

Decision 00-06-010 June 8, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the Commission's own motion into whether the Greenbelt Water Company, Inc., is unable or unwilling to serve its ratepayers, is incapable of financial management, or is unresponsive to the rules, orders, and decisions of the Commission. Order to show cause why Greenbelt Water Company Inc., and its officers and directors, John S. Cavanaugh and Evelyn Cavanaugh, should not be fined for failure to comply with Commission rules, orders and decisions. Order to show cause why the Commission should not request the Superior Court to appoint a receiver to operate Greenbelt Water Company, Inc. in order to preserve and maintain the water system and meet its financial obligations.

Investigation 96-09-002
(Filed September 4, 1996)

Laura Tudisco, Attorney at Law, and Sue Wong, for the Water Division of the California Public Utilities Commission.

John S. Cavanaugh and Evelyn Cavanaugh, for themselves and Greenbelt Water Company, Inc., respondents.

Robert Vallerga, for himself, interested party ratepayer.

Brian Hathaway, Registered Environmental Health Specialist, for the County of Santa Cruz Health Services Agency, interested party.

Gerri La Rue Higgs, Bond Financing Branch, and Chester M. Winn, Chief of the Division of Fiscal Services, Department of Water Resource State of California, interested party.

O P I N I O N

Statement of Facts

Background

Since approximately 1913, residents of the vicinity several miles north of the Village of Aptos along Redwood Drive in Santa Cruz County have obtained public water service, initially through individuals and entities no longer of record, and subsequently at mid-century through the Aptos Water Company and its successor, the Monterey Bay Water Company.

In 1960, John S. Cavanaugh (Cavanaugh) and his wife Evelyn Cavanaugh (Mrs. Cavanaugh) and the Santa Cruz Land Title Company acquired approximately 290 small lots along Redwood Drive in a very rugged and forested mountainous area. The Cavaughns were developers and sold home sites along Redwood Drive. About 1970, the Cavaughns obtained the Title Company's interest in the remaining lots of the original 290.

Earlier, after having provided water service to some of the Cavanaugh's developed lots, Monterey Bay Water Company sold out to Soquel Creek County Water District, which entity later severed the connections to the Cavanaugh properties. Lacking the funds for what threatened to be a long and expensive legal battle, the Cavaughns were forced to install their own well, storage tank and distribution main to serve their developed properties.

By 1970, the Cavanaugh Water System was serving 17 customers. As the result of a complaint by three of these, by Decision (D.) 77059 (April 7, 1970) the Commission determined that the system was a public utility. Further connections were prohibited until certain improvements were made.

Unable to obtain loans to sue Soquel Creek County Water District, or to sell lots without water connections, the Cavanaugh's also were unable to obtain Commission approval for transfer of the water system as a proposed "mutual" to the customers (D.80469).

Finally, by 1973 a compromise to the impasse was approved by D.80999. A Plant Improvement and Replacement Fund (Fund) was established. A portion of the proceeds from each lot sale by the Cavanaugh's was to be deposited in the Fund, with expenditures from the Fund to require approval from the Commission's Executive Director. However, after making a small initial deposit, the Cavanaugh's bypassed the Fund, and paid the cost of needed facilities work directly without reference to the Executive Director.

By D.91980 in 1980, the Cavanaugh Water System was incorporated as the Greenbelt Water Company, Inc. (Greenbelt).

In 1982, Greenbelt was authorized and received a Safe Drinking Water Bond Act (SDWBA) loan of \$128,440 to rebuild the failing system. By D.82-07-103, the Commission ordered consumers to pay a monthly surcharge to their water bill to repay the 30-year loan. Instead of contracting the rebuilding, Cavanaugh himself supervised the work. A 37-month delay by the Department of Water Resources (DWR) after authorization, but before actual funding during a period of soaring inflation, led to some improvements not being done, and to an inadequate road resurfacing on Redwood Drive.¹ However, the basic water system improvements were completed in 1984. Cavanaugh's supervision of the

¹ Cavanaugh was authorized by the Commission's Executive Director to use funds Cavanaugh had deposited in the Fund to complete the resurfacing of Redwood Drive, necessitated by the trenching work done as part of the SDWBA rehabilitation.

project led to questions from the States Controller's Office of his bidding and accounting practices. Despite inadequate recordkeeping by the Cavanaughs, it was concluded that the costs for the work done were commensurate with the loan funds expended.

Meanwhile, customer relations worsened. There were disputes over responsibility for maintaining Redwood Drive. Customers raised questions about the State Controller's audit of the SDWBA proceeds used to rehabilitate the water system. There were questions about Cavanaugh's compliance with his obligations under the Fund. The latter led to a 1990 Commission audit. This audit concluded that under the Uniform System of Accounts Cavanaugh was in non-compliance. The audit also questioned whether the Greenbelt rate base had been overstated in a prior rate proceeding. The Auditor, basing his computation on a form of pro-rata analysis rather than actual tracing of lots sold, concluded that Cavanaugh should have contributed \$50,000 to the Fund for improvements.

The Auditor failed to consider the fact that after the Commission ordered establishment of the Fund in 1973, the County changed building site requirements from the earlier 4,000 sq. ft. to over 15,000 sq. ft. per site. Thus, 1973 era lots had to be combined to produce a single building site. The Cavanaugh contributions were based on building sites, not lots. Seventy-one percent (71%) of their land sales represented packaging of two to five historic plotted lots. The Water Division did its own audit, and used the County Recorder's official records to conclude that Cavanaugh's contribution obligation was actually \$20,000, not \$50,000.²

² The Cavanaughs had put into plant facilities more than this \$20,000, as audit records clearly showed.

Using the 1984 rate base, a retroactive computation found that the possible 9.99% rate of return was still below the 11% the Commission was authorizing other small Class D water utilities, and that actual results showed Greenbelt barely operated in the black.

Finding that the Fund had been more than fully funded and that the funds generated from the land sales had been applied to appropriate plant improvements and replacements, the Fund was terminated by the Commission in 1994 (Becky Steinbruner et al. v. Greenbelt Water Company (1994) 54 CPUC2d 438). The Cavanaugh's were again ordered to maintain the books of account in compliance with the Uniform System of Accounts.

Subsequent Developments which Led to this OII

Repayment of an SDWBA loan is funded by a surcharge on each customer's monthly water bill. In the case of Greenbelt the individual monthly surcharge is \$14.50. These surcharge collections are to be deposited in a trust account by the utility, and bi-yearly the utility makes a payment to the DWR from the trust account until the loan is finally repaid. For Greenbelt, this bi-yearly remittance was fixed at \$5,772.00.

In July of 1994, DWR informed the Water Division that in the past Greenbelt had at times been late or had even missed payments, but that these lapses had always been corrected, albeit at an interest and penalty cost. But by July of 1994, Greenbelt was delinquent \$18,052.96.

Staff Auditors began a preliminary investigation in early 1995. Cavanaugh agreed to provide records including bank statements but did not deliver. He also agreed to set up a proper fiscal agent. After repeated efforts, Staff Auditor Wong in early 1995 met with the Cavanaugh's. By that time Cavanaugh was blind, and as the result of a stroke, Mrs. Cavanaugh could

communicate with only a "yes or no" nod. The Cavanaugh's produced miscellaneous records, including some ledger books and spreadsheets, but with gaps. Based on a 4-month sample of customer remittance slips in the records, Wong extrapolated to conclude that from 1982 to June of 1995, customer surcharge collections by the Cavanaugh's approximated \$45,000. In January of 1996, staff told Cavanaugh to either pay the delinquency of \$45,667.40 or suggest a payment plan. He was also told to open a trust account with a fiscal agent, and that all future surcharge collections were to be deposited with that agent.

By March of 1996, no fiscal agent account had been opened. Cavanaugh did remit two payments of \$1,000 each directly to DWR. On April 16, 1996, Staff personnel met with the Cavanaugh's and their daughter, Mary. A Bank of America fiscal arrangement was set up, and Cavanaugh agreed to deposit to the account all the surcharge collections each month, or \$1,000; whichever was the higher amount. As to the past delinquency, Cavanaugh stated he could repay only if he could sell some of the vacant land parcels he still owned in the Greenbelt service area. In July of 1996, Cavanaugh informed Wong that title to the lots was finally clear so that they could be offered for sale.

It further was ascertained by Staff that Greenbelt had also not remitted Public Utilities Reimbursement Fees for 1994 and 1995, nor had the Cavanaugh's filed Annual Reports for 1993, 1994, and 1995.

Concerned to keep public utility water service operating for the customers (given the physical condition of the Cavanaugh's), Commission Engineer Smegal met with Mike Mills in June 1996. Apart from being one of the resident-customer, Mills is a plumber contractor, and had been operating the water system on an unpaid basis for Cavanaugh (who owed Mills \$3,500 for materials furnished). Smegal also met with Opal McAllister (also a resident-customer) who had been doing the monthly billing for the Cavanaugh's. She told

Smegal that although the water bills, fees, and surcharges were being collected and she intended to deposit the surcharge amounts with the Fiscal Agent, Cavanaugh had ordered her to send all the money collected to him.

It was against this background that Staff asked the Commission to open an investigation proceeding, resulting in Investigation (I.) 96-09-002 opened in September of 1996.

The I.96-09-002 Order

The investigation order was very broad in its scope. It directed that determinations were to be made whether:

- a. Respondents were competent to operate and maintain the system
- b. Rates collected were being used to maintain the system
- c. Respondents were making necessary and prudent repairs
- d. Required books of account were maintained, and surcharges were collected and deposited
- e. Respondents failed to remit the \$54,358 surcharge revenue
- f. Respondents failed to file annual reports, remit PUC surcharges and misstated income

Respondents were ordered to remit any and all SDWBA loan surcharge payments to the Fiscal Agent; that the company, its officers and directors may be ordered to repay the \$54,358 (as of March, 1996) to the Fiscal Agent; that the Commission may petition Superior Court to appoint a receiver; that an evidentiary hearing would be held to decide whether to fine and take other actions specified. And finally, a prehearing conference (PHC) was ordered to determine whether Staff had additional evidence.

The November 26, 1996 Prehearing Conference

A PHC was held in Santa Cruz before Administrative Law Judge (ALJ) John B. Weiss on November 26, 1996. Present and participating were the Cavanaugh, Mills and McAllister, Water Branch staff, and members of the public.

Cavanaugh stated that since July of 1996 he had made a single \$3,000 payment direct to DWR, plus monthly \$1,000 payments to a Bank of America Fiscal Agent, for a total of \$11,000; that he had employed Mike Mills and Opal McAllister to operate the utility and handle its accounts, as being blind he could not. He stated that the State Employment Development Department (EDD) without legal process known to him had seized funds from his account, assertedly for various taxes related to his contracting work on the 1982 SDWBA work on the system, and that these EDD actions had caused his problems.

Mills and McAllister, respectively, described their work for the system. McAllister told how Cavanaugh had the \$14.50 monthly surcharge payments put through a Comerica Bank pass through account to his personal account to avoid further EDD levies, and merged personal expenses with the balances.

Water Branch personnel stated that when the periodic payments to DWR ceased, interest and penalties caused the open-balance to go to \$132,000 on the original \$128,000 loan; that the system had had no rate relief since 1984, and was a candidate for use of the Operating Ratio Method in view of its depreciated plant. Branch proposed consideration of a trust assignment of the system to Mills and McAllister pending final disposition and the Cavanaugh's agreed to this.

Vallerga preferred such an assignment rather than the Commission getting Superior Court to appoint a receiver in view of the fact that the ratepayers would incur another surcharge to pay the several thousand dollars.

per month salary of a receiver. Vallerger expressed the wrath of the ratepayers over diversion of their SDWBA surcharges to Cavanaugh personal expenses.

Cavanaugh told of the 72 non-buildable lots remaining which had value only were an adjacent property owner interested in augmenting his property. These had been tied up by a legal claim that was now resolved, and if he could sell them, the proceeds could help pay the SDWBA deficiency.

As direct and current data on the SDWBA loan was lacking, and a DWR representative would not be available until February 1997, continuation of the proceeding was necessary to allow Branch to work with DWR on the status of the SDWBA loan balance. During the interval Branch would work up an agreement allowing Mills and McAllister to operate the utility for the Cavanaugh's.

The January 1997 Cavanaugh-Mills, McAllister Stipulations

Late in January 1997 the Cavanaugh's stipulated in an agreement with Mills and McAllister, pending a final decision in I.96-09-002, that the Cavanaugh's would cede control of the finances and operation of the Greenbelt system to Mills and McAllister. The latter were to establish appropriate books and accounts, make system repairs as needed, operate the system, and remit the surcharges for the loan repayment to the Fiscal Agent. Branch agreed to initiate a rate increase for Greenbelt.

The March 27, 1997 PHC

The second PHC was held by ALJ Weiss in Santa Cruz on March 27, 1997, shortly after the death of John Cavanaugh. Mrs. Cavanaugh was unable to attend. However, representatives from the Fiscal Services Department of DWR, the Santa Cruz County Health Services Agency, the Office of the Santa Cruz District Attorney attended along with Mills and McAllister and customers

Mills reported that each month he had been depositing the customer surcharge payments on the DWR loan with the Bank of America Fiscal Agent Account, and had also taken action as previously directed by the ALJ to clean up past due customer accounts. The six-month remittance amount to DWR is \$6,300, and if the Account of the Fiscal Agent builds any significant surplus above that amount, the overage would also be remitted to DWR.

DWR reported that as of March 1997 their books showed a loan balance of \$137,127.40. Of this \$113,106.19 represented principal and \$24,026.21 represented interest. But these figures did not include penalties due because of missed payments.

Morgan C. Taylor, Assistant District Attorney in the Consumer Protection Unit of the Santa Cruz County Office, reported that while criminal prosecution had been considered, because of the age and health of the Cavanaughs, they have not been prosecuted. However, in view of a formal complaint filed against the Cavanaughs by two Greenbelt customers, Steinbrenner and Vallergera, the Consumer Protection Unit had under consideration an unlawful business practices suit against the Cavanaugh Estate and Mrs. Cavanaugh for the purpose of establishing some kind of a security interest in the water company on behalf of the customers.

Branch reported that it was working with Mills and McAllister on a rate increase application, and planned to convert Greenbelt to an Operating Ratio Return system in view of the utility's small rate base.

Noting that DWR had delayed over a year and a half before advising the Commission that Greenbelt was not making its loan payments, the ALJ stated that the ratepayers, who had regularly paid their surcharge payments to Greenbelt, could not be expected to make up the lost payments on the loan; that the ratepayers were not the surety for the loan, Greenbelt and the Cavanaughs

were. The ratepayers could not be held liable for the failure of DWR to have been more diligent in its collections on the loan. Thus, in essence DWR would have "to eat" the missed year and a half of Greenbelt payments, or seek to recover from the Cavanaugh's. But, as the ALJ pointed out, if DWR foreclosed on the Greenbelt assets it acquired a water system that would find few buyers, and what would happen to the system customers. The DWR representative flatly stated that DWR did not want the water system. The ratepayers' representative, Vallerga stated that the customers also did not want the system. The ALJ pointed out that a Court appointed receivership would add \$13 to \$25 monthly to each customer's bill for salary alone, given the remote location and condition of the system. The ratepayers did not want that solution either.

It appeared to all present that the best result would be to keep the system going with the Mills-McAllister combination operating it. Mills stated that he and McAllister would be interested in owning Greenbelt if they would not be assuming past liability "to some old stuff." Meanwhile, Mills is getting certified as a licensed water system operator.

For the customers Vallerga stated that their position was that if any recovery could be obtained from the Cavanaugh's property, with reference to the parcel fragments still owned by the Cavanaugh's, such recovery should be applied to replenish the stolen surplus accumulated from the ratepayers \$14.50 monthly surcharge payments before DWR or the Cavanaugh's should receive any of it.

Further proceedings were put on hold pending receipt of more data from DWR; information on the liens reportedly held by other governmental agencies against Greenbelt and/or the Cavanaugh estate; and decisions by the District Attorney's Office whether or not to pursue legal suits.

The Unlawful Business Practices Suit

In 1998, the District Attorney's office filed an Unlawful Business Practices Suit against Greenbelt, Mrs. Cavanaugh and Does 1-20 inclusive, in Santa Cruz County Superior Court (No. 134142), seeking recovery for unlawfully converted surcharge funds. Recovery was to be sought from the various land parcels now held by Mrs. Cavanaugh, but it was recognized that to obtain any significant value from the lots it would be necessary to combine several into single parcels and obtain land use planning assistance. It was felt that a simple default judgment and execution upon it would be ineffective. In September of 1998, the suit was continued for six months.

Discussion

The SDWBA Loan Restructuring

In April of 1999, DWR agreed to a restructure of the SDWBA loan as a solution to the problem. Had Greenbelt made its semi-annual payments as called for by its original loan agreement, the principal balance as of January 1, 1999 would have been \$89,222.37. DWR agreed to forgive the missing unpaid principal of \$23,878.82 and the missing unpaid interest of \$15,969.36. The \$89,222.37 principal balance will be amortized over 10.206 years, with semi-annual payments of \$6,304.24 due starting July 1, 1999. McAllister is seeing that the Fiscal Agent makes these semi-annual payments.³ The new amortization schedule is in Appendix A to this decision.

³ The trust account to which the SDWBA surcharge payments are deposited each month, and from which the semi-annual remittances to DWR are made is "The Greenbelt Water Co.," Acct. 91995, with the Federal Credit Union in Capitola, California.

When a SDWBA loan surcharge is initially determined and ordered by the Commission, the surcharge is set slightly in excess of the amount calculated as needed for accumulation to meet the semi-annual payment the utility must remit to DWR in order to pay the interest and principal due. As a result, a surplus accumulates. And as over time additional customers are added in the water system, their surcharge payments add to that surplus. In the usual case, toward the end of the loan period, this accumulated surplus is sent to DWR to pay off the terminal balance of the loan early.

With reference to Greenbelt, as nearly as our staff is able to reconstruct and estimate, at the time of diversion of the funds, this accumulated surplus should have been \$32,399.23 as of December, 1999. These funds were trust funds belonging to Greenbelt, they were not the property of the ratepayers. But unless some recovery is obtained from the Cavanaugh Estate or Mrs. Cavanaugh, as the owner of Greenbelt, such surplus funds will not be available for an early payoff of the loan in the final months of the loan period.

Since 1998, the Consumer Protection Unit of the Santa Cruz County District Attorney's office has pursued the unlawful business practice suit it initiated against the Cavanaugh Estate and Mrs. Cavanaugh. This resulted in a stipulated judgment for \$55,700 in Superior Court before Superior Court Judge, the Honorable Robert B. Yonts, Jr. Although some of the small land parcels held by the Estate were sold in March, 2000 for taxes, a number remain and will be sold. Additionally, the Cavanaugh home although mortgaged, can later provide additional funds. The return from these sales should go to the trust account to at least partially replace the \$32,399.23 that was unlawfully diverted by the Cavanaugh's.

In the apparent unlikely instance that more than the \$32,399.23 needed to replenish the Greenbelt trust account can be recovered, any excess up to the

judgment limit should be remitted to DWR to replace the up to \$39,848.18 DWR forgave on the SDWBA loan E51038 to Greenbelt.

Other Matters

The long term successful operation of Greenbelt depends upon securing a new owner-operator. The cost of receivership would place added burdens upon the ratepayers while merely delaying the basic issue. The Mills-McAllister combination has done a commendable job in holding things together the past several years. They have expressed their interest in acquiring the system if they can obtain some protection against prior obligations incurred by the Cavanaugh's other than the remainder of the DWR SBWBA loan. They have regularly met the system's DWR payments and have the technical and managerial abilities to run the operation. The Commission encourages them, suggesting they form a corporation to acquire Greenbelt and to limit liability. We are led to understand that the Estate and Mrs. Cavanaugh would sell their proprietary interest to the two for a token legal consideration. The Chief of the Commission's Water Advisory Branch should be directed to provide advisory and technical assistance if Mills and McAllister are willing to proceed expeditiously. If they do not proceed and file an appropriate application within a reasonable period, it will be necessary that the Chief of the Branch recommend to the Commission that we consider seeking appointment of a receiver to take over the operation, however costly and burdensome this might be to the ratepayers.

It has been brought to the attention of the Commission that a 40,000 gallon riveted steel tank, one of three storage tanks (total storage capacity 162,000 gallons) in the system is in urgent need of replacement. The replacement cost is estimated to be approximately \$40,000. The general rate increase granted Greenbelt by D.97-10-021 issued October 9, 1997 included provision for a System

Improvement Account of \$4,800 annually. Over the past two-and-a-half years about \$12,000 has been thus earmarked. Approximately \$9,000 has been spent for two electric control systems, repair of two pumps, repair of several major line breaks, and to seal a well as required by the County. The account currently has about \$3,000.00.

Greenbelt's plant assets are already pledged against the SDWBA loan. The system is in a difficult financial position to borrow funds to replace the tank. Accordingly, while with the assistance of the Chief of the Water Advisory Branch, Greenbelt should make every effort to seek a commercial loan and continue processing its application to DWR for funds to replace the tank, the funds to replace the tank or to repay any loan must still be generated from revenues or surcharges. The current balance in the System Improvement Account and allocations from revenues to the account for the immediate future should be carefully retained for use toward a tank replacement, with only the most urgent necessary repairs to be performed. The Director of the Water Advisory Branch should also be directed to assist Mills-McAllister to expeditiously file for authorization to institute a \$20 per month per customer surcharge to accumulate funds to be held in the System Improvement Account for replacement of this tank.

No further matters being deemed relevant to this proceeding, no further hearing is necessary, and the investigation should be closed.

Comments on Draft Decision

On May 9, 2000, the ALJ's draft decision was served on the parties to afford opportunity for comment. On May 30, 2000, the Water Division filed a comment. It supported adoption of the draft decision while recommending certain changes to adopt another method of financing replacement of one of the

three Greenbelt water storage tanks. We have incorporated Division's recommendation to pursue a commercial loan as well as its DWR application, but we also retain reliance upon the surcharge to be implemented as expeditiously as possible, since in any event surcharge revenues will be necessary, whether to fund a replacement or to provide security for and to repay any loan. Division also identified certain incorrect dollar statements and these corrections have been incorporated into our decision.

Findings of Fact

1. Beginning approximately 1960, the Cavanaugh's developed and sold building sites along Redwood Drive in Santa Cruz County, initially obtaining water service to those sites from a local water utility.
2. After losing this local water supplier, the Cavanaugh's were forced to develop their own water system to serve their subdivision.
3. As the result of customer complaints, in 1970 the Commission declared the Cavanaugh water system to be a public utility subject to Commission regulation.
4. The Cavanaugh's have had a troubled relationship with both the Commission and their customers, primarily because they operated with little regard for regulatory requirements or customer concerns.
5. The Cavanaugh's incorporated the water system as Greenbelt in 1980.
6. In order to rehabilitate Greenbelt, the utility was authorized and obtained a 30-year SDWBA loan of \$128,440 in 1987, but because of soaring inflation at the time and a three-year DWR delay in funding the loan, the proceeds were insufficient to complete all the rehabilitation scheduled.
7. A monthly customer surcharge was authorized by the Commission and implemented to accumulate the scheduled bi--annual loan repayments to DWR for the SDWBA loan.

8. Cavanaugh supervised the rehabilitation work, but his failure to adhere to bidding and accounting practices led to DWR and State Controller audits which later concluded that the work actually performed was commensurate with the expenditures; a conclusion never accepted by some of Greenbelt's customers.

9. Customer complaints pertaining to use of a repair and replacement fund earlier ordered by the Commission led to Commission audits in 1994 which concluded that while procedures had not been followed, Cavanaugh had used the challenged funds for appropriate repairs and replacements, and the Commission abolished the Fund.

10. In mid-1994, DWR notified the Commission that Greenbelt had missed remitting three semi-annual SDWBA loan repayments.

11. Later Staff investigation ascertained (a) the Cavanaughs were both incapacitated; (b) substantial surcharge payment funds has disappeared; and (c) few Greenbelt records were available for tracing the missing funds.

12. To assure continued interim operation of the water system, Staff arranged for the Cavanaughs to turn over the day-to-day operations to a resident operating couple with plumbing and bookkeeping experience.

13. In September of 1996, the Commission ordered the present investigation, I.96-09-002.

14. Complicated by the incapacities of the Cavanaughs, and the intervening death of Cavanaugh, PHCs were held in November of 1996 and March of 1997.

15. Information obtained during the PHCs from both Cavanaughs, Mills and McAllister, Commission staff personnel, several customers, the Santa Cruz County District Attorney's office, and DWR officials, indicated there had been defalcations (including probable embezzlements) of Greenbelt funds, failure by Greenbelt to keep records as required, and failure to make requisite payments semi-annually to DWR on the SDWBA loan. It further became apparent that the

only possibility of some recovery on the missing funds would Cavanaugh restitution from sales of Cavanaugh properties.

16. Retention of the Mills-McAllister team to operate the system until new ownership can be obtained would be less costly to the ratepayers than the services of a Court appointed Receiver.

17. In January of 1997, the Cavanaugh's stipulated to the Mills-McAllister team operation of the water system pending a final decision in I.96-09-002, with the Mills-McAllister team to remit surcharge payments to a Fiscal Agent for the SDWBA loan.

18. By the same January 1997 stipulation, staff agreed to begin the process of consideration of a needed rate increase for Greenbelt, resulting in D.97-10-021 issued October 9, 1997.

19. In 1998, the Santa Cruz County District Attorney's office instituted an Unlawful Business Practices suit against Greenbelt, Mrs. Cavanaugh and Does 1-20 seeking restitution of unlawfully converted Greenbelt SDWBA surcharge funds.

20. In April of 1999, after consultations with Commission staff, DWR agreed to "forgive" \$39,848.13 representing unpaid principal and interest on the Greenbelt SDWBA loan, and to restructure the resulting \$89,222.37 principal balance over a 10.206 year period, with semi-annual payments of \$6,304.24 to commence July 1, 1999. These semi-annual payments are being made.

21. Staff determined that there was a further approximate \$32,399.23 missing from the Greenbelt SDWBA loan fund, represented by the excess of monthly surcharge payments above the scheduled accumulations toward semi-annual payments to DWR.

22. The Unlawful Business Practices suit in Superior Court resulted in a stipulated judgment.

23. The Commission is informed that some recovery and restitution to the Greenbelt SDWBA loan fund may be anticipated from sale under the stipulated judgment of Cavanaugh land parcels.

24. Mills and McAllister would make an excellent team to acquire Greenbelt.

25. A necessary component to the Greenbelt distribution system, a 40,000 gallon steel riveted storage tank, is in urgent need of replacement.

Conclusions of Law

1. SDBWA loan E51038 is an agreement between DWR and Greenbelt, and is secured by Greenbelt's plant and land assets. The repayment responsibility is Greenbelt's.

2. Funds collected under the Commission authorized surcharge provisions of Greenbelt's filed tariff for aggregation and periodic payment to DWR under the provisions of Greenbelt's SDWBA loan E51038 are trust funds that belong to Greenbelt, not to the ratepayers who paid the surcharge as part of their rates for water service.

3. Funds obtained from sale of assets of Mrs. Cavanaugh under the stipulated judgment in Superior Court, thus recovering defalcations of Greenbelt's SDWBA loan trust aggregations, should be restored to Greenbelt's trust account to cover future loan repayment of SDWBA loan E51038, with any surplus to be paid by DWR to reimburse for the "forgiven" principal and interest.

4. Mills and McAllister should be permitted a reasonable time in which to obtain corporate status, and thereafter to apply for formal Commission authorization to acquire Greenbelt from Mrs. Cavanaugh and/or the Cavanaugh Estate.

5. Should Mills and McAllister fail to avail themselves of the opportunity to acquire Greenbelt, the Commission should seek Superior Court appointment of a Receiver.

6. With insufficient accumulated funds in its System Improvement Account, and in a difficult borrowing position to obtain funds to replace the failing 40,000 gallon water tank, while conserving the funds presently accumulated, Greenbelt should, assisted by the Chief of the Water Advisory Branch, make every effort to obtain a commercial loan, continue processing its DWR application for funds, and immediately file an advice letter to institute a monthly per customer surcharge to accumulate funds necessary for a replacement tank or to pay off any loan it may obtain.

7. Because of the urgency of certain actions that must be undertaken, both for restructuring of the SDWBA loan and resolution of the future ownership of Greenbelt, the order that follows should be made effective as of the date hereof.

8. No further hearings are necessary for this investigation.

9. The investigation should be closed.

O R D E R

IT IS ORDERED that:

1. If within six months of the effective date of this order, Michael Mills (Mills) and Opal McAllister (McAllister) form a legal entity for the purpose of acquisition of Greenbelt Water Company, Inc. (Greenbelt), the Chief of the Commission's Water Advisory Branch shall provide advice and technical assistance in preparation and filing of the requisite application to the Commission to initiate such a transfer of ownership.

2. Funds allocated and accumulating each month in the System Improvement Account of Greenbelt shall as far as possible, barring more urgent need elsewhere in the operation, be preserved and retained toward accumulation of funds to replace the 40,000 gallon steel riveted storage tank.

3. The Director of the Water Advisory Branch shall provide assistance to Mills and McAllister in preparation and filing of a temporary monthly per customer surcharge tariff provision to accumulate funds toward replacement of the 40,000 gallon steel tank.

4. With the assistance of the Chief of the Water Advisory Branch, Greenbelt shall also seek a commercial loan and continue processing its Department of Water Resources (DWR) application, for funds to replace the tank.

5. The Commission accepts and approves the restructuring of the Safe Drinking Water Bond Act (SDWBA) loan as instituted by the DWR, and authorizes the repayment schedule set forth in Appendix A to this order.

6. Greenbelt is directed to adhere to the repayment schedule set forth in Appendix A to this order.

7. Any funds recovered under provisions of the Superior Court's order in Case No. 134142, as restitution for the approximate \$32,399.23 misappropriated from the Greenbelt SDWBA loan repayment fund, shall be deposited with the Fiscal Agent, the Federal Credit Union in Capitola, California, for ultimate early payoff of the SDWBA loan, E51038.

8. Should Mills and McAllister fail to apply to the Commission by January 1, 2001 for authorization to acquire Greenbelt, the Director of the Water Advisory Branch shall institute the necessary preparation for a Commission request to Superior Court for the appointment by the Court of a Receiver for Greenbelt.

9. Imposition of a fine for failure of the Cavanaugh's to comply with Commission rules, orders, and decisions under the circumstances would be meaningless.

10. Investigation 96-09-002 is closed.

This order is effective today.

Dated June 8, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners

APPENDIX A

GREENBELT WATER COMPANY

E51038

Loan Amount:	\$89,222.37
3% Administrative Fee:	\$0.00 (Included in the Loan Amount)
Principal:	\$89,222.37
Interest:	7.4000%
Remaining Term:	10.206 Years

Semi-annual Payments

Payment No. & Date	Semi-annual Payment	Interest	Principal	Principal Balance
				\$89,222.37
07/01/99	\$6,304.24	\$3,301.23	\$3,003.01	\$86,219.36
01/01/00	\$6,304.24	\$3,190.12	\$3,114.12	\$83,105.24
07/01/00	\$6,304.24	\$3,074.89	\$3,229.35	\$79,875.89
01/01/01	\$6,304.24	\$2,955.41	\$3,348.83	\$76,527.06
07/01/01	\$6,304.24	\$2,831.50	\$3,472.74	\$73,054.32
01/01/02	\$6,304.24	\$2,703.01	\$3,601.23	\$69,453.09
07/01/02	\$6,304.24	\$2,569.76	\$3,734.48	\$65,718.61
01/01/03	\$6,304.24	\$2,431.59	\$3,872.65	\$61,845.96
07/01/03	\$6,304.24	\$2,288.30	\$4,015.94	\$57,830.02
01/01/04	\$6,304.24	\$2,139.71	\$4,164.53	\$53,665.49
07/01/04	\$6,304.24	\$1,985.62	\$4,318.62	\$49,346.87
01/01/05	\$6,304.24	\$1,825.83	\$4,478.41	\$44,868.46
07/01/05	\$6,304.24	\$1,660.13	\$4,644.11	\$40,224.35
01/01/06	\$6,304.24	\$1,488.30	\$4,815.94	\$35,408.41
07/01/06	\$6,304.24	\$1,310.11	\$4,994.13	\$30,414.28
01/01/07	\$6,304.24	\$1,125.33	\$5,178.91	\$25,235.37
07/01/07	\$6,304.24	\$933.71	\$5,370.53	\$19,864.84
01/01/08	\$6,304.24	\$735.00	\$5,569.24	\$14,295.60
07/01/08	\$6,304.24	\$528.94	\$5,775.30	\$8,520.30
01/01/09	\$6,304.24	\$315.25	\$5,988.99	\$2,531.31
07/01/09	\$2,624.97	\$93.66	\$2,531.31	(\$0.00)
	\$128,709.77	\$39,487.40	\$89,222.37	

(END OF APPENDIX A)