D.94-10-049 became effective.

⁷ Nonactive parties were: Briody, the Garritys, and Michelin.

⁸ Citizens' Roscoe, D'Addio, and Saccone testified, asserting fire flow compliance under the "grandfather" provisions of GO 103, compliance with main replacement requirements, and revenue requirements for the improvements projected with variation depending upon the time frame to be adopted. DRA's report set forth staff's position that fire flow should be upgraded to meet current GO 103 standards, and proposed amending the Master Plan with further hearings on the Master Plan. Complainants' consultant Bohley (a public works civil engineer) noted inconsistencies and inaccuracies in the fire flow test results, asserted inadequate fire flow storage capability, and made recommendations for improvements. Warhaftig sought further hearings, alleging deficiencies in Citizens' plan, a failure to address water quality, and unacceptable improvement options, and asserted the availability of options he favors.

⁹ In filing their consents to deletion of paragraph 7, complainants expressly stated they were not waiving their right to seek rehearing or modification of the decision. The utility merely agreed

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As issued, the decision provided for initiation of programmed system improvements designed to mitigate poor fire flow conditions under a preliminary budget estimate of \$1.16 million spread over three years (first year, \$341,000; second year, \$437,100; and third year, \$381,100), all subject to modifications. While quality of water and source of supply were not addressed, the decision essentially left further implementation of the December 1993 Master Plan capital improvements in these two areas up to Citizens. The decision also formally closed the application and the six complaints.

Application for Rehearing of D.94-10-049

On November 22, 1994, PMFPD, Warhaftig, and Dekker filed for rehearing of D.94-10-049. They contended the decision was inconsistent with established Commission policy for regulating problem water companies (basing this contention on the approach used by the Commission in another Citizens' water system in 1989—*Guerneville District* (D.89-11-016)). They asserted Stipulation 7 did not intend to usurp Commission authority, but merely to supplement the master planning process. They stated they effectively had been "blackmailed" by the requirements of written consents to deletion of paragraph 7, and that they signed only in order to assure retention of the urgently needed fire flow improvements contained in the remainder of their stipulation. They further alleged legal error in procedure, but chose not to pursue it in their application for rehearing.¹⁹

to the deletion, and DRA, while consenting to the deletion, expressed reservations about leaving provision of adequate service to the discretion of Citizens in view of the Commission's statutory obligation to insure adequate service. DRA expressed its understanding that Citizens would file a new application with regard to the capital improvements of the Master Plan which would provide opportunity for all parties to be heard.

¹⁹ In their rehearing petition, they had stated that the ALJ's proposed decision had been adopted by the Commission without compliance with the PU Code § 311 requirements of opportunity to comment (noting that receipt of evidence at the May 10, 1994-noticed evidentiary hearing constituted the proceeding as a matter having been "heard," so as to bring it within the context of PU Code § 311 and Rule 71.1). However, complainants specifically declined to pursue it as "error."

D.96-06-063 (June 16, 1996)

By D.96-06-063, the Commission modified D.94-10-049. It concluded that while there was no error in its rejection of paragraph 7 (since the Commission has the right to control its own proceedings, and the intent by the rejection was to focus on fire flow in that phase of the proceeding), D.94-10-049 was inconsistent with D.94-04-027 to the extent the former decision inferred that there need be no hearing on the contents of Citizens' Master Plan, and ordered the ALJ to issue a ruling affording opportunity to comment or be heard in limited evidentiary hearing with respect to the contents of the Master Plan.

The Commission further made it clear that it had ample authority under PU Code §§ 701 and 761, GO 103 provisions, and the Supreme Court *Camp Meeker* decision (51 C.3d 845, 862) to order Citizens to improve its fire flow facilities.

Notice of Evidentiary Hearing (July 23, 1996)

In compliance with D.96-06-063's requirement that all parties have opportunity to comment or be heard on the contents of Citizen's Master Plan, an evidentiary hearing was noticed for September 26, 1996. Citizens asked leave to file prepared testimony for that evidentiary hearing, and by a July 26, 1996 ALJ Ruling, all parties were invited to do so. On September 6, 1996, Citizens asked for an extension of time to file its prepared testimony, and for postponement of the September 26, 1996 scheduled evidentiary hearing. On September 12, 1996, the Water Division concurred with Citizen's request, essentially to allow time for the final revisions by Citizens to the Master Plan. On September 16, 1996, an ALJ ruling reset the evidentiary hearing for November 26, 1996, and ruled that Citizens' Master Plan and its prepared testimony had to be served no later than October 25, 1996, and that the prepared testimony of any other party had to be filed and served by November 19, 1996.

Citizens' Water System Master Plan Update (October 1996)

On October 24, 1996, Citizens served all parties with its final-version, updated Master Plan together with copies of the prepared testimony of D'Addio and Roscoe."

" The submission was Citizens' final version Master Plan, updated October 1996, submitted pursuant to the Commission's order in D.93-04-027, to list, prioritize, and cost propose plant improvements to bring the Montara system into compliance with GO 103 standards. Apart from reporting on the fire flow improvement projects begun since 1994, the Master Plan provides analysis and proposals relative to sources of water supply, the system storage and pumping facilities, and pipeline replacements, both short and long term, through 2004.

The improvements for the ten-year period are estimated at \$5.3 million. The fire flow projects (1994-1997) are estimated at \$1.3 million. The source of supply projects (1994-2004) are estimated at \$958,000. Storage and interzone pumping projects in the six-zone system (1996-2004) are estimated at \$2.0 million. Pipeline replacements (1997-2004) are estimated at \$784,000. Specific year-to-year scheduling, cost item by item, for these projects is set forth in Tables 7-1 through 7-5 of the Master Plan.

The most critical problem addressed is the lack of sufficient water supplies to do more than meet current "no growth" demand. In 1988, the Commission ordered Citizens to locate additional sources and to bring total supply capability to 550 gpm. At that time, the total supply was only 383 gpm, so that Citizens was to find an additional 167 gpm. Citizens' search for new external supplies has not been successful, despite effort. With existing wells losing capability, Citizens nonetheless by September 1996 did increase its maximum capability to 425 gpm by addition of a third airport area well and modification of its surface division facilities.

Citizens states that "maximum day demand" is the water system design standard (if total supply capability equals or exceeds maximum day demand, storage tanks should refill daily, and demand is met). In 1994-1995, Citizens' maximum day demand was 476 gpm, making the deficiency in capability to meet demand 51 gpm for existing customers. Based on limited population projections (the county limits building permits to 125 a year until it can be shown that water and sewer services can handle more), the 2004-2005 maximum day demand is projected to be 520 gpm. The deficiency in supply capability in 2004-2005 thus would be 95 gpm.

The Master Plan sets forth at length Citizens' efforts to obtain additional supplies to meet these deficiencies, and presents its analyses of each option considered. Citizens' consultant concluded that the *only* option that would enable Citizens to meet all the current and future needs through the year 2035 would be a desalination plant. But the estimated cost, staged over six years, is estimated to be \$9.3 million, and the resulting rate impact led the utility to its alternative well option recommendation. This recommendation relies upon rehabilitation of the existing Guntren and Park wells for an additional 80 gpm supply in the 1997-1999 time frame, and to installation of a fourth airport well for a potential 70 to 90 gpm additional supply

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Postponement Requests

On November 15, 1996, complainants sought extension of time to file their prepared testimony and for postponement of the evidentiary hearing scheduled for November 26, 1996.¹² The Water Division joined in the postponement request, seeking a rescheduling for after January 1, 1997. Citizens did not oppose a moderate delay.

Transfer of the Proceeding (November 18, 1996)

On November 18, 1996, the application and complaint consolidated proceedings were transferred to ALJ John B. Weiss. By his ruling the same day, the evidentiary hearing on the Master Plan was rescheduled for February 19, 1997, and a deadline set for service of the prepared testimony of Water Division and complainants on January 31, 1997.

Filing of Prepared Testimony for Evidentiary Hearing (January 31, 1997)

On January 31, 1997, complainants Montara-Moss Beach Water Improvement Association (MMBWIA)-Warhaftig and the Montara Sanitary District (MSD), and the Commission Water Division, each submitted its prepared testimony

in the 2001-2002 time frame. Upgrades to the Alta Vista Water Treatment plant in the immediate future are also recommended, although additional supplies to be obtained would depend upon the seasonal and unpredictable nature of flows in Montara Creek. Not recommended were acquisition of existing private wells (unreliable production, iron/manganese problems, inability to meet Department of Health standards, and rehabilitation costs); wheeled water (not available to Citizens), purchased water (either not available or without firm delivery), and water from creeks other than Montara (not available). The rate impact were the Master Plan proposals completed, would in year 2004 result in an estimated monthly average customer's bill of \$83.35, a 67.02% increase.

The recommended options would require California Environmental Quality Act documentation, County Coastal Development permits, a National Pollution Discharge Elimination System permit from the Regional Water Quality Control Board, and permits from the California Coastal Commission. The permitting process would take approximately six months.

¹² Reasons given for postponement were to allow PMFPD more time to formulate a position in view of a change in leadership at PMFPD, and to permit continuation by complainants of discussions with various special districts and other entities.

pursuant to the ALJ Ruling.¹⁹ The MMBWIA-Warhaftig and MSD submissions were in the form of a cover letter to the ALJ with an attached Master Plan review. The Water Division submission was in the form of a formal staff report on Citizens' Master Plan.

The February 19, 1997 Evidentiary Hearing

After the ALJ acknowledged receipt for the record of reports or reviews from the parties to constitute their prepared testimony, the parties indicated that they

¹⁹ Each of the three submissions asked that implementation of the Master Plan be bifurcated into short-term (two-year) and long-term (eight-year) planning phases. Specifically:

Water Division reported the system now was adequate to provide peak hour demands for the present and immediate future (apparently based on continuation of a moratorium in the absence of new sources). Staff agreed with elimination of a desalination option and recommended following the Plan's well option together with optimization of storage facilities (as scheduled through 2004 in the Plan). As to long-term water sources, staff would postpone planning until after the expected early 1998 DWR study, and then have all parties cooperate to find a resolution.

MMBWIA-Warhaftig asked delay in other than short-term projects, stating that until the DWR report is available, new water sources cannot properly be addressed. Warhaftig stated the MMBWIA had access to "unreliable" sources of water that could be donated to his association (for a tax deduction) from two farm companies unwilling to sell their right to surplus water to Citizens. Warhaftig asks that Citizens be ordered to purchase this water when available from MMBWIA.

MSD questions the two large storage tanks proposed by the Master Plan for the schoolhouse site (one in 1997-1998; the second in 2002-2004), but does not otherwise address the present storage deficit. MSD points up the fact that expanded sewage capacity after 1998 will relieve one of the two limitations to building permit limits, but that the Master Plan provides no additional water sources to allow removal of the existing moratorium. It asks revision of the Master Plan to cover the range of growth possible with the expected sewer capability, noting that water sources double those existing would be needed. However, it concedes that "the location of this additional water supply is unknown." Noting the indicated cost of additional infrastructure to serve an expanded population it would allow MSD to collect a water service charge for new development when sewer connection is granted and use these funds to fund such additional infrastructure, then lease the infrastructure back to Citizens. MSD would hold all but the fire flow and some minor pipeline replacement in abeyance until after the DWC study and appropriate public-private partnership agreements between Citizens and MSD are obtained.

were seeking a continuance of the hearing for the purpose of possibly firming up a proposed settlement agreement. A February 14, 1997 informal meeting to explore the possibility had assertedly been productive, and proposals had been exchanged in recognition of much common ground.

In response to questions from ALJ Weiss, both MMBWIA and MSD stated there was no interest in an acquisition of Citizens' system, MMBWIA stating it did not believe the system was financially viable. MMBWIA-Warhaftig stated that the Association had access to some privately-owned water not available directly to Citizens, and that the private partner would in exchange donate this nonreliable water source when available to Citizens for a tax deduction.¹⁴ Admittedly, this could only be of intermittent, short-term help, and was not something Citizens could rely upon for future development. Citizens expressed its concerns regarding control of facilities in light of the utility's responsibility to provide service. MSD stated that in its special status, it also retained unexercised water claim rights which it could bring to some cooperative mix of the special powers it had with (1) a nonprofit tax exempt organization such as MMBWIA, and (2) the regulated investor owned public utility which is Citizens. Both MMBWIA and MSD felt there was water out there, the location of which the DWR study would determine.

ALJ Weiss pointed out that this proceeding had been pending over five years with little progress, and that the Commission wanted it brought to a close. However, in view of the parties' opinion that they were near a settlement, further proceedings would be deferred to allow a noticed settlement conference so that they could present an agreement for the Commission's early consideration. The parties agreed upon March 10, 1997, for a settlement conference.

¹⁴ Apparently not considered by the MMBWIA was the fact that such activity pursuant to PU Code § 216(c) would cause the MMBWIA to itself become a public utility subject to the jurisdiction, control, and regulation of the Commission. (See PU Code §§ 216(c) and 204.)

An agreement was reached, but delays attributable to vacations held up signing (Citizens 4/28/97, Water Division, 5/2/97, Dekker 6/3/97, MMBWIA-Warhaftig 6/4/97, MSD 6/4/97, and PMFPD 6/5/97), and it was not until August 13, 1997 that their Joint Motion for Approval of a Settlement was filed. The day of filing, the ALJ caused notices of a settlement conference, to be followed immediately by an evidentiary hearing on August 26, 1997, to be sent all parties.

The August 26, 1997 Settlement Conference and Evidentiary Hearing

As submitted, the Settlement Agreement proposed to bifurcate authorization to proceed on the Master Plan improvements. Apart from the fire-flow improvements previously authorized and due for completion in 1997, only some telemetry (\$86,000), minor pipeline replacements (\$112,000), and minor storage and pumping work (\$140,000) would be done in 1997-1998. The fourth airport well drilling (\$238,000) and more minor pipeline work (\$56,000) would be authorized for 1998-1999. The \$642,000 cost recovery for these expenditures would be deferred to future rate proceedings.

The rest of the Master Plan improvements (estimated at \$3 million) would be deferred for consideration until after all parties reviewed the anticipated DWR study, and in essence reformulated the Master Plan "to satisfy all parties," and incorporated any economically feasible results from the study. If the DWR study did not get completed, the parties agreed to cooperate to pursue "prudent and necessary capital improvements." The agreement would also have Citizens consider proposals advanced by any party to reduce any overall costs of capital improvements with recourse to the Commission if Citizens did not agree.

The Master Plan improvements left in this limbo included the Guntren and Park well projects to improve *present* sources of supply (1997-1999), the schoolhouse site initial storage facility (1997-1999), standby diesel generator (1999-2000), the second storage tank (2002-2004), and substantial pipeline replacements (1999-2004).

Except for the Water Division, complainants wanted the complaint docket left open to facilitate Commission interventions. Citizens would dismiss the complaints rather than leave these dockets open for many more years.

Commenting on the agreement proffered, ALJ Weiss observed that while adoption of some short-term projects appeared a reasonable resolution finally of problems that initiated these proceedings six years ago, to place the rest of the Plan's projects on a vague hold basis on the chance that a DWR study will locate abundant sources so as to obviate some or all is not satisfactory. Some of these to-be-held projects should be started immediately as they have been needed *now*: site work and construction of the 650,000 gallon storage tank; rehabilitation of the Guntren and Pack wells to increase the present supply from known sources, and the pipelines to replace undersized piping and reduce high velocities in a fire demand. If the DWR study comes up dry or with slim pickings (and for years no one has found more water sources), we would be back to ground zero with seven years lost. The ALJ stated:

"This proceeding has been open formally since November of 1991. The past history and progress do not provide much encouragement for a more expeditious progress if the matter is continued to keep it open for possible future consideration of proposals to reduce overall costs of capital improvements."

The ALJ noted the intention of the Commission to expeditiously bring all proceedings of any vintage to a speedy close. He noted that were all the Master Plan prospects to be authorized now for the time schedule of the Plan, the planning and permitting preliminaries would still mean that actual construction would not begin before late 1998. Thus little would be lost by authorization *now* if the DWR study comes up with gold.

The Master Plan improvements accommodate only the presently projected population and restricted development into the next century. All the Plan's projects are needed to accommodate only that scenario. If new water sources are found, significant additional infrastructure will be needed, and the present Master Plan can be added to as needed.

Temporary, as available, infusions of private source water not guaranteed as to duration or constancy of supply do not provide a basis to lift the present moratorium. The Commission will not set a stage for subsequent rationing which would be necessary if an expanded demand base should then lose or be cut off from such intermittent unreliable additional infusions. Nor would it be prudent for Citizens to expend funds or its credit to invest in wells, pipelines, and treatment facilities for unowned sources of this nature.

For these reasons the ALJ found the proffered settlement agreement unacceptable. Offered opportunity off record to discuss possible amendment to provide something acceptable, the parties after a recess returned to state:

"The parties would agree that Citizens may proceed with the Master Plan subject to the DWR study results. And if there's any additional water sources provided for in that report, we'll incorporate them into the master planning process; and we'll work out the language on doing that through an application and having the staff bring it to the Commission's attention through an OIR if its not done through the application.

"The parties also are going to modify the proposal to address recovery of cost through the advice letter process and are going to make one minor modification to one of the projects, the \$10,000 diversion project, to move that to occur in a later year." (Tr. 798.)

It was agreed by all parties present that a revised agreement would be signed by the participating parties and submitted at the continued evidentiary hearing scheduled by the ALJ for Friday morning, August 29, 1997."

Turning next to the August 13, 1997 noticed Evidentiary segment for the August 26, 1997 hearing, the ALJ accepted evidence offered either to supplement or amend the earlier (January 31, 1997) submissions by the parties of prepared testimony.

" Warhaftig asked, if the parties' signature were on the revised agreement, would their presence be needed at the Friday, August 29, 1997 hearing? He was told, "you won't have to be here unless you want to be."

Citizens entered the earlier D'Addio and Roscoe prepared testimony, amended to reflect D'Addio as the witness (Exh. 1-September 26, 1997), and its October 1996 updated Master Plan (Exh. 2-August 26, 1997). Each party present, MMBWIA-Warhaftig, Dekker, MSD, and Water Division was offered opportunity to cross-examine on the witness or exhibits. Each stated it had no questions. There were no other offers to supplement or amend earlier prepared testimony.

The ALJ questioned D'Addio on the latter's testimony and for clarification of a number of elements in both the agreement and the Master Plan. Nothing further was offered and the parties waived briefs. The matter was then submitted with provision for receipt of an amended agreement on August 29, 1997.

The August 29, 1997 Hearing

The proceeding having been submitted August 26, 1997, the only ostensible purpose of the Friday, August 29, 1997 hearing was to receive the revised agreement signed by the participating parties for the Commission's consideration on the record, or possibly to hear any potential exceptions they might wish to address. But on August 29, 1997, only Citizens and the Water Division appeared for the scheduled hearing to receive an amended agreement. These two parties presented a revised agreement reflecting the matters purportedly agreed upon at the August 26, 1997 evidentiary hearing. Citizens and the Water Division each had signed the amended agreement (August 27, 1997 and August 29, 1997, respectively). However, despite the prior agreement none of the complainant parties made an appearance, nor had they provided notice to the Commission, Citizens, or the Water Division that they would not appear, had decided not to join or sign the agreement, or had any objections. The Commission proceeding was just left hanging. Unsuccessful attempts were made to telephone complainants.

After waiting an appropriate time, ALJ Weiss proceeded without the missing complainants, and the agreement signed and submitted by Citizens and the Water Division was received as a contested stipulation from those parties for consideration in the submitted proceeding. The two-party agreement consisted of their

stipulations classifying the Master Plan projects as baseline, short term, and long term, and proposed advice letters and future rate proceedings to enable Citizens to recover costs to be incurred. It also provided that continuation on certain of the Plan's projects would be reviewed after review of the DWR study and that any economical and operationally feasible results of that study could be presented to the Commission for possible incorporation into the Master Plan by a Citizens' application, or if Citizens failed to do so, by a Water Division proposal for the Commission to open an investigation. It was further stipulated that the Commission would close the pending proceedings by a decision approving their agreement." Pursuant to Rule 51.4 of the Commission's Rules of Practice and Procedure, a copy of the two-party agreement was mailed as a "contested stipulation" to each complainant of record (on September 2, 1997 to the 3 inactive participants, and on September 4, 1997 to the 4 active participants). By cover letter each was informed of the 30-day comment period afforded by the rule. There were no comments received in response."

"The Citizens-Water Division sponsored Agreement is appended to this decision as Appendix A.

"The only communication to be received by the Commission within the 30-day Rule 51.4 period for comment was a September 5, 1997 letter (received a week after the August 29, 1997 hearing day) from complainants MMBWIG-Wafhaftig and Dekker. In it they stated they would not sign the Citizens-Water Division agreement. No excuse was offered for their failure to appear on August 29, 1997. In the letter they assert they had lacked notice that the August 26, 1997 proceeding was also evidentiary hearing. This despite the fact that the August 13, 1997 notice was titled "Notice of Evidentiary Hearing," and the text stated "a settlement conference to be followed immediately by an evidentiary hearing in the above entitled matter." The letter asserts lack of opportunity to prepare direct or cross examination on Citizens' witnesses testimony or the Master Plan. This dissemblance disregards the fact that each had had copies of the D'Addio-Roscoe prepared testimony since October of 1996, and that after opportunity to study that material, they had submitted prepared testimony in the form of "reviews" of that material the previous January 31, 1997, so that they had seven months in which to prepare. Their letter continues, listing changes they want which essentially would result in deferral of most projects for "reformation" at a future time, making a mockery of the Master Plan.

These delay tactics, gross misrepresentation of facts, and cavalier disrespect of the Commission and its processes raise serious questions of deliberate violation of Rule 1 (the Code of Ethics) of the Commission's Rules of Practice and Procedure.

Discussion

This proceeding, consolidating the application of a small problem water system for a rate increase after a ten-year interval, with miscellaneous complaints of five individuals and a fire protection district, has now been open six years.

After certain delays, the rate relief was granted and no longer is an issue. However, the complaints, involving inadequate water supplies, water quality, low pressure, leaking mains, inadequate water storage facilities, and fire flow issues, are still open.

In 1992, following a public meeting conducted by our staff, an ALJ conducted public participation hearings, and five days of evidentiary hearing, this small utility in a very complex service territory with a long history of insufficient water sources, was directed to expeditiously prepare a short and long-term Master Plan for system improvements which would bring the system into compliance with General Order (G.O.) 103. Provision was made for public comment, and the Plan was to take into consideration State Health Department drinking water standards, as well as prior Commission orders that the utility obtain sufficient additional water supply sources to bring its total capacity up to 550 gpm. The path since has been long and tortuous.

An initial draft of a Master Plan was released for public comment in August of 1993. It was followed in December of 1993 with the initial Master Plan (which contained essentially the same elements subsequently included in the final updated October 1996 Master Plan). This December 1993 version included revisions on the initial draft reflecting comment received after release of the draft. Prepared by the Montgomery Watson consultants, it conceded undersized source capacity, storage capacity, and an insufficient distribution system, pointing up needed fire flow, standby power, booster pumping and pipeline improvements to be undertaken.

The Plan acknowledged the long experienced inadequate water source problems and recited Citizens efforts to remedy the problem in an area where water supplies contain substantial iron and manganese. For the most part, these efforts have not been successful. As to most recent efforts the Plan at length described and evaluated a considerable number and variation of known potentially additional sources, grouping

these finally into eight options. Rated for potential capacity, reliability, and relative cost, three were eliminated as unavailable to Citizens (wheeled water, purchases from districts, other creeks); existing private wells showed likelihood of small return for the effort; and desalination would be very expensive. The most feasible were the Guntren and Park rehabilitations, and a new airport well. Two potential ways to increase supply from Montara Creek by a dam or construction of spring wells indicated an estimated 64 gpm potential, but uncertainties over lack of data, costs, environmental concerns, and effect on downstream aquifer recharge led to elimination of the option. While the well option is recommended, it is conceded that it can produce only an approximate 108 gpm of the 161 gpm needed to attain maximum day demand, set as the objective by the Commission.¹⁴

Area population growth has been held fairly constant by a combination of the 1986 Commission connection moratorium and the County limitation on building permits. (However, as enlarged sewer treatment facilities will be available after December 1998, the only obstacle to growth will be the limited water supply.) In recognition of the fact that the well option set forth in the Plan cannot provide enough additional supplies to do more than meet the present needs, Montgomery Watson in the

¹⁴ In 1986, when the Commission order was issued, the system produced only 269 gpm, and with the limited 642,000 gallons of storage capability then available, the system was then capable of providing only a barely adequate level of service for the 1,502 connections. But this was accomplished by using rationing programs and stored water for short times. And the system was not capable of producing "reliable" levels of supply ("Reliable" supply is defined as the total supply less that part furnished by the largest single source; the concept being the level of service available when the largest well is suffering an outage).

Production facilities typically are designed to provide enough water to meet maximum day demands. By 1992, Citizens' system's average day demand was 316 gpm and average all source production 390 gpm. Maximum day demand was 471 gpm, but maximum day all source production was 408 gpm, with reliable maximum day all source production only 310 gpm. Accordingly, additional sources of 161 gpm were then needed to meet the 1992 maximum day demand (471 gpm - 316 gpm = 161 gpm). And this assumed that all sources continued production at their current rates (most of the utility's wells cannot operate at rated capacity because of abrasive material in the water, age of the pump, or drop in the aquifer level).

1993 Plan recommended evaluation of a desalination plant with potential to meet present and future needs. But as cost estimates for desalination indicated year 2005 average customer monthly bills of \$131.90, a 178% increase, the desalination option was set aside in favor of the well option. The well option set out in the 1993 Plan prioritized recommendations; in the first year water source capacity additions, followed the 2nd and 3rd year with fire protection improvements including pipelines, with storage additions the next two years. In the 2nd five-year period, storage, standby power, and booster improvements followed pipeline replacements. Total estimated cost: \$6,380,000.

In the May 1994 evidentiary hearing that subsequently resulted, prepared testimony was received relative to the Plan. In particular, the testimony of complainant witness Bohley was instructively helpful on fire flow and emergency deficiencies. Apart from recommending immediate addition of over a million gallons of additional storage, he recommended immediate programs to check valves and pressure reducers, further hydrant testing, main replacements, construction of emergency generators, systems controls and telemetry. (Much of his recommendation was worked into the final October 1996 Master Plan.) Warhaftig was critical and sought more community participation. Unhappy with water quality, and both desalination and well options, he provided no evidence of alternative permanent sources (his wheeling and neighboring district purchase options were adequately discussed in the later final October 1996 Plan). Warhaftig's proposals that surplus water when available be purchased from nearby farm ranches would not answer the need for reliable permanent additional sources, as Warhaftig himself later conceded. Such purchases could be helpful to refill urgently needed additional storage tanks planned, but substantial costs would be involved in drilling wells in these ranches and providing pipelines to additional treatment plants. In that such unreliable sources could not provide a foundation for lifting the connection moratorium, an investment in them without ownership and rate base recovery appears unrealistic.

The final October 1996 Master Plan recognized that the Farallon Vista Project (of 148 units) would not proceed unless significant additional water (beyond the well option additions) is found in the future; records the finalization of fire flow

improvements; centers storage, booster pumps and pressure valve stations at the central schoolhouse site; eliminate desalination; pursues the well option; and optimizes storage facilities as soon as possible.

The final plan spreads \$5,291,491 of capital improvements, prioritized over the 1994-2004 period, and is designed to bring the system into compliance with G.O. 103. To the extent Citizens deemed it possible without recourse to desalination, the well option water addition would bring current total yield to 533 gpm, slightly short of the Commission's overall 550 gpm objective. The Plan also adds significant storage capacity toward alleviation of that grave deficiency.

At the February 19, 1997 evidentiary hearing, there was a general discussion relating to the participation of various complainants in resolution of the problems of the system. Questioned by ALJ Weiss, both MMBWIA-Warhaftig and MSD indicated that neither was interested in any acquisition of the system. (Warhaftig stated that he did not think it would be financially viable.)" However, both were interested in a vague sort of joint venture teaming Citizens' public utility status and powers with MSD's ability as a public entity to borrow money at low rates and/or tax, and MMBWIA's nonprofit, tax exempt status. But Citizens was concerned with terms of ownership, control of facilities, and its responsibilities as a public utility, being an investor owned public utility. With regard to MSD's concerns (expressed in its prepared testimony) of the unfairness of saddling existing customers with costs to expand the system to serve another 1,700 customers (assuming that additional water, location unknown but discovery anticipated from the 1998 DWR study, becomes available), and MSD's proposal that MSD impose a water connection charge for new connections, and use the monies collected to finance the necessary additional facilities, the ALJ suggested that as there was historical precedent for a public water utility to impose its own connection fee that consideration

" Warhaftig stated that about ten years earlier, in association with San Mateo County, a County service area entity had been contemplated to acquire the Citizens' system, but that interest had since been lost.

be given to Citizens obtaining Commission authorization for Citizens to impose such a new connection fee, with the fees to go into a blocked account from which specific improvement expenditures would require Commission staff approval.

At this hearing the parties stated that they were almost in full agreement on a settlement (although Citizens expressed some reservations) but wanted a continuance to firm matters up. While expressing the Commission's concern to bring the proceeding to a close as expeditiously as it could, the ALJ agreed to a March 10, 1997 formal settlement conference (Rule 51.1(b) to afford all opportunity to review any settlement proposal), after which the matter would be returned to calendar.

After five months' delay due to party negotiations and various vacations, the ALJ ordered and held a duly noticed settlement conference and evidentiary hearing on August 26, 1997, at which time an All Party Settlement Agreement was offered.

This all party proffered settlement of August 26, 1997 is not acceptable. Apart from the fire flow improvements listed on Table 7-1 of the Master Plan for years 1994-1996 (estimated amount \$552,871) for which the ratemaking impacts have already been addressed by Advice Letters after their completion, and the completed Alta Vista Treatment Plant project (\$250,000) listed in Table 7-3 for year 1994-1995 (for which no ratemaking impact treatment as yet has been addressed), and the all party proposal incorporating \$790,100 of other fire flow projects under way since 1994 and due for completion in 1997 (for which ratemaking was authorized by D.93-04-027), and acceptance by the parties of the vitally needed 4th airport well (\$238,000 for 1998-1999), the proffered settlement was limited to acceptance of only another \$404,000 of the Plan's remaining \$3,718,521 of proposed projects. Those accepted would be an immediate \$10,000 for the diversion structure; \$226,000 in 1998 for pumping and telemetry at the Schoolhouse, Portola and Alta Vista storage tanks, and \$168,000 in 1998-1999 for some miscellaneous pipeline replacements.

But left in limbo for possible future authorization after the DWR study and to be subjected to future agreement to be negotiated with complainants would be the rest of

the improvement projects needed now. These include the redrilling and rehabilitation of the existing Guntren and Park wells²⁰ (\$290,000 in 1997-1998); the associated Guntren iron/manganese treatment plant and raw water line (\$170,000 in 1998-1999); the urgently needed 650,000 gallon storage tank at the Schoolhouse site²¹ (\$618,000 in 1997-1998) to assist in partially meeting the present deficiency in operational, emergency, and fire fighting storage; the replacement operations building at the Schoolhouse site (\$393,000 in 1998-1999); the standby diesel generator, tank, electrical, and controls (\$409,000 in 1999-2000); and additional pipeline replacements in the remaining period 1999-2004 (\$616,520).²²

²⁰ The Master Plan stated that its primary and recommended course of action for increasing present water source capability would be the improvements to these two wells to provide an increase of 80 gpm, which when added to the 28 gpm average annual withdrawal expected from the 4th airport well would add 108 gpm to current production, resulting in a total of about 533 gpm, which based on current population projections would provide enough capacity until year 2012.

²¹ A water system must provide storage capacity beyond source capacity for operational, emergency, and fire fighting purposes. Operational storage is needed to supply peak hours when demand exceeds the maximum day production rate. It is replenished during off peak hours when demand falls back below the production rate. Typically, operation storage approximately equals 25% of maximum day demand. Citizens needs 170,000 gallons operational storage ($471 \times 60 \times 24 = 678,240 \div 4 = 169,560$). Emergency storage is based upon historical experience and time required to correct emergencies. Citizens uses three days of current demand, or 1,370,000 gallons emergency storage as its criteria ($316 \times 60 \times 24 \times 3 = 1,365,120$). Fire fighting storage is regulated by G.O. 103 (2 hours flow at 2,000 gpm) and requires 240,000 gallons storage. Accordingly, the system should have 1,760,000 gallons total storage. The Citizens' system has only 760,000 gallons storage, resulting in a current deficiency of 1,020,000 gallons. Interestingly, complainant's expert witness Bohley in 1994 recommended "an immediate program for the design and construction of an additional 1,120,000 gallons of storage."

The first tank proposed in 1997-1998 (\$618,000) would add 650,000 gallons urgently needed storage capability.

²² A significant concern, common to the initial complaints and repeatedly expressed in the public meeting and hearings, was the quality of water-being delivered. MMBWIA-Warhaftig complained that the Master Plan did not address water quality (smell, taste, color, and turbidity). Citizens Plan presents evidence that the water meets Health Department Standards. Citizens' Niederberger testified conceding there were secondary or aesthetic problems attributable to the local iron/manganese situation but also to the fact that the distribution

Footnote continued on next page

Of less immediate concern is the second 650,000 gallon storage tank scheduled for the 2002-2004 period (\$405,000).²³

It certainly appears that this consolidated proceeding has assumed a life of its own. It appears to reflect the paralysis of compromise decisionmaking too frequently associated with the committee approach to resolution of difficult problems. Six years has produced little but resolution of the fire flow problem and upgrade of the Alta Vista Treatment Plant. Complainants over the intervening years have been afforded ample opportunity to have participated in fashioning solutions to the problems that gave rise initially to this proceeding. The system was in terrible shape. But six years of discussions, hearings, negotiations, and conferences have produced relatively little progress in rehabilitating the system. The essential proposals of the Master Plan, prepared by a well known, competent consulting firm in this field, have been known to all parties since August of 1993. Two revisions have been prepared and distributed since, resulting in the final October 1996 Plan. They provide expert professionally designed improvements to bring the system up to G.O. 103 and generally accepted industry stands, which was our intention in D.93-04-027 and D.96-06-063.

Afforded opportunity to submit prepared testimony specifically addressing the Plan's proposals, almost nothing very constructive apart from the excellent earlier Bohley critique on fire flow, pumping, and storage matters was provided. Bohley's recommendations were considered and helped fashion recommendations in the Plan. MSD's prepared testimony criticized location of the two proposed 650,000 storage tanks, and was constructive. The first tank is proposed at that site for immediate

system had been constructed with pre-1955 era steel pipe. The replacement program represented by the Plan's recommendations addresses the water quality issue.

²³ While the second tank could be filled with purchased water and retained for fire protection, if that water sits undisturbed ready for a fire, the water becomes unfit for drinking due to lack of circulation. If used in event of a fire, the entire distribution system would become contaminated and would require disinfection, a "boil water" order, and incur expense to disinfect. But the option will be there.

construction (needed yesterday according to Bohley) and the many reasons for placing it at the central Schoolhouse location are amply addressed in the Plan. There is abundant time before the scheduled 2002-2004 proposed construction of the second 650,000 gallon tank to determine whether it should be located elsewhere—or even constructed at all. Should water supplies be discovered at a higher location, it may be best to locate the second tank at a higher location than the Schoolhouse site. And if no water additions are feasible, a second tank would be difficult, if not impossible, to fill or keep filled raising a question whether it should be built at all in that event.

MMBWIA-Warhaftig and MSD repeatedly have pointed up anticipated sewer capacity relief expected by the end of 1998, asserting that the Plan should address a system designed to serve the growth expected if existing connection and permit limitations are lifted. But unless significant new water sources are found and feasibly added to the Citizens' system, there can be no lifting of the Commission's moratorium on new connections. Over the years many studies have been made, but no significant new sources found. Impracticality and/or expense rules out numerous small known potential additive sources. Perhaps, the DWR study expected in 1998 will produce the hoped for miracle despite the failures of other studies to do so. But more time cannot be lost in correcting yesterday's problems still with us. If the study does not reveal new potential sources that are economically feasible, nothing is lost but growth. The system under any circumstances cannot afford the luxury of not fully developing or rehabilitating existing sources such as the Guntren and Park Wells. While these wells produce water containing undesirable quantities of iron/manganese, the water treatment facility also being provided will render the water useful, if only on a blended basis.

Should the DWR study, after digestion, indicate additional sources, while these are being evaluated and planned there would be ample time to plan additional facilities to recover, treat, store, and distribute that water to wherever the new developments will be placed. The Master Plan was charged with resolution of existing problems; it does not and was not charged by the Commission to indulge in planning precatory, speculative additional plant to accommodate potential growth should significant

discoveries of new water permit lifting of the moratorium. The Plan did what the Commission ordered, and it does address professionally and competently what expert consultants recommend is required now and in the immediate future to avoid the outages and fire flow problems for the needs of the existing customers. It also proposes to provide the necessary operating, emergency and fire fighting storage as required to comply with accepted professional standards and G.O. 103.

The Commission in this proceeding put to rest issues relating to its authority under the PU Code, case law, and G.O. 103 to order replacement before expiration of economic utilization of existing facilities where the public welfare requires it. The Commission recognized the sad state of this system and the validity of much in the complaints filed. Citizens was ordered to and did produce this Master Plan. Complainants had opportunity to comment or be heard in limited hearing on the Plan. The desalination option was eliminated and options to bring up source supply to 550 gpm were extensively studied, and the Plan's proposals come close, given the known a limited water resources of the area.

Conclusions

We will bring this proceeding to a close. The time to bring the system to standards is past due. If new developments are indicated by the DWR study, as we will provide, either the utility or our staff will initiate a new proceeding to address these future developments.

Accordingly, while we do not adopt either the August 26, 1997 all Party Settlement offered or the August 29, 1997 Citizens-Water Division Stipulation offer, we do adopt portions along with most of the Citizens' final October 1996 Master Plan as our resolution of this consolidated proceeding.

We will authorize Citizens to proceed with specific improvement projects as proposed by October 1996 Master Plan during the time frames we indicate and at the estimated costs, as set forth in the order that follows. Following the end of each calendar year, the ratemaking impacts of such specific improvement projects as have been completed and are in service by the end of that calendar year may be submitted to

the Commission by Advice Letter.²⁴ Should the Advice Letter submission not be resolved within four months of its filing, Citizens may file an application with the Commission to resolve the ratemaking impacts of the Advice Letter filing.

Citizens will be ordered to review the DWR study after it becomes available. Within five months after release of the study, Citizens will consider any economical and operationally feasible results from the study, and will file an application with the Commission to incorporate into the Master Plan specific proposals effectuating such results along with a time frame and cost estimate. Should the DWR study provide a reasonable, feasible, and economic basis for changes or elimination of any of the specific improvement projects we are authorizing in the order that follows, Citizens in its application will propose such changes or eliminations.

The Large Water Branch will also be ordered to review the DWR study after it becomes available. If Citizens fails to file an application, or the application it files fails to incorporate economic and operationally feasible results from the DWR study, or to propose changes or elimination of any of the specific projects we here authorize which no longer have a reasonable feasible or economic basis as a result of the contents of the study, the Large Water Branch shall propose to the Commission an Order Instituting Investigation (OII).

In either event, a Citizens application or an OII, the participating captioned complainants herein would be noticed and afforded opportunity to participate as provided by our Rules of Practice and Procedure.

Comments on the Prepared Decision of the Administrative Law Judge

As provided by PU Code § 311, the Proposed Decision of ALJ Weiss was served on the participating parties to this proceeding. The Water Division filed comment.

²⁴ This includes the ratemaking impact of the now completed and in service improvements to the Alta Vista Treatment Plant, which enhance the system's ability at least seasonally to draw more from the unpredictable flows in Montara Creek.

Complainants PMFPD, Warhaftig, Dekker, and intervenor District jointly also filed comment. No Reply Comments were submitted.

Both comments pointed out certain typographical errors which have been corrected herein. Several factual errors have also been corrected in the text.

The Water Division comment, while conceding that both the rejected Settlement Agreement between the Water Division and Citizens and the Proposed Decision allow Citizens to proceed with all the projects in the Master Plan, expresses concern that the Proposed Decision does not provide a process for ongoing consideration of cost reduction proposals to assure cost-efficient improvements. However, as improvements are submitted for inclusion in rate base, there will be ample opportunity for staff review of these costs before inclusion. And should the anticipated DWR study identify realistically accessible alternate sources of water located so as to obviate any of the Master Plan projects over the forthcoming five years, there will also be ample opportunity, through a resulting Citizens' application or a Water Division OII, to incorporate changes or to halt projects. Both types of proceedings would afford opportunity for community participation. Basically the Master Plan is designed to remedy problems of the existing system—the problems that initiated these complaints. As to these projects, the up-front financing must be provided by Citizens, and not through joint venture financing involving District. It must also be remembered that this system is not a public entity; it is a private, investor-owned utility characterized by proprietary ownership of its facilities, involving fundamental rate base issues. Early in the regulation of all California public utilities, the Commission accepted as a fundamental principle that in general, a utility should own the instrumentalities by means of which it renders service. (*In re Practice of Water, Gas, Elec. & Tel. Util* (1915) 8 CRRC 372.) Should District or another public entity conclude it can do better, the option of possible purchase or eminent domain acquisition is available.

Despite the facts that the final Master Plan had been distributed in October of 1996, and that after repeated delays requested by the parties to provide opportunity for preparation of their prepared testimony finally submitted on January 31, 1997 (a full seven months before the noticed August alternative evidentiary hearing on the Master

Plan), Water Division believes that the parties were unprepared for effective cross examination, having solely relied upon their proposed and rejected all-party settlement. The ALJ conducted his examination on the Master Plan at the evidentiary hearing, and any failure to be prepared to participate after notice is the sole responsibility of the parties.

Finally, Water Division believes complainants' concerns with the rejected Citizens-Water Division stipulations are relatively minor, and would modify the ALJ's Proposed Decision to incorporate the provisions of the stipulation. We do not agree.

The Joint Comment of Complainants argues that significant progress was achieved through years of cooperative effort, but that the proceeding should not be terminated, but rather proceed with a second phase to consider projects of the Master Plan not included for implementation in their rejected Settlement Agreement. We do not agree. Apart from fire flow improvements previously authorized by the Commission and to be completed in 1997, the result of these years of effort, their Settlement Agreement, adopts only the fourth airport well project and \$404,000 of pumping, telemetry, and pipeline replacements, leaving in limbo for further negotiation in such a second phase over \$3.5 million of other projects needed to bring this system to compliance with G.O. 103 standards.

The complaints filed in 1992 were of low pressure, leaking mains, inadequate storage capacity for fire and emergency needs, and fire flow problems in this inadequate, worn out, difficult to serve, dispersed, multi-pressure zone system. The remedies are not cheap to rehabilitate the system. And unfortunately the system is located in an area of poor quality groundwater with limited seasonal stream runoff for blending purposes. Known local water supplies are marginal for present needs, and imports either unavailable or not feasible.

While fire flow and some pipeline replacements have substantially been accomplished, complainants' settlement left out well rehabilitations needed to augment the present inadequate supply, and the first 650,000 gallon storage tank, needed back in 1994 by their own witness Bohley's testimony, is also left out even though it is at a key midpoint location. The Master Plan does not address, nor was it ever intended to

address, improvements beyond those needed to meet G.O. standards. It was not designed, nor is it part of the scope of this proceeding, to provide such additional facilities as would be required should the DWR study identify new water sources that over the years have escaped everyone's identification.

The Master Plan utilizes the presently known sources to the extent their exploitation is feasible and economic. As complainants allude, there are other known local sources. Complainants assert these as being of "better quality, quantity, and availability," but apart from generalities, presented no facts during the proceeding to substantiate the generalities. On the other hand, the Master Plan devotes 18 pages in Section 5 to identification and detailed analysis of these sources, and in each instance states why it is not feasible to pursue them. The proposal pushed by Warhaftig for purchases of excess water when available from an area farm provides no reliable constant or dependable supply while requiring substantial investment for wells, treatment and transmission/storage facilities.

Finally, the comment states that the ALJ instructed Citizens' attorney to draft changes to the rejected All Party Settlement. The transcript of the August 26, 1997 hearing contains no such instruction—the ALJ was unaware of and not concerned with who prepared a revision. The comment further states that the ALJ told the parties there was no reason for all to appear on August 29, 1997, when their revision was to be offered. The transcript indicates that the ALJ stated that the parties should "either sign or be here" (TR 800), and in response to Warhaftig's question "...if our signatures are on that, is our attendance needed on Friday morning?," to which the ALJ responded "No, no." (TR 812) and "...you won't have to be here unless you want to be." (TR 813).

Findings of Fact

1. Citizens is a public utility providing public utility water service in various areas in California, and is subject to the jurisdiction, control, and regulation of this Commission.
2. The Citizens' system serving the Montara area obtains its water supply from a combination of surface and groundwater sources, but over the years with inadequate

sources of supply, it has been unable to adequately meet the growing needs of its service area, or to provide adequate storage capacity to meet present operational, emergency, or fire fighting requirements.

3. With an antiquated, undersized distribution system largely using pre-1955 iron pipe, the system not only suffered outages, water quality problems, but also provided inadequate storage and fire flow capability, leading to the filing of the captioned complaints immediately after Citizens had filed the captioned application seeking rate relief. The application and complaints were consolidated.

4. Despite repeated orders from the Commission, and imposition in 1988 of a new connection moratorium, Citizens has been largely unsuccessful in locating and acquiring additional water supply sources to comply with the Commission orders.

5. By 1992, following public meetings and hearings on the application and complaints, it was asserted that Citizens' service level was "deficient relative to the expected level of service."

6. After an initial series of fire flow tests was shown to have been flawed, a new series of tests indicated that portions of Citizens' system could meet neither local nor G.O. 103 fire flow standards.

7. While D.93-04-027 determined that a series of step rate increases were appropriate to increase needed revenues in response to A.91-11-010, authorization for implementation of the rate increases was deferred pending completion of satisfactory fire flow testing. And as other service improvements were also deemed necessary, Citizens was ordered to prepare a Master Plan of comprehensive system improvements with notice and opportunity for comment before the Commission would consider the plan and order compliance.

8. In August of 1993 Citizens released its initial draft of a Master Plan, followed in December of 1993 with a formal plan. These versions provided recommended improvements, time frames, and cost estimates for a 10-year renovation of the system with projects addressing fire flow requirements, storage and pumping requirements, source of supply, and pipeline replacements.

9. By D.94-10-049, after receipt of prepared testimony, an all-party stipulation was offered and adopted as the order of the Commission, initiating a 3-year program of system improvements designed to mitigate poor fire flow conditions, and providing a mechanism for Advice Letter implementation of the rates accepted by D.93-04-027 as each year's projects are completed and placed into service (basically, these are the fire flow improvements set forth in Table 7-1 of the Master Plan and scheduled over the 1994-1995 to 1996-1997 years). While permitting work on additional storage was authorized, construction was not to begin before the Commission approved the proposed Master Plan storage proposals of the Plan.

10. Following Citizens' earlier attempt to have capital improvements deferred under the "grandfather" clause of Section I(1)(a) of G.O. 103 (which in part provided that replacements or abandonment of facilities prior to expiration of economic utility was not to be required where the facilities were in service prior to the G.O.), the Commission by D.96-06-063 stated that it had ample authority under further provisions of Section I(1)(a) of G.O. 103, and under PU Code §§ 701, 761, and 762 (as affirmed by the California Supreme Court in Camp Meeker (supra)) to order Citizens to replace or abandon inadequate facilities. The decision also stated that there would be a hearing on the contents of the Master Plan to evaluate its merits before implementation, and ordered the setting of a limited evidentiary hearing with opportunity to comment or to be heard on the contents.

11. Both the initial draft and the December 1993 Master Plan, while discussing in detail and evaluating the merits of both the well option, other potential sources of supply, and a desalination plant option for augmentation of the water supply, concluded that desalination was the sole potential water source which could fulfill and surpass the requirements of the Commission's order. However, the very high cost of desalination (approximately double the well option) resulted in opposition.

12. The well option, evaluated and discussed in the Master Plan, of all the known potential and realistically available sources of additional water supplies evaluated and discussed in the Master Plan, is the most economic and realistic choice. Moreover, with

its very limited known source resources, this system cannot afford to do less than strive to obtain optimum production possible from each and every well.

13. The Master Plan revision of October 1996 eliminated the desalination plant as the preferred option to augment supply, and recommends that the well option and increased storage capacity be adopted to close the gap both to meet current demand needs, and to meet growth under the existing permitted growth rates.

14. MSD, an active intervenor participant in this proceeding, and as a sanitary district with full powers of a County water district, in 1996 commissioned DWR to do a hydrological study of the Montara area to determine if and where additional water resources are located. This study assertedly is to be completed in February of 1998.

15. While the DWR study could be definitive, there is no reasonable basis to conclude that the study will locate substantial, reasonably accessible, and economically developable additional sources of potable water for the Citizens system.

16. Evidentiary hearing on the Master Plan, initially noticed for September 26, 1996 but repeatedly delayed on various requests of the parties including complainants, was finally set for February 19, 1997, with the parties submitting their respective prepared testimony on January 31, 1997.

17. Apart from complainant proposals (i) to set over water source, storage, etc. issues for an all community cooperative team effort to develop a new Master Plan after the DWR study in 1998; (ii) to require Citizens to purchase "unreliable" supplies of water assertedly present in private lands on a fill in basis; and (iii) criticizing of the location and utility of the 650,000-gallon storage tanks of the Citizens' Master Plan, the cost to develop the well option, and proposing for some form of a public-private partnership with MSD collecting a water connection fee on new development with the proceeds to be used to fund facilities needed with a lease-back of those facilities to Citizens, the proposed testimony submissions failed utterly to address the specific proposals of the Citizens' Master Plan - the purpose of the evidentiary hearing.

18. At onset of the February 16, 1997 evidentiary hearings, on the basis of a meeting the week prior with proposals having been exchanged in recognition of common

ground (but with reservations from Citizens), the parties sought, and were granted, a continuance to firm up a possible Settlement Agreement.

19. After delays attributed to vacations, it was not until August 13, 1997, that the parties filed a joint motion for approval of a proposed Settlement Agreement, and the ALJ immediately noticed a settlement conference and an evidentiary hearing for August 26, 1997.

20. The proposed Agreement would bifurcate the Master Plan. While acceding to the previously authorized fire flow improvements and treatment plant upgrade presently being completed, apart from the urgently needed additional water source from the tightly regulated Airport well field (for which both County and California Coastal Commission permits are required), the Agreement would accept only relatively minor items, with the \$3 million balance of projects to be deferred pending review of the DWR study in 1998 and reformulation of the Master Plan after negotiations between the parties. Complainants would keep the complaint dockets open into the future for this purpose.

21. Master Plan improvements left in limbo under the proffered Agreement included the Guntren and Park Well projects needed to augment the water source supply, the Schoolhouse storage tank needed to provide at least a reasonable portion of the presently needed operational, emergency, and fire fighting storage capacity, the standby diesel generator, and substantial pipeline replacements for leaking distribution lines.

22. Neither MSD nor MMBWIA are interested in either a purchase or eminent domain acquisition of the system.

23. Offers of nonproprietary, uncertain access to other privately owned undeveloped water sources cannot provide the reasonably reliable consistent water source asset needed to resolve Citizens' supply problem, nor can they provide a basis for utility investment to access them, or a basis for lifting the existing new connection moratorium, as the Commission will not set a stage for potential future rationing if the temporary source is later lost.

24. Noting the passage of time and the intention of the Commission to expeditiously close all vintage proceedings; the offered acceptance of only minor projects apart from the 4th Airport well to go forward at this time, while other badly needed water and storage source and pipeline replacement projects would be deferred for possible reformulation of the Master Plan after review of a DWR study which provides no assurance of additional water sources, the ALJ found the Settlement Agreement unacceptable.

25. Following a caucus break at the August 26, 1997 settlement conference and evidentiary hearing, the parties stated agreement on modifications to their Settlement, and agreed to submit a revised All Party Settlement Agreement at a continuation of the hearing on August 29, 1997.

26. At the August 29, 1997 continuation of the hearing only Citizens and Water Division appeared with a revised agreement containing Stipulations signed by none of the complainant parties. Complainants neither appeared, nor provided any notice of their intended absence or disagreement with the revision agreement.

27. The agreement signed by Citizens and Water Division was received as a contested stipulation agreement, and pursuant to provisions of Rule 51.4 of the Rules of Practice and Procedure, a copy was mailed each complainant for comment. No comments other than a September 5, 1997 letter from MMBWIA were received, which comment, if adopted, would defer supply, storage, and pumping projects for formulation at a future time after the DWR study and subject to acceptance by all. These proposals are unacceptable.

28. There is ample opportunity available in the interval between authorization and actual construction, which interval necessarily must be expended in preliminary planning, site acquisitions, and the lengthy multi-agency local permitting process, for Citizens, after review of the 1998 DWR study, to propose to the Commission additions, changes, or eliminations to Master Plan projects.

29. The Master Plan improvement projects set forth in the order that follows have been expertly evaluated and proposed to reasonably meet the requirements of the system, and no evidence has been produced to provide any reasonable doubt that they

are reasonably necessary to meet the objective of improving the system to industry and G.O. 103 standards.

30. In view of the record of this proceeding, it would be unreasonable and counterproductive to continue the proceeding.

Conclusions of Law

1. It is the responsibility of this Commission in regulating a public utility, when the utility has failed to provide an appropriate level of service, to determine the facilities, service, and method of service in order to ensure that the service provided is adequate (PU Code § 761), and in aid thereof the Commission may order that the utility improve its physical facilities so that it can provide an appropriate level of service.

2. Considering the past history of outages, inadequate water supply sources and storage, poor water quality, and undersized leaking pipes; the meager results obtained over the past six years from this proceeding; the failure, despite ample opportunity, of complainants to have presented substantial controverting evidence as to the reasonableness or necessity of the projects set forth in the Master Plan; the precatory and uncertain nature of the proposed continuation of the proceeding, and facing the time constraints of Senate Bill 960, this proceeding should be closed and a decision rendered forthwith based upon the evidence obtained.

3. The Master Plan improvement projects set forth in the order that follows are reasonably designed to meet the objectives set by the Commission in response to the captioned complaints, to bring the system up to industry and G.O. 103 standards within a reasonable time frame so as to provide an appropriate level of service given the limited water supply sources available.

4. Within a reasonable period of time within which to have reviewed the DWR study, Citizens should be required to come to the Commission with proposals for indicated additions, changes, or eliminations of any of the Master Plan projects authorized in the order that follows.

5. The Water Division should be instructed to serve as a backup, with an independent review of provisions of the DWR study, and in the event of Citizens' inaction, to propose an OII to the Commission.

6. The objectives of the application and of the complaints having been to the extent deemed appropriate by the Commission provided for in the order that follows, the complaints should be dismissed, and this consolidated proceeding closed.

7. Because there is an immediate need to undertake the improvement projects provided therein without further delay, the order that follows should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Commission accepts the October 1996 Water System Master Plan Update for the Montara District (Master Plan) as Citizens Utilities Company of California (Citizens) reasonable fulfillment of various Commission orders in this and earlier proceedings to prepare such a plan, and to obtain additional sources of water supply for the system.

2. On or after the effective date of this Order, Citizens is authorized to file with the Commission Advice Letters addressing the rate-making impacts of such of the improvements to satisfy fire flow requirements as set forth in Table 7-1 of the Master Plan, and as have been completed and entered into service but for which the rate-making impact has not as yet been resolved.

3. On or after the effective date of this Order, Citizens is authorized to file with the Commission an Advice Letter addressing the rate-making impact of, and seeking appropriate ratemaking relief for, the Alta Vista Treatment Plant Upgrade as set forth in Table 7-3 of the Master Plan, which upgrade has been accomplished and is presently in service, except that the ratemaking impact has not yet been resolved.

4. On or after the effective date of this Order, Citizens is authorized to undertake, as of the time frame and considering the estimated cost indicated in this Ordering Paragraph, the planning, permitting, construction, and entry into service, each of the system improvement projects listed in the Master Plan's Tables 7-2, 7-3, and 7-4:

For Year 1997-1998:

SP1	Schoolhouse - Property Acquisition	\$50,000
SP2	Schoolhouse - Mobilization	47,000
SP3	Schoolhouse - Site work	80,000
SP4	Schoolhouse - Site grading	22,000
SP5	Schoolhouse - New electrical drop	14,000
SP6	Schoolhouse - 650,000 g. tank	405,000
SS4	Alta Vista division structure	10,000
SS5	Iron/Manganese Treatment Plan	50,000
SS6	Equip Guntren Well	120,000
SS7	Acquire land-Guntren Well	40,000
SS8	Redrill Park Well	200,000
SS9	Raw Water Line	50,000
PRP3	Pipe Corona	33,600
PRP4	Pipe Reef Point	25,200
PRP5	Pipe Birch St. 3 segments	53,200
SP13	Telemetry to Alta Vista Tank	39,000
SP14	Telemetry Airport Well - Schoolhouse	47,000
SP18	Portola 100,000 g. Tank	60,000
SP19	Booster Pump Station	50,000
SP20	Telemetry - Portola Tank	30,000
		<hr/> \$1,426,000

A.91-11-010 et al. ALJ/JBW/bwg

For Year 1998-1999:

SP8	Operation Bldg. incl. demolish. Present bldg.	\$393,000
SP9	PRV Station inter zone	55,000
SP10	Fire Pumps to Alta Vista Zone	70,000
SP11	Fire Pump to Moss Beach/Seal Cove Zone	37,000
SP12	Control Valves	13,000
SP10	Airport Well #4 Site development	36,000
SS11	Airport Well #4 Well Development	72,000
SS12	Airport Well #4 Equip/pipe	115,000
SS13	Airport Well #4 Ancillary Facility	15,000
PRP6	Harte St. Pipe	56,000
		<hr/> \$862,000

For Year 1999-2000:

SP15	Standby diesel generator/tank	206,000
SP16	Electrical	156,000
SP17	Controls/instrumentation	47,000
PRP7	Pipe-Valle Mar	25,200
PRP8	Pipe Franklin St.	16,800
		<hr/> \$451,000

For Year 2000-2001:

PRP1	Pipe - Diversion to Treatment Plant	300,000
PRP9	Pipe - Hwy 1, 9-14th	89,600
PRP 10	Pipe - Acacia	22,400
		<hr/> \$412,000

For Year 2001-2002:

PRP2	Pipe - Schoolhouse	5,000
PRP11	Pipe - 1 st St.	8,400
		<hr/> \$13,400

For Year 2002-2003:

SP7	2 nd 650,000 g. Tank	205,000
PRP13	Pipe Connect Valle Mar.	72,000
		<hr/> \$277,000

For Year 2003-2004:

SP7	2 nd 650,000 g. tank (continued)	200,000
PRP12	Pipe - 7 Street	32,320
PRP 14	Pipe - 4, 5, 6 and 8 Streets	44,800
		<hr/> 277,120
Total		<hr/> \$3,718,520

5. Following the end of a calendar year in which any of the projects enumerated in Ordering Paragraph 4 of this Order have been completed and have been placed in service, Citizens is authorized to file an Advice Letter with the Commission, aggregating in that Advice Letter the rate-making impacts of the costs of those projects, and seeking appropriate rate relief.

6. Should an Advice Letter filing with the Commission as authorized by Ordering Paragraph 5 not be resolved within four months of the filing, Citizens may file an application with the Commission to resolve the rate making impacts and to obtain rate relief.

7. Citizens will obtain and review the California Department of Water Resources Hydrological Study of the Montara Area (DWR Study) scheduled for completion in

February of 1998, and after review, within five months of the release date of the DWR Study will file an application with the Commission to incorporate into the Master Plan any new economical and operationally feasible projects to augment Citizens's water supply sources, together with a project time frame and cost estimate, and/or to change or eliminate any present Master Plan project set forth in Ordering Paragraph 4 of this Order.

8. The Large Water Branch of the Water Division (Water Division) is ordered to obtain and review the DWR Study, and if Citizens fails to timely file the application ordered in Ordering Paragraph 7, or if the application as filed fails to incorporate economic and operationally feasible results from the DWR Study, including indicated changes or eliminations to projects of the Master Plan as authorized by Ordering Paragraph 4, the Water Division shall propose to the Commission an Order Instituting Investigation designated to focus on those additions, changes, or eliminations that the Water Division deems to be in order.

9. To whatever extent the rate relief sought by Application 91-11-010 filed November 12, 1991, has not been afforded by prior orders issued in this proceeding, such requested relief is denied.

10. Cases 92-01-026, 92-01-045, 92-02-031, 92-02-033, 92-02-045, and 92-03-010 are dismissed with prejudice.

11. This consolidated proceeding is closed.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of the Application of
CITIZENS UTILITIES COMPANY
OF CALIFORNIA for authority to
increase rates and charges for
water service in its Montara Water
District (U-87-W)

And Related Matters

Application 91-11-010

Case 92-01-026
Case 92-02-031
Case 92-02-045
Case 92-01-045
Case 92-02-033
Case 92-03-010

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is entered into by and among the
following parties to the above consolidated proceedings (hereinafter "the parties"):

1. Citizens Utilities Company of California ("CUCC")
2. California Public Utilities Commission - Large Water Branch

WHEREAS, pursuant to an order of the California Public Utilities
Commission ("Commission"), CUCC has prepared a revised master plan for
making capital improvements to its Montara/Moss Beach water system dated
October 1996 (hereinafter "Master Plan");

1 WHEREAS, evidentiary hearings on the Master Plan had been scheduled by
2 the Commission for February 19, 1997;

3 WHEREAS, several parties submitted testimony or comments on the
4 Master Plan for the consideration of the Commission;

5 WHEREAS, rather than proceed with full evidentiary hearings at that time
6 the parties have met pursuant to notice in conformance with the Commission's rules
7 governing settlements, including Rule 51.1(b)-(c), have exchanged proposals and
8 have negotiated in good faith to discuss the possibility of settling outstanding issues
9 relating to improvements in CUCC's Montara Water System;

10 WHEREAS, on August 26, 1997, pursuant to notice, the Commission held
11 an evidentiary hearing concerning the Master Plan during which all parties were
12 afforded the opportunity to cross-examine a witness presented by CUCC
13 concerning the Master Plan consistent with their pending settlement; and

14 WHEREAS, in accordance with the desire of the Commission that matters
15 be resolved through alternatives to litigation, the parties have reached an agreement
16 regarding the issues related to improvements to CUCC's Montara Water District
17 and implementation of CUCC's revised Master Plan.

18 NOW THEREFORE, the parties agree as follows:

19 The parties agree to cooperate in making improvements to CUCC's
20 Montara/Moss Beach water system. It is agreed that CUCC will move forward
21 with the following two year short term and one year baseline capital improvement
22 projects from its Master Plan:

23 1. As identified in its Master Plan for 1996-97, CUCC will proceed to
24 complete fire safety improvement projects totaling \$770,100. This project will be
25 part of a step increase filing authorized in D. 93-04-027.

26 2. During the 1997-98 time frame, CUCC will complete projects
27 totaling \$86,000 to place telemetry facilities to the Alta Vista storage tank and from
28 Airport Wells to the Schoolhouse tank. Additionally, CUCC will complete (a)

1 Pipeline Replacement projects totaling \$112,000; (b) the Portola Tank Site storage
2 and pumping facilities improvements, including storage tank, booster pump and
3 telemetry, totaling \$140,000; and (c) a \$10,000 Diversion Structure project for Alta
4 Vista Water Treatment Plant.

5 3. In the baseline time period 1998-99, CUCC will move forward to
6 complete the Airport #4 Well project totaling \$238,000 and Pipeline Replacement
7 projects totaling \$56,000.

8 4. CUCC will move forward with the other projects specified in the
9 Master Plan. Any project identified in the Master Plan as a short term project that
10 is not addressed in paragraphs 1 - 3 above shall be treated as a long term project to
11 be treated for ratemaking purposes in the course of CUCC's other rate proceedings.

12 5. The ratemaking impacts of the projects identified in paragraphs 1- 3,
13 above, shall be submitted to the Commission by advice letter on an annual basis.

14 The above construction cost estimates identified in items 1 through 4 were
15 developed consistent with the American Association of Cost Engineers guidelines
16 for developing reconnaissance level estimates.

17
18 The parties also agree as follows:

19 1. Continuation of Master Plan capital improvements to storage,
20 pumping facilities and increased source of supply will be reviewed after the
21 Montara Sanitary District's commissioned California Department of Water
22 Resource's (DWR) water supply study. The study will be completed and issued by
23 February, 1998 and reviewed by all parties within five months of its availability.

2. A meeting of the herein parties to evaluate the results of the DWR study will be scheduled and completed within five months of the study becoming available. Any economical and operationally feasible result from the DWR study which is not already a part of the Master Plan and which is accepted by CUCC or proposed for adoption by any other party will be presented to the Commission for possible incorporation into CUCC's long term Water Master Plan. CUCC will present such a proposal to the Commission by application. In the event that CUCC fails to file such an application, Large Water Branch may do so by proposing that the Commission open an investigation into the Master Plan. Other parties may do so by initiating another proceeding.

3. If the DWR's water supply study is not completed as noted above, the parties will continue to work cooperatively to pursue prudent and necessary capital improvements associated with CUCC's Master Plan.

4. Subject to regulatory approval, CUCC will consider any valid proposals forwarded by any party herein to reduce the overall cost of capital improvements (e.g., financing, water transfers, etc.). However, if CUCC does not consider the proposal to be valid, the party making the proposal may seek an order from the Commission for approval of the proposal.

5. This Settlement Agreement is subject to the approval of the Commission, and the parties agree to make a joint motion to the Commission to request approval of this agreement. The parties agree that they will support the agreement before the Commission and that no party will do anything to oppose this Settlement Agreement.

6. The provisions of this Settlement Agreement are not severable. If the Commission does not approve any portion thereof, or if the Commission or any court of competent jurisdiction rules that any material provision of this Settlement Agreement is invalid or unenforceable, or materially modifies any material provision of this Settlement Agreement, the parties agree to meet and consider

alternatives that the Commission may accept.

7. The parties agree that the Commission may close the pending application and complaint cases in its decision approving this settlement.

8. The parties agree that no signatory to these stipulations nor any member of the staff of the Commission assumes any personal liability as a result of these stipulations. The parties agree that no legal action may be brought by any party in any state or federal court, or any other forum, against any individual signatory representing the interests of Water Division ("WD"), attorneys representing WD, or the WD itself related to these stipulations. All rights and remedies of the parties are limited to those available before the Commission.

No party to these stipulations will provide, either privately or publicly, before this Commission any rationale or strategies for support of any compromises reached herein beyond any explicitly stated herein unless otherwise agreed to by all the parties.

This Settlement Agreement may be signed in counterparts. Facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on the pages that follow:

Agreement Signature:


Citizens Utilities Company of California
By: E. Garth Black, its attorney

Date: 8/27/97


Project Manager
California Public Utilities Commission-
Large Water Branch

Date: 8/29/97

(END OF APPENDIX A)