

ALJ/BDP/sid

Decision 98-08-034 August 6, 1998

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Gabriel Valley Water Company (U 337 W) for Authority to Increase Rates Charged for Water Service in its Los Angeles County Division.

Application 95-09-010
(Filed September 5, 1995)

(See Decision (D.) 96-07-057 for appearances.)

FINAL OPINION

Summary

The Commission concludes that San Gabriel Valley Water Company's (San Gabriel) plan for installing wellhead water treatment facilities should be adopted. Accordingly, the general rate increase authorized by D.96-07-057 is no longer subject to refund.

Background

Royal K. Brown, a citizen, made a statement at the public participation hearing held on December 11, 1995, alleging that San Gabriel was requesting ratepayers to pay for construction of wellhead treatment facilities when funding for such construction was available from various governmental sources.

Michael L. Whitehead, president of San Gabriel, rejected the notion that such funding was available. According to Whitehead, San Gabriel has no choice but to construct the wellhead treatment facilities to assure that San Gabriel's water supply meets drinking water standards.

An evidentiary hearing¹ was held on January 16, 1997, in Los Angeles on San Gabriel's plan for wellhead treatment facilities. Intervenors Brown and his associate Bill Robinson participated in this phase of the proceeding. They are not customers of San Gabriel and their interest in this proceeding was not clearly stated.

Opening briefs were filed by Brown, Robinson, San Gabriel and the Commission's Water Division (staff) on February 21, 1996. Reply briefs were filed by Brown and San Gabriel on March 7, 1996.

The administrative law judge's (ALJ) proposed decision was mailed for comments on July 15, 1996. Due to an oversight, Brown and Robinson were not served with copies. The Commission issued D.96-07-057 granting San Gabriel a general rate increase subject to refund and bifurcated the wellhead treatment facilities issue (Phase II) for later consideration. Brown and Robinson were granted an extension of time to file comments on the ALJ's proposed decision (which included a discussion of the wellhead treatment facilities issue).

Brown and Robinson filed comments on the ALJ's proposed decision on August 1 and 2, 1996, respectively. San Gabriel filed a reply to Brown and Robinson's comments on August 9, 1996.

In D.96-07-057 granting a general rate increase to San Gabriel, the Commission stated:

¹ Evidentiary hearing on San Gabriel's cost-of-capital was held on January 18 and 19, 1996, in San Francisco. The staff and San Gabriel signed a settlement agreement on all results of operation issues, which was adopted by the Commission in D.96-07-057.

"Rates approved in this order are made subject to refund pending a Phase II examination of, and Commission order regarding San Gabriel's plan for wellhead treatment facilities. The assigned ALJ is directed to conduct such further proceedings as are necessary to develop a record on this matters.

"This proceeding shall remain open to address Phase II."
(D.96-07-057, p. 8.)

On October 25, 1996, the ALJ issued a ruling stating that he had reviewed the record related to wellhead treatment facilities and concluded that further evidentiary hearing on the issue was not required. However, the ALJ requested supplemental briefs addressing issues stemming from late-filed Exhibit 14. San Gabriel filed a supplemental brief on November 22, 1996. Brown filed a reply on December 19, 1996, and Phase II was submitted for decision.

Wellhead Treatment Facilities

San Gabriel derives its water supply from 31 active production wells, 27 of these wells being located in the Main San Gabriel Groundwater Basin (Basin). In 1984, the United States Environmental Protection Agency (EPA) declared the Basin a Superfund Cleanup site. San Gabriel states that it is required to install treatment facilities on new or existing production wells in the most contaminated areas of the Basin. To clean parts of the Basin, these new facilities would remove volatile organic compounds (VOCs) and nitrates from the contaminated water in an attempt to slow the migration of plumes of contamination throughout the Basin.

As part of a settlement reached in its general rate case for the period 1996-1999, San Gabriel and staff reached agreement on all results of operations issues, including the utility's plan for installation of wellhead treatment facilities. Staff reviewed company records and inspected existing wellhead treatment facilities. Staff supports San Gabriel's plans for new facilities and reached

agreement with the company on utility plant additions, including wellhead treatment plant to be included in the test years.

Position of Brown and Robinson

Brown and Robinson questioned the need for San Gabriel to construct wellhead treatment facilities at ratepayer expense. They contend that there are existing federal and state programs that would fund cleanup of the VOC and nitrate contamination in the Basin. They also questioned San Gabriel's plans to install wellhead equipment and San Gabriel's plans for pumping at certain wells. They contend that: (1) there is no need to construct a treatment facility to remove VOCs at Well B1; (2) there is no need for nitrate treatment at Plant B6; and (3) there is no need to operate the existing stripping towers at Wells 11B, B7C, and B11B.

Brown and Robinson argue that the Watermaster does not have the authority to order San Gabriel to install cleanup equipment. They assert that large amounts of VOCs' have been removed by pumpers upstream of San Gabriel's wells, and recent data (Exhibit 14) indicates that VOC contamination in San Gabriel's wells is declining. Brown and Robinson contend that San Gabriel's proposed treatment plant is unnecessary. They suggest the use of portable equipment should the need arise. Therefore, in the interest of avoiding increased rates, they argue that operating expenses for cleanup equipment and new wellhead treatment plant should be allowed only when prescribed maximum contaminant levels at a well exceed California Department of Health Services (DOHS) standards.

Position of San Gabriel

The prepared testimony of Thomas M. Stetson (Exhibit 6), an independent expert on the Basin, and San Gabriel's Vice President - Engineering and

Operations, Frank A. LoGuidice (Exhibit 2, ch. 3, 5, 8; Exhibits 8 and 16) addresses the issues raised by Brown and Robinson.

LoGuidice testified that contrary to Brown and Robinson's assertions, there are no funds available from governmental sources to pay for construction of wellhead treatment plant. He further stated that the Water Quality Authority does not fund individual wellhead treatment facilities for individual water purveyors. Instead, the Water Quality Authority uses its resources to plan and coordinate the groundwater cleanup programs and is working to bring about voluntary contribution from parties identified by the EPA as being potentially responsible for causing VOC pollution in the Basin. He also testified that he is aware of no other government funds available to San Gabriel at this time or in the future to pay the cost of a project to reduce nitrate concentrations.

Stetson testified that 17 of San Gabriel's wells were contaminated or vulnerable to contamination from VOCs and six wells were contaminated or vulnerable to contamination with nitrates. He disagrees with Brown and Robinson's assertions that the wellhead treatment plant included in San Gabriel's general rate case is not needed.

First, regarding Brown's contention that there are alternatives to installing wellhead treatment at Plant B1, Stetson testified that based on historical and present VOC contaminant levels, Well B1 cannot be considered a long-term reliable source of supply. The well has to be shut down completely whenever VOCs exceeds maximum contaminant levels because without wellhead treatment or the availability of another uncontaminated well at the site to use for blending, the water will not meet prevailing drinking water standards. Therefore, San Gabriel identified Well B1 as a site for an air-stripping facility to remove VOCs.

Regarding Brown's contention that since Well B2 is close to Well B1 it "could be a candidate for a blending strategy," San Gabriel points out that

Well B2 is not an active well. The DOHS issued a directive not to pump that well because of its proximity to the outfall from a sewage treatment plant.

Further, San Gabriel states that the alternative to wellhead treatment at Well B1 would be to acquire land and drill a well elsewhere hoping to find uncontaminated water. According to San Gabriel, that would be uncertain at best, given the high levels of contamination in the area. More importantly, under the Judgment that governs pumping from the Basin, pumpers are required to drill wells in areas of known contamination and to install necessary wellhead treatment so as to remove existing contaminants and not draw contaminant plumes into uncontaminated areas.

Second, regarding Brown's argument that additional treatment facilities are not required at Plant B6, San Gabriel states that the Plant B6 wells are located in the southerly portion of the Baldwin Park Operable Unit, which is the largest and most contaminated area in the San Gabriel Valley. In fact, as high as the contaminant concentrations are at Plant B6, an even more highly contaminated upstream plume continues to migrate in a southerly direction toward Plant B6. Because of the severity of contamination in the Baldwin Park Operable Unit, EPA has devoted most of its efforts and attention to developing a cleanup plan for that area. An important element of the plan calls for San Gabriel to maximize production and treatment from Plant B6, and in particular from Well B6C, so as to remove as much VOC contamination as possible from this particular hot spot and to at least slow migration of contaminants. This is in accordance with EPA's longstanding goal to support treatment for wells in more highly contaminated areas, and minimize actions that unnecessarily spread contaminants. In keeping with this policy, the EPA has recognized that if San Gabriel does not operate Plant B6 at maximum capacity, it is probable that this plume will migrate to and

contaminate the Company's downstream wells and require treatment facilities to be installed at those locations as well.

Further, San Gabriel states that Wells B6C and B6D at Plant B6 are crucial water supply sources for its system serving Baldwin Park, La Puente, El Monte, and adjacent unincorporated areas of Los Angeles County. Because Plant B6 is such an important water production facility and because of the extraordinary high levels of VOC contaminants (some of which exceed 15 times their respective maximum contaminant levels), in March 1994, San Gabriel installed and since then has operated two air-stripping treatment facilities at that location. However, according to San Gabriel, nitrates present an additional water treatment requirement at Plant B6, and contrary to Brown's assertions, blending water from another source is not an alternative.

San Gabriel states that Well B6C routinely exceeds the maximum contaminant levels for nitrates. Pursuant to a DOHS directive, San Gabriel is already blending water from Well B6D to lower (but not remove) the overall concentration of nitrates at this site. But to achieve a blend that satisfies DOHS's requirements, Well B6C is being temporarily operated at about half of its developed capacity of 4,500 g.p.m. (i.e., at 2,400 g.p.m.). On the other hand, Well B6D must be operated at its full 3,000 g.p.m. capacity at all times. Therefore, whenever B6D is out of service for any reason, such as equipment failure or required maintenance, Plant B6 must be shut down completely and this large and strategically important component of San Gabriel's water supply is lost entirely. According to San Gabriel, this is one of the inherent shortcomings of relying solely on blending to meet drinking water standards.

Further, San Gabriel points out that the blending strategy advocated by Brown is incompatible with the EPA cleanup plan which calls for San Gabriel to pump and treat Well B6C up to its full capacity and minimize extraction from

Well B6D. San Gabriel believes that the EPA plan makes sense not only in terms of the overall cleanup strategy for the Baldwin Park Operable Unit but, more importantly, it is entirely consistent with San Gabriel's water production requirements from Plant B6. But, as both Stetson and LoGuidice testified, in order to achieve both the EPA's and the Company's production objectives at Plant B6, San Gabriel needs to proceed with its plans for nitrate treatment. Otherwise, the water from VOC treatment alone will not meet drinking water standards and cannot be put to beneficial use or be discharged back into the basin.

San Gabriel states that in the course of its general rate case, company representatives met with staff and reviewed the options available for dealing with the severe nitrate contamination. Those alternatives include abandoning Well B6C (not feasible because of the need for the water supply), replacing B6C (not feasible because of the uncertainty of locating a comparable alternate site and bringing in a well of the same capacity without contamination), abandoning B6C and purchasing treated imported water from the Metropolitan Water District of Southern California (not economically feasible because it would cost more than nitrate removal).

Further, San Gabriel contends that Brown's suggested alternative of deepening Well B6C to get cleaner water is not possible because it conflicts with EPA's objective of pumping from the shallower aquifer and under the Judgment that controls pumping from the Basin, the Company is simply not permitted to pump clean areas; instead it must construct water treatment facilities to cleanup the contaminants at existing sites within known areas of contamination.

San Gabriel states that after it provided extensive data to staff and conferred at length about the alternatives, staff concurred that nitrate treatment is necessary. Following issuance of the staff report, San Gabriel and staff had

further discussions about the cost of nitrate treatment and the schedule for designing and constructing those facilities. As a result, San Gabriel and staff agreed that the nitrate facilities should be included in Test Year 1997 Plant Additions, and that was reflected in the stipulation approved by the Commission.²

Next, San Gabriel addresses the arguments of Brown and Robinson that San Gabriel does not need to operate the existing stripping towers at Wells 11B, Well B7C and Well B11B. These stripping towers are not directly at issue in this proceeding since the facilities were previously approved. However, Brown contends there is no need to continue operating these facilities based on recent sampling results (Exhibit 14).

San Gabriel states that Well 11B historically has been contaminated with high levels of VOCs and still remains vulnerable, thus requiring continued treatment. (Exhibit 14.) Moreover, this well (like Well B1) lies directly in the downslope path of known plumes of contamination. In fact, Plant 11 and Well 11B lie at the confluence of the plumes moving from the Baldwin Park Operable Unit, the Puente Valley Operable Unit, and the El Monte and South El Monte Operable Units, as those plumes continue to move downslope to the Whittier Narrows.

Given the history of high levels of contamination at Well 11B and the continued presence of high and fluctuating levels of VOCs in Well 11B (and the rising level of VOC contamination at Well 11C), San Gabriel asserts that it has no

² In the course of those discussions between San Gabriel representatives and staff, the parties agreed that certain Utility Plant facilities other than those referred to above would be postponed or eliminated entirely from this general rate case proceeding but that the subject wellhead treatment facilities would be included.

choice but to continue to treat the water produced at that well. If in the future San Gabriel, the EPA, Watermaster, and DOHS conclude that Well 11B is no longer contaminated or vulnerable to contamination, the wellhead treatment facility could be relocated to another well that requires treatment. According to San Gabriel, there is no evidence to suggest that such a move should even be considered at this time.

Regarding Brown's belief that some day it might be possible to blend water from Well B11A with Well B11B instead of removing VOCs with the existing air-stripping facility, San Gabriel contends that is certainly not possible now. San Gabriel believes that it is highly unlikely that DOHS would approve a blending plan (in place of wellhead treatment) involving two contaminated wells. San Gabriel submits that it makes no sense to base long-term water supply and cleanup strategies on mere speculation that existing contaminant levels might fall below prescribed maximum contaminant levels "at some time in the near future." As Stetson testified, Well B11B is highly contaminated with three different VOCs and Well B11A (which Brown thinks might some day be used to blend) contains the very same VOCs, making it susceptible to contamination above the maximum contaminant levels. San Gabriel asserts that installation and operation of the air-stripping facility for Well B11B was a necessary and prudent addition when it was made in 1993 (which the Commission approved in D.93-09-036) and it remains so today.

San Gabriel points out that Well B11B is located within the Puente Valley Operable Unit. Because Well B11B is located near the middle of the leading edge of that plume as it moves toward the Whittier Narrows, there is no reason to believe that the high levels of VOC contaminants will decline. Accordingly, San Gabriel cannot discontinue wellhead treatment at Well B11B in the foreseeable future.

Next, San Gabriel addresses Brown's argument that Well B7C could be operated without air-stripping treatment.

San Gabriel states that Well B7C located at its Plant B7, is a critical source of supply for customers in the City of Industry and Hacienda Heights. Without water production from Plant B7, the water supply would be jeopardized and fire flows (which in most of the City of Industry are set at or near 5,000 g.p.m.) could not be met. In December 1992, San Gabriel completed an air-stripping treatment facility to remove high levels of three VOCs from the water produced at Well B7C, with concentrations of all three contaminants historically exceeding maximum contaminant levels.

San Gabriel contends that Well B7C cannot be operated without air-stripping treatment and contrary to Brown's unsupported assertion, blending with Well B7E is not feasible and would not produce water that meets drinking water standards. Well B7E is only capable of producing 600 g.p.m. while Well B7C produces over 3,250 g.p.m. To achieve a satisfactory blend, Well B7C production capacity would have to be reduced by more than 80%. Even then, there is no assurance the resulting blend would always meet drinking water standards. Also, Well B7E produces sand and cannot be operated on a continuous basis. It must be cycled on and off and it would not always be available to blend with Well B7C. As a result, Well B7C would have to be shut down altogether when Well B7E is not available and San Gabriel would have no water supply available from this important water production facility.

San Gabriel points out that again, this illustrates a significant limitation inherent in relying solely on blending to treat contamination; i.e., when the less contaminated well (which in this instance is a low production well operated only intermittently) does not operate, the whole plant must be shut down. Also significant is that historically the concentration of the three VOC contaminants in

Well B7C have been so high that no amount of blending with Well B7E would reduce VOCs below the maximum contaminant levels.

Regarding Brown's recommendations for Well B7C, San Gabriel states that as with Well B11B, B7C is located within the Puente Valley Operable Unit area. EPA is investigating the extent of groundwater contamination in the Puente Valley Operable Unit and although that investigation is ongoing, it is not expected to be completed for some time. Nevertheless, as Stetson testified, the contamination plumes in that area are moving down slope from east to west and San Gabriel's Plant B7 is located virtually in the middle of the leading edge of that plume as it moves toward the Whittier Narrows. Therefore, San Gabriel contends there is no reason to believe that there will be any reduction in historical and current levels of contamination which exceed maximum contaminant levels and consequently, San Gabriel cannot discontinue wellhead treatment at Well B7C in the foreseeable future.

Discussion

Brown and Robinson provided no support for their contentions that government funding was available for construction of cleanup facilities. Also, they offered no evidence refuting San Gabriel's proposed plant additions. Their position is apparently based on the unsupported assumption that the latest available data (Exhibit 14) indicates that "some of these wells may cleanup in the future on their own," the nitrate problem can be corrected by blending with water from low nitrate wells, and existing wells may be deepened to get cleaner water. San Gabriel has addressed those arguments.

We do not find the arguments of Brown and Robinson to be persuasive. As the largest producer of water in the Basin, San Gabriel has a responsibility to ensure that a long-term water supply will be available to its future ratepayers. The alternative of purchased water is clearly more expensive. Therefore, we do

not find acceptable the argument of Brown and Robinson that to keep rates low, San Gabriel should wait for polluters upstream to cleanup the Basin, or that San Gabriel should not operate or install cleanup equipment on a well until contaminants in water produced from the well exceed DOHS maximum contaminant levels.

We give much weight to the testimony of Stetson, that in his opinion, San Gabriel's wells and service area are in the immediate path and downslope of large VOC contaminant plumes which are migrating toward and in some instances already affecting them. Stetson argues that to clean up the contamination in the Basin, all water producers extracting from the Basin must cooperate with the regulatory agencies responsible for seeing that the cleanup is accomplished. In addition, all water producers must comply with the requirements of the amended Basin Judgment as set forth in the Watermaster's Rules and Regulations. Stetson believes that this leaves San Gabriel no alternative to building additional water treatment facilities to remove VOCs and nitrates.

Stetson points out that the rules of the Watermaster apply to nitrates as well as to VOCs. As nitrate concentrations continue to increase, the ability to blend water for treatment of nitrates will decline and nitrate treatment facilities will need to be constructed. According to Stetson, the only question is how many wells in addition to the San Gabriel's Plant B6 will require nitrate treatment.

We believe San Gabriel has met its burden of proof in this proceeding with un rebutted evidence and expert testimony demonstrating the need to construct wellhead treatment facilities to remove contaminants from groundwater produced at Plants B1 and B6. San Gabriel has also shown that the evidence does not support Brown's contention that San Gabriel does not need to continue to operate the existing wellhead treatment at Wells 11B, B7C, and B11B.

Accordingly, we reiterate and make final the Commission's approval of the settlement between San Gabriel and staff as set forth in Ordering Paragraphs 1 and 2 in the Interim Opinion, D.96-07-057, dated July 17, 1996.

Section 311 Comments

The ALJ's proposed decision was mailed for comments on August 6, 1998.

Comments were filed by Brown. He repeats his claim that other water agencies receive funds to pay for cleanup of the Basin, but again provides no specifics. Brown contends that at a minimum, the Commission should order San Gabriel to seek repayment of these costs for cleanup of the Basin from the responsible parties.

While we agree with Brown that the parties responsible for the pollution should assume the cost of cleanup; however, as a practical matter, the Commission does not have jurisdiction over the polluters or the management of the Basin. Legal proceedings are expensive and these costs would be borne by San Gabriel's ratepayers. Furthermore, the results of legal proceedings would be uncertain at best. In the meantime, San Gabriel is required to provide a water supply that meets drinking water standards, both now and in the future. We conclude that San Gabriel's plans for wellhead treatment are necessary.

Findings of Fact

1. San Gabriel derives most of its water supply from wells located in the Basin.
2. The EPA has declared the Basin a Superfund Cleanup site and San Gabriel is required to install treatment facilities on wells located in the most contaminated areas of the Basin to slow the migration of plumes of contamination throughout the Basin.

3. The Water Quality Authority, which coordinates the groundwater cleanup programs of the various pumpers in the Basin, does not fund individual wellhead treatment facilities for individual water purveyors.

4. San Gabriel, as the largest producer of water in the Basin, has a responsibility to ensure that a long-term water supply will be available to future ratepayers.

5. San Gabriel is not permitted to construct new wells in clean areas of the Basin; instead it must construct water treatment facilities to cleanup the contaminants at existing well sites within known areas of contamination.

6. Construction of a treatment facility to remove VOCs at Well B1 will ensure that this well will remain a long-term reliable source of supply.

7. Construction of a nitrate treatment facility at Plant B6 will allow San Gabriel to operate this strategically important component of its water supply at maximum capacity to slow the migration of contaminants to downstream wells.

8. Since blending with less contaminated sources is not a viable alternative, San Gabriel should continue to operate the existing stripping towers at Wells 11B, B7C, and B11B to produce water that meets drinking water standards.

9. San Gabriel's plan for operation and construction of wellhead treatment facilities is in the long-term interest of its ratepayers, and conforms with EPA's plans for cleanup of the Basin.

Conclusions of Law

1. San Gabriel has met its burden of proof and demonstrated the need for the proposed wellhead treatment facilities during the years 1996-1999.

2. The Commission should make final the approval of the settlement between San Gabriel and staff as set forth in Ordering Paragraphs 1 and 2 of Interim Opinion D.96-07-057.

FINAL ORDER

IT IS ORDERED that:

1. The general rate increase authorized San Gabriel Valley Water Company by Decision 96-07-057 is no longer subject to refund.

2. This proceeding is closed.

This order is effective today.

Dated August 6, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners