

Decision 98-10-044 October 22, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the proposed transfer of water pumping rights by Park Water Company to the City of Bell Gardens.

Investigation 91-03-046
(Filed March 22, 1991)

David A. Ebershoff, Attorney at Law, for
Park Water Company, respondent.
Laura J. Tudisco, Attorney at Law, for the
Office of Ratepayer Advocates.

ORIGINAL

OPINION

Summary

This decision approves an uncontested Settlement Agreement between the Office of Ratepayer Advocates (ORA) and Park Water Company (Park) which allocates \$668,869 to the ratepayers of Park for the sale of its water rights and distribution system to the City of Bell Gardens and determines that the utility has already provided mitigation to its ratepayers in the amount of \$564,630. Total sale price is \$3,809,000.

Background

On October 8, 1990, Park and the City of Bell Gardens applied to the Commission for authorization of a Water System Acquisition Agreement by which Park would sell to the City of Bell Gardens all of its lands, property, and rights within the city limits including its rights to pump 1,914 acre-foot (AF) of water from its 1,915.3 AF annual allotment and, in return, the City of Bell

Gardens would pay Park \$3,809,000 and assume responsibility of providing water service to those Park customers in the City of Bell Gardens.

On February 1, 1991, the Water Utilities Branch of the Commission filed a Protest to the Application, to which Park filed a Response on February 15, 1991. In its Response, Park asserted that the issues raised in the Protest were moot as a result of the commencement by the City of Bell Gardens of a formal eminent domain proceeding to acquire the water system, and the withdrawal of the Application for Commission approval.

On March 22, 1991, the Commission ordered an investigation (OII) into the effects of the transfer by Park of all of its water pumping rights to the City of Bell Gardens. Evidentiary hearings on the OII began on April 23, 1991, but were continued to await the outcome of a motion by the Commission to intervene in the eminent domain case brought by the City of Bell Gardens. The Commission's motion to intervene was denied and, on April 28, 1991, a judgement of condemnation was entered.

On February 9, 1995, a prehearing conference was held and a schedule was established for the issues remaining from the OII. Evidentiary hearings were set for February 6, 1996, but were taken off calendar pending the submission of additional prefiled testimony and the selection of hearing dates mutually acceptable to the parties. ORA served its prepared testimony on August 1, 1995. Park served its prepared rebuttal testimony on May 1, 1996.

Negotiations between the parties led to the filing on April 3, 1998 of a Joint Motion to Adopt Settlement Agreement Pursuant to Article 13.5 of the Commission's Rules of Practice and Procedure and Settlement Agreement. The Settlement Agreement, executed by Park and ORA on April 2, 1998, is appended to this decision as Attachment A and Exhibit 1.

This matter was submitted for decision on July 30, 1998.

Settlement Agreement Summary

The Settlement Agreement allocates the gain from the condemnation sale of the distribution system and the water rights, and mitigates the adverse effects on Park's remaining ratepayers. The Settlement Agreement measures the adverse effects by the higher cost of leased water rights since the condemnation of sale of the distribution system and water rights. The Settlement Agreement proposes an allocation of \$668,869 to the ratepayers of Park for the sale of the water rights and distribution system, and determines that Park has already provided mitigation in the amount of \$564,630. The Settlement Agreement provides that the \$104,239 remaining allocation due ratepayers will reflect accrued interest since July 1, 1991 and that this results in a total of \$187,352, which shall be credited to the Purchased Water Balancing Account.

Basis for Adoption of Settlement

The Commission has recognized the strong public policy of this State that favors settlements and the avoidance of litigation. (*In the Matter of the Application of California-American Water Company* (1997) D.97-01-013.) Commission policy also favors settlement, so long as it is "reasonable in light of the whole record, consistent with law, and in the public interest." (See Commission's Rules of Practice and Procedure, Rule 51.1(e).)

Both Park and ORA believe that they have made a comprehensive showing on the condemnation sale of the distribution system and the water rights to the City of Bell Gardens. Together, Park's Application, ORA's Report, and Park's rebuttal testimony convey sufficient information to permit the Commission to "discharge [its] regulatory obligations with respect to the parties and their interests...[or to]...move forward with the application on a contested basis if that were necessary." (See *In the Matter of the Application of California-American Water Company* (1997) D.97-01-013; 1997 Cal. PUC LEXIS 13, *5.)

Both Park and ORA believe that the Settlement Agreement is consistent with law and with the policies and decisions of the Commission. For purposes of the Settlement, Park and ORA have agreed that, if the assets of the distribution system were in rate base, 100% of the gain from the sale of the distribution system should be allocated to ratepayers to mitigate adverse impact under Redding II principles. (See: *RE Ratemaking Treatment of Capital Gains Derived from the Sale of a Public Utility Distribution System Serving An Area Annexed by a Municipality or Public Entity*, hereinafter referred to as *Redding II*, (1988) 32 CPUC2d 233, 238; D.89-07-016.) However, for purpose of this Settlement, the parties also agree that the water rights sold to the City of Bell Gardens were not in rate base and do not meet the criteria for situations covered by Redding II. As a compromise, for purposes of the Settlement, the parties have further agreed that ratepayers, through rates, paid 22.19% of the total costs associated with the ownership of the 1914 A.F. of water rights and should be allocated 22.19% of the net after-tax gain on the sale of the water rights to mitigate adverse impacts.

The parties have negotiated an allocation to ratepayers of Park of \$668,869 of the gain from the sale of the water rights and the distribution system. In keeping with the Commission's recent decision in the Cal-Am Coronado District settlement, the negotiated amount of the remaining allocation due Park's ratepayers takes into account amounts that Park has already provided by means of paying the higher costs of leased water rights without seeking recovery of those higher costs from Park customers. (See *In the Matter of the Application of California-American Water Company* (1997) D.97-01-013; 199 Cal. PUC LEXIS 13, *4.)

Finally, the parties believe that the Settlement Agreement is in the public interest. As noted above, the Commission has recognized the strong public policy of this State favoring settlement. Therefore, the parties, rather than

expending scarce resources on protracted hearings, have worked to resolve their differences themselves. Park and ORA are the only parties to this proceeding and believe that they are fairly reflective of the interests affected by the condemnation sale. Park believes that this Settlement Agreement produces a fair and reasonable result; ORA believes that the Settlement Agreement is in the interests of ratepayers in that it provides them with mitigation of adverse impacts resulting from the condemnation sale.

Findings of Fact

1. On October 8, 1990, Park and the City of Bell Gardens applied to the Commission for authority to execute an agreement for the utility to sell all of its lands, property, and rights within the city limits, including pumping rights, to the City of Bell Gardens for \$3,809,000.
2. On March 22, 1991, the Commission ordered an OII, into the effects of the sale.
3. On April 2, 1998, Park and ORA, the only parties to the OII, filed a Settlement Agreement resolving all issues in the proceeding together with a motion that the Commission adopt the Settlement Agreement.
4. The Settlement Agreement proposes an allocation of \$668,869 to the ratepayers of Park for the sale of the water rights and distribution system, and determines that Park has already provided mitigation in the amount of \$564,630.
5. The Settlement Agreement provides that the \$104,239 remaining allocation due ratepayers will reflect accrued interest since July 1, 1991, and that this results in a total of \$187,352, which will be credited to the Purchased Water Balancing Account.
6. The Settlement Agreement resolves every issue in the OII.
7. There is no known opposition to the Settlement Agreement, and no need for further hearings.

Conclusions of Law

1. The Settlement Agreement is an uncontested settlement as defined in Rule 51(f), Rules of Practice and Procedure.
2. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The joint motion for adoption of the Settlement Agreement should be granted.
4. The Commission having found that further hearings are not needed, the rules and procedures of Article 2.5, Senate Bill 960 Rules and Procedures, do not apply to this proceeding pursuant to Rule 6.6.
5. This order should be effective today to permit early implementation of the Settlement Agreement.

O R D E R

IT IS ORDERED that:

1. The joint motion for adoption of the Settlement Agreement is granted. The Settlement Agreement attached to this order as Attachment A is adopted.
2. Investigation 91-03-046 is closed.

This order is effective today.

Dated October 22, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the proposed transfer of water pumping rights by Park Water Company to the City of Bell Gardens.

I.91-03-046

SETTLEMENT AGREEMENT

This Settlement Agreement, executed this 2nd day of April, 1998, is entered into by and among Park Water Company ("Park") and the Office of Ratepayer Advocates ("ORA") of the California Public Utilities Commission ("the Commission"), collectively, the "Parties."

WHEREAS, on October 8, 1990, Park Water Company and the City of Bell Gardens applied to the Commission for authorization of a Water System Acquisition Agreement by which Park would sell to the City of Bell Gardens all of its lands, property and rights within the city limits including water pumping rights to 1914 of its 1915.3 acre foot annual allotment and, in return, the city of Bell Gardens would pay Park \$3,809,000 and assume responsibility of providing water service to those Park Water Company customers in the City of Bell Gardens;

WHEREAS, on February 1, 1991, the Water Utilities Branch of the Commission filed a Protest to the Application;

WHEREAS, on February 15, 1991, Park Water Company filed a Response to the Protest of the Water Utilities Branch asserting that the issues raised there were moot as a result of the commencement by the City of Bell Gardens of a formal eminent domain proceeding to acquire the water system, and the withdrawal of the Application for Commission approval;

WHEREAS, on March 22, 1991, the Commission ordered an investigation ("OII") into the effects of the transfer by Park Water Company of all of its water pumping rights to the City of Bell Gardens.

WHEREAS, on April 23, 1991, an evidentiary hearing on the OII began, but was continued to await the outcome of a motion by the Commission to intervene in the eminent domain case brought by the City of Bell Gardens;

WHEREAS, the motion of the Commission to intervene in the eminent domain case was denied, and on April 28, 1991 a judgment of condemnation was entered;

WHEREAS, the Division of Ratepayer Advocates ("DRA") assumed the responsibilities of this proceeding from the Water Utilities Branch of the Commission.

WHEREAS, on February 9, 1995, a pre-hearing conference was held and a schedule was established for the issues remaining from the OII;

WHEREAS, Park Water Company filed a report on May 1, 1995 concluding that ratepayers should not be allocated any portion of the proceeds from the condemnation sale.

WHEREAS, DRA filed testimony on August 1, 1995, recommending that all or at least 50% of a total gain of \$3,095,700 for the condemnation sale of the distribution system and water rights to the City of Bell Gardens be allocated to ratepayers.

WHEREAS, evidentiary hearings were set for February 6, 1996, but were taken off calendar pending the submission of additional pre-filed testimony and the selection of hearing dates mutually acceptable to the Parties;

WHEREAS, Park Water Company filed rebuttal testimony on May 1, 1996, disputing DRA's assertion that all or 50% of the gain from the condemnation sale should be allocated to ratepayers.

WHEREAS, in September 1996, ORA assumed the responsibilities of the former Division of Ratepayer Advocates.

NOW, THEREFORE, the Parties agree as follows:

1. That the proposed allocation of the gain from the condemnation sale of the distribution system and the water rights is consistent with the Commission's decisions on gain from sale matters, and will mitigate any adverse effects on Park's remaining ratepayers of the condemnation sale.

2. That the condemnation of distribution system and water rights be viewed as a whole, a condemnation of a group of assets resulting in an adverse impact, without assigning the adverse impact to specific segregated assets. The Parties agree, however, that assets will be viewed separately for purposes of allocating gain based on whether they were in ratebase.

3. That the adverse effect of the condemnation sale of the distribution system and water rights on Park's remaining ratepayers can be measured by the higher cost of leased water rights since the condemnation sale of the distribution system and water rights.

4. Attached hereto as Schedule I is a 2-page exhibit showing the proposed allocation of \$688,869 to the ratepayers of Park Water Company of the gain from the sale of the water rights and the distribution system. The Parties agree that Park has already provided mitigation in the amount of \$564,630 and that \$187,352 of the allocation to ratepayers has yet to be provided. Schedule I also shows the development of the \$187,352. The proposed allocation is developed as follows:

- a) the gross pre-tax gain from the sale of the water rights and the distribution system totals \$3,095,700;
- b) after deducting the costs of the sale, the net pre-tax gain totals \$2,839,728;
- c) after deducting the deferred tax on the gain from the sale, the gain totals \$1,589,728;
- d) the assets of the distribution system were in ratebase and, therefore, the net after tax gain on sale of the distribution system, \$408,323, meets the conditions of the Redding II decision as being available for allocation to the ratepayers to mitigate

adverse impact. Since the measured adverse impact exceeds this amount, 100% of the gain on the distribution system is proposed to be allocated to the ratepayers;

- e) the water rights were not in ratebase and, therefore, do not meet the criteria for situations covered by Redding II. The Parties agree that ratepayers paid (theoretically through rates) 22.19% of the total costs paid by both ratepayers and shareholders associated with ownership of the 1914 A.F. of water rights and agree that 22.19% of the net after tax gain on the water rights, \$260,547 should be allocated to the ratepayers to mitigate adverse impact;
- f) The combined ratepayer allocation of the net after-tax gain for both the water rights and the distribution system totals \$668,869 and is to be applied to mitigate the adverse effects of the condemnation;
- g) Park incurred lease costs for replacement water in the amount of \$564,630 (expressed in nominal dollars) from 1991 through 1993, but did not recover those lease costs in rates;
- h) Deducting the lease costs incurred by Park from the ratepayer allocation of the gain from the condemnation sale, and accounting for interest at the 90-day commercial paper rate, the remaining allocation due ratepayers for the purposes of mitigating the adverse effects of the condemnation sale is \$187,352.

5. The \$ 187,352 remaining allocation due ratepayers shall be credited to the Purchased Water Balancing Account.

6. The Parties agree to settle I.91-03-046 solely on the basis of the allocation proposed here and on the other terms and provisions specifically set forth in this Settlement Agreement. The Parties agree that adoption of this Settlement Agreement is just and reasonable for the purposes of finally resolving all issues presented in I.91-03-046. The Parties recognize that there is risk

involved in litigating I.91-03-046 and that it is not likely that any one party would prevail entirely. The Parties have vigorously argued their positions in settling I.91-03-046 and have reached overall compromise positions that they believe are appropriate in light of the litigation risks and of their separate goals.

7. This Settlement Agreement is subject to approval by the California Public Utilities Commission. The Parties agree to file a joint motion with the Commission as soon as practicable to request approval of this Settlement Agreement. The Parties agree to provide, or to cooperate in providing, such additional information, documents and testimony that may be required by the assigned Administrative Law Judge or the Assigned Commissioner to obtain a grant of said motion and adoption of the Settlement Agreement.

8. The Parties further agree that by entering into this Settlement Agreement, they are not waiving any legal rights they may have against any other party to this Settlement Agreement in a proceeding that is now pending before this Commission, or which may be asserted in the future except to the extent that the assertion of such claim conflicts with or would tend to undermine this Settlement Agreement.

9. The Parties agree that the California Public Utilities Commission shall have jurisdiction over this Settlement Agreement, and that any party seeking interpretation of this Settlement Agreement, enforcement of this Settlement Agreement, or the assertion of rights pursuant to this Settlement Agreement shall seek redress first from the California Public Utilities Commission.

10. The Parties further agree that no signatory to this Settlement Agreement, nor any member of the Staff of the Public Utilities Commission, assumes any personal liability as a result of this Settlement Agreement. The Parties further agree that no legal action may be brought in any state or federal court, or in any other forum, against any individual signatory, party representative, or staff member related to this Settlement Agreement.

11. The Parties each agree, without further consideration, to execute and/or cause to be executed any other documents and to take any other action as may be necessary, to effectively consummate the subject matter of this Settlement Agreement, whether in this proceeding or in another proceeding before the Commission.

12. This Settlement Agreement shall not establish, be interpreted as establishing, or be used by any party to establish or to represent their relationship as any form of agency, partnership or joint venture. No party shall have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Settlement Agreement, is provided.

13. This Settlement Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, executors, administrators, parent companies, subsidiary companies, affiliates, divisions, units, agents, attorneys, officers, directors and shareholders.

14. This Settlement Agreement and the provisions contained here shall not be construed or interpreted for or against any party hereto because that party drafted or caused its legal representative to draft any of its provisions.

15. This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of California and in accordance with the rules, regulations and General Orders of the California Public Utilities Commission.

16. This Settlement Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement.

17. The provisions of this Settlement Agreement are not severable. 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, then this Settlement Agreement shall be deemed rescinded and the Parties returned to the status quo as of the date of the execution of this Settlement Agreement.

18. This Settlement Agreement shall not be construed as or deemed precedential by any Party or by the Commission for any other purpose other than determining the disposition of the gain from the condemnation sale of the water rights and distribution system of Park Water Company to the City of Bell Gardens in accordance with the terms and conditions set forth in this Settlement Agreement.

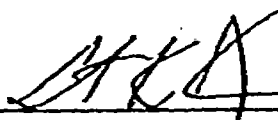
19. The Parties hereto acknowledge each has read this Settlement Agreement, that each fully understands its rights, privileges and duties under this Settlement Agreement, and that each enters this Settlement Agreement freely and voluntarily. Each party further acknowledges that it has had the opportunity to consult with any attorney of its own choosing to explain the terms of this Settlement Agreement and the consequences of signing it.

20. The Parties each represent that they and/or their counsel have made such investigation of the facts and law pertaining to the matters described in this Settlement Agreement as they deem necessary and that they have not relied and do not rely upon any statement, promise or representation by any other party or its counsel, whether oral or written, except as specifically set forth in this Settlement Agreement. The Parties each expressly assume the risk of any mistake of law or fact made by them or their counsel.

21. The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Settlement Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

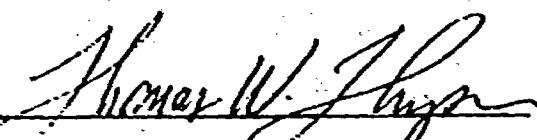
IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as set forth below.

PARK WATER COMPANY

By: 
Leigh K. Jordan, Senior Vice President

Date: April 1, 1998

OFFICE OF RATEPAYER ADVOCATES

By: 
Thomas W. Thompson, Supervisor

Date: April 2, 1998

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EXHIBIT 1

Schedule I - Page 1

BELL GARDENS OIL - PROPOSED ALLOCATION OF GAIN

	WATER RIGHTS	DIST. SYST.	TOTAL
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1 GROSS PRE-TAX GAIN	\$2,296,800	\$798,900	\$3,095,700
2 COSTS OF SALE	\$195,476	\$67,993	\$263,469
3 PRE-TAX NET GAIN	\$2,101,324	\$730,907	\$2,832,231
4 TAX	\$927,415	\$322,585	\$1,250,000
5 NET OF TAX	\$1,173,908	\$408,323	\$1,582,231
6 CUST. ALLOC.	\$260,547	\$408,323	\$668,869
7 UNRECOVERED LEASE COSTS (1991-1993)			(\$564,630)
8 REMAINING ALLOC. DUE TO RATEPAYERS (July 1, 1991)			\$104,239

NOTES

1 Per DRA report page 13.

2 \$143900 closing costs plus \$119569 Oil costs (\$117569 as of 2/28/98 plus \$2000 est. remaining). Allocated between water rights and distribution system by % of total gain.

4 Allocated between water rights and distr. syst. by % of total gain.

6 Allocated between shareholders and ratepayers at 100% for distr. syst. and by % of costs incurred for water rights. Park paid \$67778 for the water rights obtained through the Uehling purchase (Jordan page 6) and \$973, 1914 AF/ 19674 AF times \$10000 adjudication costs (Jordan page 4) for adjudication. Ratepayers paid \$520 in ROR on the \$78 in ratebase (Jordan page 23) and \$19092 in ownership associated fees (Jordan page 9). The % of total costs paid by the ratepayers for water rights is 22.19%

7 In 1991-93 Park leased the 1914 AF at a cost of \$115/A.F. in 1991, \$117.5/A.F. in 1992, and \$120/A.F. in 1993. These costs were not included in rates.

Schedule I - Page 2

**BELL GARDENS OIL - PROPOSED ALLOCATION OF GAIN
INTEREST CALCULATION**

YEAR	BOY BALANCE	LEASE COST NOT IN RATES	' EOY BALANCE	AV. BAL.	INTEREST	EOY AFTER INTEREST
1991	668869.4	110055	558814.4	613841.9	18016.26	576830.6
1992	576830.6	224895	351935.6	464383.1	17414.37	369350
1993	369350	229680	139670	254510	8195.221	147865.2
1994	147865.2	0	147865.2	147865.2	6890.519	154755.7
1995	154755.7	0	154755.7	154755.7	9177.014	163932.7
1996	163932.7	0	163932.7	163932.7	8868.761	172801.5
1997	172801.5	0	172801.5	172801.5	9625.043	182426.5
1998	182426.5	0	182426.5	182426.5	4925.517	187352.1
TOTAL		564630			83112.7	

Adjustment to balancing account would be \$187,352

Interest calculated on balance owed to ratepayers net of unreimbursed water rights lease expenses. Interest rate is 90 day commercial paper rate (5.4% used as estimate for 1998). Interest calculated for the period from July 1, 1991 to July 1, 1998.

(END OF ATTACHMENT A)