ALJ/JBW/avs

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Decision 99-08-016 August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of McCanna Ranch Water Company, a California corporation, for a Certificate of Public Convenience and Necessity to construct a Public Utility Water System in the unincorporated area of Riverside County, in or near Perris, California and to Establish Rates for Service and to Issue Stock.	Application 95-06-024 (Filed June 9, 1995)

Luce, Forward, Hamilton & Scripps, L.L.P., by Steven S. Wall and Robert E. McGinnis, Attorneys at Law, for McCanna Ranch Water Company, applicant.

Redwine and Sherrill, by Steven B. Abbott, Attorney at Law, and McCutchen, Doyle, Brown & Emersen, by William J. Newell, Attorney at Law, for Eastern Municipal Water District, protestants.

Peter G. Fairchild, Attorney at Law, and Daniel R. Page, for Small Water Branch of the Water Division.

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Background

Barratt American Incorporated (Barratt) is a California corporation headquartered in Carlsbad, California. It is wholly owned and financially backed by its parent company, Barratt Developments PLC (Barratt PLC).[1] In the mid-1980 period, Barratt acquired the 246-acre McCanna Ranch property (Ranch) for subdivision purposes. The Ranch lies north of the City of Perris in Riverside County, but is within the City's sphere of influence. With generally level land, the Ranch has an elevation of between 1,457 and 1,523 feet above sea level. Perris Dam on Perris Reservoir[2] is to the north, with an interstate highway to the west.

Barratt intends a development of the Ranch to include 1,356 suburban residential homes on lots averaging 5,000 square feet in size. To date of the hearing, Barratt had spent approximately $10 million to acquire the land and to entitle the development project. Having separate tract maps on many individual lots, Barratt

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[1] Barratt American, the USA Division of Barratt PLC, has operated throughout Southern California for nearly 15 years, during which time it has built and sold over 12,000 homes. Barratt PLC is a large British development company first founded in 1958. Since then it has built and sold over 100,000 homes throughout the United Kingdom. Both companies are currently involved in growth programs. Neither Barratt American or Barratt PLC has ever defaulted on a development project.

[2] Perris reservoir was created as a State Water Project by erection of the Perris dam in 1972, and occupies the better part of a square mile to the northwest of the Bernasconi Hills.

can sell off individual lots with entitlements to other builders as well. For CEQA purposes, the City of Perris is the lead agency for the project.

In earlier years the Ranch was farmed. At present Barratt has leased it to Agri Empire, the largest potato farming company in California. Until 1980, there were four wells serving the earlier farming operations. At present there are two; one from the original farming operations with its well and pump refurbished, and a newer well. Together they have capacity to produce a million gallons a day, and have been pumped at that capacity without producing change in the static level.

During its preliminary investigation for the Perris Dam site in 1967, the Department of Water Resources study determined existence of a buried native groundwater stream channel, with a depth of about 280 feet, with flow southwestward through the reservoir site.

Today, this underground stream picks up seepage from beneath the reservoir, and flowing from the reservoir area, it bisects the Ranch area and extends southwestward into the area of the City of Perris. The water is of very high quality, is similar to that of the reservoir water, and surpasses the water quality found in adjacent areas in the same water sub-basin.

The Eastern Municipal Water District (District), with extensive facilities stretching over a 555 square mile area in the eastern region of the Inland Empire in Riverside County, provides water service on both retail and wholesale basis in approximately half of this area.[3] Through numerous reservoir tanks, and an

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[3] Organized in 1950, and governed under the Municipal Water District Law of 1911 (Water Code § 71,000 *et seq.*), District provides retail water service to 76,000 connections, and wholesale water service to Brownlands Mutual Water Company, the cities of Halmet, Perris, San Jacinto, Lake Helmet, Municipal Water District, Elsinore Valley Municipal Water District, Moreno Valley Mutual Water Company, Nuevo Water Company and March Air Force Base.

Footnote continued on next page

extensive grid of large diameter transmission pipelines, it can deliver water to existing and potential customers in this area. Indeed, it was the existence of both a 16-inch and a 12-inch District transmission line which transverse a part of the Ranch property that led Barratt in 1993 to meet with District's staff to discuss the possibility of District providing water to Barratt's proposed subdivision.

In these initial discussions, Barratt offered its well and its water rights on the Ranch property to District in exchange for a commensurate credit against the District connection fees.[4] District's staff was directed by its Board to study the feasibility and benefit of locating a District well on the McCanna land, and from its study the staff learned that the yield from such a well would easily be 1,000 acre feet (AF) annually. Morever, the water was high quality groundwater from the buried channel stream under the Ranch, making such an acquisition highly desirable for District.

District's policy has been that in exchange for provision of District service to any development, it requires the developer to agree to transfer to the District the developer's rights to produce groundwater from his development area. In its

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District obtains 80% of its water from the Metropolitan Water District of Southern California (MWD) which in turn obtains the water from the Colorado River Aquaduct and the State Water Project. The remaining 20% of District's water is local groundwater obtained through District's 16 wells.

The District's policy is to provide 24 hours of maximum day demand plus fire flows through 73 storage reservoirs, using gravity flow.

[4] Apart from the costs for construction and installation of intract facilities to deliver service, which a developer must provide as a contribution to District, District has various charges to all developers who request service. Amongst these charges, District includes a Domestic Water System Facilities Financial Participation charge of $1,510 for Equivalent Dwelling Unit (EDU), levied upon all developers who request service to pay for District's back-up capacity; a General District Standby Charge of $4 per acre; Improvement District Charges of $6 and $1 per lot where the lot is less than an acre; and an additional ad valorem property tax of 50 cents per $100 assessed value of the property.

overall area water supply plans, the District has identified up to 10,000 AF of Water District could obtain through application of this policy as agricultural lands within its general area are ultimately developed.

Against the backdrop of this policy it was the concern of District's staff that were it to make a deal with Barratt to offset hook-up fees against contribution of water rights on the Barratt lands (with their estimated 15-year net present value of $1,092,059), District would be setting a precedent for similar claims in the future as agricultural lands would be developed. The staff concluded these could be a potential loss to District of over $20 million. Barratt's proposal was never forwarded to the District Board, and the staff broke off talks, informing Barratt that as there was an issue as to Barratt's water rights (since Barratt had not been using them), District would have no interest in any offset deal.

The District then filed a complaint in eminent domain on February 29, 1998, seeking to take a 5.7 acre parcel inside the Ranch to construct a District well. District offered Barratt $5,000 for the site, that amount to include all the water District might extract from the well (Riverside Superior Court Case No. 262097).[5]

Barratt then had to chose. Were it to connect to District it faced in addition to the Contribution in Aid of Construction costs of the infrastructure to be

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[5] On February 23, 1995, District filed its eminent domain action to condemn a 2.5-acre parcel on the Ranch to build a well and was to take possession in April 4, 1995. Barratt moved for a stay. It then developed that District had relied upon an old road for access, a road that turned out had been abandoned, leaving District with a landlocked well parcel that could not be connected to District's system. Subsequently, the Court granted an interim stay for the parties to meet and confer in order to agree upon an alternate site. None of Barratt's multiple alternate sites have been acceptable to District and at start of this proceeding, the matter remained unresolved.

contributed to District, water connection fees of over $2 million for District's EDU charges, and another $700,000 for other District charges. In addition, there was the probability of another $1.5 million payment to District to cover a possible MWD "New Demand Charge" to District for the new demand on District's system from a McCanna addition to the system. All these costs would have to be to be passed to home purchasers.

From these developments, Barratt determined that as it sat on its own quite adequate water supply of high quality water, principles of sound economic policy dictated that Barratt seek Commission authorization to construct and operate its own public utility water system rather than connect to District.

A. The McCanna Ranch Water Company Application

Accordingly, on April 18, 1995, Barratt organized and qualified as a California corporation, the McCanna Ranch Water Company (applicant) to be its water system supplier for the subdivision. And on June 9, 1995, applicant filed the captioned application for a Certificate of Public Convenience and Necessity. Applicant also sought authorization to issue its 100,000 shares of single class stock to Barratt. And it filed for approval of metered service and commodity charges to be applicable. The application states that applicant will obtain a Department of Health Services (DHS) water supply permit, and will obtain a franchise from the City of Perris. A final Environmental Impact Report for the McCanna Ranch Specific Plan addressing the impacts of provision of water service to the project site as well as impacts of the installation of a water service infrastructure system, was obtained from the City.

B. The Eastern Municipal Water District Protest

On July 7, 1995, District filed a protest to the McCanna application. District asserted that the Ranch lay within District territory, and by construction

of 12- and 16-inch pipelines, District could connect its established supply of water to serve the proposed subdivision from existing District facilities located off-site. It asserts that existing storage facilities in the area could provide both maximum day demand and fire flows by gravity flow to the Ranch subdivision. The protest set forth District's charges and fees. It points out the Applicant's lack of experience and expertise in construction and/or operation of a water system, and questions the financial ability of applicant and its backers. District questions the quality of the groundwater sub-basin from which applicant would draw. District further questions the feasibility of any proposed inter-tie with the City of Perris, pointing out that were District to permit the city to inter-tie, Applicant would become responsible to pay District the latter's Domestic Water System Facilities Financial Participation charges of $1,510 per unit. District requested a hearing and denial of the application.

C. Applicant's Response to District's Protest

In its July 31, 1995 response to the protest, Applicant pointed out that the proposed subdivision was underlain by a source of quality water[6] more than adequate to supply the subdivision. Applicant stated that District's motive in resisting is merely to obtain that supply without cost from Applicant, and then to sell it back for millions. Applicant stated it was employing appropriate experienced consulting firms, contractors and operating staff to construct and operate the system in compliance with Commission requirements.

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[6] Citing the testimony of District's own Resource Development Administrator (the manager of District's Team of hydrologists) in the Eminent Domain action, that McCanna's water was "high quality," and could be "pumped directly from the ground, chlorinated, ammonia added to it, then fed directly into EMWD's pipeline."

Applicant questions District supply prospects for the future, pointing out District's reliance upon the Colorado River and State Water Project sources, noting that other states have successfully asserted their prior claims to the Colorado source and the probability of reduced allocation from the State Water Project. The result will be that District's efforts to replace and augment its supplies must result in future costs to District necessitating charges well in excess of present charges, bringing pressure upon District's future ability to service its debt.

Applicant notes that District did not even offer Applicant the same wholesale rates it offers others, and that District does not charge all its existing wholesale customers the $1,510 EDU charge it seeks to impose on Applicant. Applicant further responded by stating that while its proposed inter-tie with the City of Perris was included to add a reliability factor in the event of an outage, it could also provide its own reliability factor without the intertie.

D. First Prehearing Conference

A Prehearing Conference (PHC) attended by Applicant and District was held on December 14, 1995. Applicant stated that its proposed operating finances, construction plans, and master water plan would be fleshed out and available in discovery which would follow. Dates were set for filing of prepared testimony: March 1, 1996 for Applicant and April 15, 1996 for District, with reply prepared testimony to follow on April 29, 1996, and May 15, 1996, respectively. A week for hearing was set for August 19, 1996, later reset to October 21, 1996, after Branch decided to participate.

E. Staff Advice of Participation

After both Applicant and District had filed prepared testimony for their respective witnesses, the Small Water Branch of the Water Division

(Branch) decided to file, and on May 21, 1996, filed an Advice of Participation. Branch would investigate, prepare a factual report, appear at hearing and present testimony. Staff Counsel was appointed on June 11, 1996.

F. The Second Prehearing Conference

Branch's late decision to participate necessitated a second PHC which was held September 17, 1996 with all parties in attendance. Hearing issues identified were: Service area questions; the water quality and reliability of Applicant's proposed system; Applicant's ability to establish and operate a system; Barratt's financial commitment to Applicant; Applicant's cost of service and proposed rate base; whether a small water utility should be certificated where an established public agency was available to serve; the water quality of District's supply; the reliability of District's supply and District's cost of service.

In order to afford Applicant and District opportunity to review Branch's proposed report, and to prepare and file rebuttal testimony to the report before the hearing scheduled to begin October 21, 1996, Administrative Law Judge (ALJ) John B. Weiss directed staff to complete, file, and serve its proposed report by September 27, 1996. Any rebuttal briefs from Applicant or District, and all prehearing briefs were directed to be filed and served by October 16, 1996.

G. Report of the Small Water Branch

Branch's report was filed and served September 27, 1996. It centered on two issues: (1) should Applicant be certified in an area served by District, and (2) would Applicant be able, if certified, to provide service at reasonable rates, and also become financially self sufficient?

The report cited Commission Resolution M-4708 issued August 28, 1979, which provided that the Commission would deny certification

to small Class D Applicants if another public utility or public agency reasonably would be able to serve the proposed area, and would deny certification for operations likely to be unviable or marginally viable, or provide inadequate service.

Branch recommended denial because 1) the proposed service area could be served by District which is able and willing to serve; 2) the proposed rates would not initially provide a fair return on investment; and 3) compensatory rates would have to exceed District's rates for at least five years.

Prehearing Briefs

All parties filed and served prehearing briefs on October 16, 1996.

A. Applicant's Prehearing Brief

Applicant stated it would show that Resolution M-4708 was not relevant as its project would exceed the Class D 500 customer cap; that the project's financial viability would be guaranteed by a $250 million corporation; that its proposed "levelized" rate structure protects the ratepayers, and by the project builtout would provide a fair rate of return; and that the application meets the Bakman Water Co. ((1979) 1 CPUC2d 364) criteria as to which of two competing utilities should be allowed to serve a new area. Applicant also revealed that it was negotiating a management agreement for Dominguez Services Corporation (Dominguez) to manage and operate the water system.[7]

[7] Dominguez Water Corporation is a Class A water utility that owns and operates a number of Class C and D water systems in the Antelope Valley and Kern River Valley. Dominguez Services Corporation is the parent corporation whose common stock is publicly traded on the NASDAQ Exchange. Dominguez also manages other's systems for a fee.

B. District's Prehearing Brief

District stated it would show that District was ready, willing, and able to serve the project. District stressed its financial and administrative ability to serve, its extensive system and competent experienced staff. It pointed to its more than adequate and reliable water supply. It would show that duplication of facilities would result if Applicant were certified; that Applicant does not meet the financial self-sufficiency test of Resolution M-4708; that Applicant has no experience in water system operations, and would be dangerously dependent upon continued seepage of Perris Dam Water. District noted past Commission decisions which denied certification within the area of a public entity supplier other than where the public entity was either unwilling or unable to supply service.

C. Branch's Prehearing Brief

Branch asserted it would show that given the high proportion of rate base planned for immediate installation, Applicant would not be self-sufficient financially until its sixth year of operation, or in the alternative, were it to so set its rates according to actual costs incurred, Applicants rates would have to be far in excess of District's rates. Either way, Branch would show that Applicant does not meet the criteria of Resolution M-4708. Branch would further show that impracticability of service from District based on "prohibitive" cost to Applicant is not relevant to Resolution M-4708.

The Evidentiary Hearing

A duly noticed evidentiary hearing was held before ALJ Weiss in San Francisco on October 21, 22, 23, and 24, 1996. Commissioner Henry M. Duque shared the bench with ALJ Weiss for substantial portions of the final two days of hearing.

A. Applicant's Evidence

Applicant introduced its evidence through witnesses Donald R. Howard, Charles E. Doering, David Jacinto, and Richard D. Pattinson.

Howard, a licensed civil engineer and general engineering contractor, partner in the firm of Engineering Systems and Construction, with a BS and MS in Civil Engineering, has 38 years of extensive public and private utility work involving feasibility studies, the bidding and construction of water treatment plants and generator systems, design of booster pumping stations and deep wells, source and reliability of supply, evaluation of water quality and quantity, including service as staff for the San Gabriel Basin Watermaster, and the Puente Basin Watermaster, and participation in the Mojave River Basin adjudication. He has served as consultant, testifying before the Commission for various public utilities with respect to plant facilities, operating costs, depreciation, rate base, start-up expenses, and rates. In the present proceeding, he presented the principal evidence on Applicant's proposed system and facilities, consumption estimates, operating costs, depreciation, rate base, start-up expenses and rates, and addressed comparative water quantity, reliability of supply and respective delivery systems of the two parties.

Howard testified that Applicant's system would provide polyvinyl chloride (PVC) water mains six to 12 inches in diameter; two storage reserve tanks with total capacity of one million gallons; two wells with total pumping capacity of not less than 1,500 gpm (over 2,400 acre feet annually); operate at pressures between 45-75 pounds per square inch (average 65 pounds per square inch); two electric powered pumps; five electric powered booster pumps; all to conform to CPUC General Order 103. The greenbelt areas will require 104 acre feet of water per year, and it is anticipated there would be unaccounted for water

loss of 5%. Either well would have ability to provide the water supply needed. Applicant anticipates expending about $1,600,000 to start the water system.

Responding to the substantial differences in costs between Applicant's estimates for construction of the infrastructure plant for the project, and the District's estimates set forth by District's Witness Crew, Howard testified that based upon his professional experience, District's estimates for well drilling, chlorine treatment plant, and storage facilities, were too high. In part, Howard pointed out that these higher estimates came from District's requirement to use "prevailing wages," a restraint that Applicant was not constrained to follow. Howard testified that his estimates for maintenance and general and administrative costs had been based upon the costs actually incurred within his knowledge by similar sized public utilities. He stated that his depreciation estimates all fall within the range allowed by Commission Standard Practices Manual U-H. He further noted that if it happened (as District predicts) that 20 HP pumps are undersized and 30 HP pumps would be required, the additional costs involved would be nominal,[8] and resulting additional electricity costs would only be $2,400 a year.

Regarding the water rate schedule Applicant proposes, Howard testified that the rates proposed are set so as to recover the estimated operating expenses and depreciation every year. Being a new operation, Applicant

[8] Howard testified that based on available data the pump horse power estimate as used sufficient, but that until the wells are drilled and tested final horsepower requirements cannot be known. If larger horse power is needed, it would be provided – a change does not materially affect the cost estimates. The system design includes a generator to provide service during power outages.

recognizes it must incur the full capital costs of the entire plant up front. Necessarily, certain expenses such as depreciation will initially be high as well.

Accordingly, in order to be able to offer a reasonable and fair rate structure during the buildout period, the investors accepted that they must, as with any new enterprise, have smaller initial returns on their investment. But they recognize the necessity of recovering operating expenses and depreciation expense from the start.

Applicant therefore developed its proposed "levelized" rate structure to apply. It keeps the customer's charges at a fixed level for the eight years of the buildout. The customer charge of $29.58 per month includes a readiness to serve charge of $15 fee, and a commodity charge of $0.70 per Ccf, and assumes consumption of 20.83 Ccf per month.[9]

Howard contrasted these "levelized" rates proposed by Applicant to District's rates then in effect. Using the same 20.83 Ccf consumption estimate, District's monthly charge would be $36.39 which includes its $6.02 readiness to serve charge and its $1.458/Ccf commodity charge.[10]

Howard estimates that except for a loss of $3,255 the first year, Applicant's "levelized rate" structure would provide sufficient working funds to properly operate the system the first year. By the second year, a 2% return on investment should be achieved, increasing each succeeding year until buildout is

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[9] Based upon Howard's experience with similar small systems, he used 250 Ccf per year, or 20.83 Ccf per month, as the anticipated consumption per housing unit. The District's experience is stated to be 18 Ccf per month.

[10] Howard used the present monthly District charges, holding it constant through the eight-year buildout period. This makes no provision for the interim additional increases that are virtually certain to come into effect, if only to pass through the MWD wholesale increases in succeeding years as MWD's costs must increase.

obtained the eighth year when the rate of return on rate base is anticipated to be 12.8%. Howard argues that this result is that expected for any new business venture and is the way most new start-up ventures would operate. He asserts that for the eighth year start-up period, a "levelized" rate structure is fair to both the customers and the investor.

While stating that he did not favor the procedure, as part of his rebuttal to Branch's objections that "levelized" rates do not provide an initial financially viable operations, Howard also addressed an alternative rate structure option that the Commission has on rare occasions authorized as a corrective procedure to remove existing overbuilt rate base where the economic impact to ratepayers from imprudent or injudicious overbuilding was essential. This alternative, adopted to the present situation, is the so-called "saturation adjustment" concept.

Under this "saturation adjustment" concept,[11] the customers would pay a monthly water charge that changes every year during the buildout period. It is based on adjustments to rate base each year that reflect the increasing ratio of actual customers then served to the total anticipated at buildout. The initial year customer charge under his alternative concept Howard estimated to be $18.78 per month, including a readiness to serve charge of $13.85 per month, and a commodity charge of $0.237 per Ccf, assuming the same 20.83 Ccf monthly

[11] In the "saturation adjustment" adoption proposed here, essentially the total cost for the completed plant needed to serve the total customer base after buildout is calculated. Of this total cost, that portion as would be sufficient to provide residential fire service for one customer unit, is determined. This is the initial minimum plant. The difference between the total cost for the complete buildout plant and the cost for the initial minimum plant is subject to a "saturation adjustment." This adjustment is the ratio of actual customers receiving service from the system at adjustment dates (usually annually) to the anticipated total number of customers expected to receive service at full buildout.

consumption. However, this concept requires annual adjustments to rate base, revisions of depreciation and taxes annually, and recalculation of the customer charges each year. And by the eighth year, the customer charge would go to $30.12 per month, including a readiness to serve charge of $21.18 and a commodity charge of $0.429 per Ccf, assuming the same 20.83 Ccf consumption per month.

In Table A that follows (which was Table H in Exhibit 4, Howard's prepared rebuttal testimony), Howard compared "levelized" rates; the rates that would result from Branch's "hypothetical";[12] "saturation adjustment" rates; and rates should District serve.

[12] As an indication of "viability" for a new system of Class D size, Branch would require the complete project plant to be included up-front in the rate base; recovery of all operating expense and maintenance costs the initial year; with 100% of fixed costs to be in the service charge, and would base rates with a requirement that the generic rate of return authorized a Class D systems be included in the revenue requirement. As the comparison table indicates, the monthly customer rate the first year would be $149.24, decreasing progressively annually to $27.79 the eighth year. Other than for "hypothetical" comparisons, no consideration was accorded this structure.

Table A

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McCanna Ranch Water Company
Comparison of Proposed Water Rates
at 20.83 Ccf/mo.

McCanna Ranch Water Company

Year	Number of Customers	Class	"Levelized" Rates Service $./Mo.	Commodity $/ccf	Monthly $./Mo.
1998	135	D	15.00	0.70	29.58
1999	312	D	15.00	0.70	29.58
2000	489	D	15.00	0.70	29.58
2001	666	C	15.00	0.70	29.58
2002	843	C	15.00	0.70	29.58
2003	1,020	C	15.00	0.70	29.58
2004	1,197	C	15.00	0.70	29.58
2005	1,368	C	15.00	0.70	29.58

Staff Hypothetical

Year	Number of Customers	Class	Service $./Mo.	Commodity $/ccf	Monthly $./Mo.
1998	135	D	98.00	2.46	149.24
1999	312	D	58.00	1.44	88.00
2000	489	D	43.00	0.99	63.62
2001	666	C	21.00	1.22	46.41
2002	843	C	18.00	1.03	39.45
2003	1,020	C	15.00	0.90	33.75
2004	1,197	C	14.00	0.75	29.62
2005	1,368	C	13.00	0.71	27.79

Table A

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McCanna Ranch Water Company
Comparison of Proposed Water Rates
at 20.83 Ccf/mo.

Saturation Adjusted Rates

Year	Number of Customers	Class	Service $./Mo.	Commodity $/ccf	Monthly $./Mo.
1998	135	D	13.85	0.237	18.79
1999	312	D	18.96	0.265	24.48
2000	489	D	20.19	0.312	26.69
2001	666	C	20.23	0.341	27.33
2002	843	C	20.55	0.374	28.34
2003	1,020	C	20.73	0.395	28.96
2004	1,197	C	20.82	0.409	29.34
2005	1,368	C	21.18	0.429	30.12

Eastern Municipal Water District

Year	Number of Customers	Class	Service $./Mo.	Commodity $/ccf	Monthly $./Mo.
1998	135	D	6.02	1.458	36.39
1999	312	D	6.02	1.458	36.39
2000	489	D	6.02	1.458	36.39
2001	666	C	6.02	1.458	36.39
2002	843	C	6.02	1.458	36.39
2003	1,020	C	6.02	1.458	36.39
2004	1,197	C	6.02	1.458	36.39
2005	1,368	C	6.02	1.458	36.39

Howard testified that in his opinion, "levelized" rates here would be the most fair to the parties concerned – the customers and the utility. He stated that the "saturation adjustment" alternative simply allows less costs than are incurred, causing the investor to lose substantial amounts. Less revenue is received in the initial years than is needed to adequately maintain the system,

pay property taxes, etc. In addition, the customers face the irritant factor of a new, higher rate each year until buildout, since rates and charges must be adjusted annually as the customer base increases. A mechanism would be needed to provide as quickly as possible each year for the changes, necessitating at least annual recourse to the Commission for approvals. Under use of "levelized" rates, all this would be avoided according to Howard. The customer at all times during the eight-year buildout period has the same rate structure, and the utility knows where it stands without the constant necessity of seeking annual rate approvals.

Finally, regardless of whose consumption estimate is used (Applicant's 20.83 Ccf or District's 18 Ccf), Howard testified that a homeowner's overall costs for water and mortgage under Applicant's operation of the system as opposed to District operation, would be approximately 50% less. This he ascribes to avoidance of the hook up and other supplemental fees District must charge if it operates the system.

In all Applicant's rate calculations, Howard testified, Applicant has proceeded on the assumption that all developer financed plant (the distribution mains, services, meters, and hydrants) would be contributed plant.

Doering, a senior vice-president of RECON Research Corporation, with BS and MA degrees in Business Administration, and having all requirements except the dissertation for a Ph.D. in natural resources and environmental economics, testified comparing capital and cost structure of Applicant and District, total costs of service over the eight year buildout and rates of return.

Doering also stressed the need for the Commission to evolve water utility certification policies in an incremental market to incorporate competitive principles once reliability of supply and water quality considerations are

adequately met, so that consumers can benefit from the most economically efficient supplier when there are choices.

Jacinto, a licensed civil engineer and vice president for planning and engineering of Barratt, and board member of Applicant (BS in engineering with graduate work in geotechnical and hydraulic engineering as well as experience with the State Department of Water Resources Division of Safety for Dams (including work experience on the Perris Dam)), testified of prior negotiations with District for service; Barratt PLC's funding of Applicant's capital costs; Barratt's substantial investment exceeding $10 million in the project at issue; the anticipated rate of buildout; comparison of monthly homeowner costs under District and Applicant for services; Applicant's present capacity to pump one million gallons daily, and the paid down status of Barratt's mortgage on the project property. Jacinto introduced Exhibit 13, the Resolution of the City of Perris certifying the final Environmental Impact Report (EIR) on the project. As this EIR referenced provision of on- and-off-site infrastructure consistent with District's Master Plan requirements, Jacinto testified that with a private water provider now in the picture, an additional assessment would be made to provide either a Supplement or Negative Declaration with the City as lead agency, but that discussion with the City indicated that some minor screening landscaping would be required at most. He testified that the City will work out a franchise agreement as well, and that all land use entitlements needed have been obtained.

Jacinto also introduced Exhibit 14, a contract between Barratt and Dominguez, under which Dominguez would provide operating and maintenance services to Applicant for three years. He also disclosed that Dominguez has offered 1 ½ times the $1.6 million anticipated rate base for taking

over ownership of the system, and that in the event of a sale to Dominguez, the same "levelized" rates would apply for the eight year buildout period.[13] Jacinto further stated that Applicant would waive the right to impose connection fees or facilities fees with respect to the eight-year period.

Pattinson, president and CEO of both Applicant and Barratt, as well as former board member Barratt PLC, testified (in response to ALJ Weiss's query at the second PHC as to how Applicant would pay capital improvements and operating expenses not fundable from Applicant's rates if the Subdivision does not build out in eight years?) that Barratt PLC would advance funds for capital and operating needs and finance Applicant until such time as Applicant operates on its own for three consecutive years. In support of this testimony, Pattinson introduced Exh. 16 (Barratt PLC's Resolution regarding financial support with attached certification by the chief executive officer of Barratt PLC). Pattinson further confirmed that Barratt and/or Barratt PLC would expect that funds or loans advanced to Applicant would be repaid once Applicant begins to earn a return, but would not penalize customers by excessive rates to do so. Pattinson stated that as long as Barratt held a controlling interest in Applicant, the Barratt guarantees would remain in place. He noted the expectancy of economic recovery in California and the pickup in home building, and opined that the Inland empire would be one of the strongest growth areas. He stated that home builders cannot load on costs to new buyers, and that faced with the additional

[13] After Jacinto had introduced Exhibit 14, and disclosed ongoing negotiations relative to a possible sale of the water system to Dominguez, RRB moved in the alternative that either the application be dismissed without prejudice to refiling once a decision was reached on a possible sale, or that the proceeding be halted and left open to proceed once a decision on a possible sale was made. Both Applicant and District opposed the motion, stating they wished to proceed on the merits of the Application. ALJ Weiss denied the motion.

fees involved with District service, Barratt was left with no alternative but to try to certify its own water utility.

B. District's Evidence

District introduced its evidence through witnesses John S. Fricker, Kevin L. Crew, and Behrooz Mortazavi.

Fricker, retired director of customer services, and a 37-year employee with experience in the construction, survey and design fields, testified on District's organization, management and service, stating that District provides retail service to 76,000 domestic customers in half of the area it claims as its territory, and wholesales water either as the basic supplier or as back up to four cities, two mutuals, a district, and to March Air Force Base. He testified that no investor owned public utility has been formed in District's area since District's inception in 1951. District also operates a sewer system serving 118,000 connections and a reclaimed water line system.

Fricker told of Barratt's submission of water and sewer plans in 1988, initially in anticipation of service from District; that in 1993 Jacinto proposed to donate Barratt's wells and water rights as an offset for District's facilities fees, a proposal District's staff rejected; after which District initiated eminent domain action to acquire a well site on Barratt land. Fricker sets forth District's fees and charges to developers: a foot frontage charge per lot, an EDU charge,[14] MWD's readiness to serve charge pass through, a meter and installation charge per lot and a one time charge per lot for service. District also requires (by

[14] Fricker conceded that while the $1,510 EDU charge per unit was levied on all developers, District had not levied it on its takeover of Sunnymead Mutual's 700 customers, and in the negotiations to take over Moreno Valley Mutual's 1,100-1,200 customers, no EDU charge is contemplated. Both systems required or require improvements to meet District standards.

its Agency Agreement) that it be given extraction rights for any water under a developer's property. There are also certain improvement district and other assessments per lot. District's readiness to serve charge to customers would be $6.02/month with a commodity charge of $1.458 per Ccf, for an estimated total monthly billing of $32.26 for 18 Ccf.[15]

Fricker testified of District's fears that if Applicant were not builtout, District might have to pay just compensation for a system it considers below its standards. In the past, District once served three irrigation and four residential meters on the McCanna Ranch; today all services are either served by Barratt's well or inactive.[16] Fricker told of District's supply sources, the Colorado River and the State Water Project (both through MWD), and conceded the probability of substantial supply cutbacks from the Colorado River source, forcing MWD to pay twice as much for State Water Project water replacements, with the probability of pass through to District of the increased cost. The State Water Project today would be unable to deliver MWD's full allotment if MWD wanted to have it. At present MWD (because of the cheaper Colorado Water) takes only half of its State Water Project allotment.

Crew, director of customer services for District, and a licensed professional civil engineer with a BS in Environmental Resources Engineering and experience in pumping systems with Pacific Gas and Electric Company, testified of District's unused capacity in its local pressure zone sufficient to serve

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[15] Applicant's estimate of per customer usage was 250 Ccf annually, or 2,083 Ccf per month using District's service and commodity charges. With Applicant's higher estimated consumption (20.83 Ccf v. 18.0 Ccf), District's monthly bill would be $36.35.

[16] Fricker testified of two District transmission lines, one each of 12 inches and 16 inches, that cross portions of the McCanna Ranch.

Applicant's average use and fire flow requirements through gravity flow, and that in an emergency District could tap both filtered and unfiltered water flow from other pressure zones. His review of Applicant's plans concluded that the proposed system would not meet District's standards as they fail to have gravity flow and are not sized to District's eight-inch minimum. He testified that at a 1,219 gpm total demand for both residential and landscaping use, his conclusion was that the 20 HP pump motors planned were undersized; that 30 HP was minimum but he would use 40 HP. He also questioned noise mitigation, and the lack of "smoothing" in Applicant's proposed system.

Crew questioned cost items in Applicant's proposal for well drilling and equipment, treatment plant, generator structure, pumps, and storage facilities, using District experienced costs as his base. He also differed on electricity costs based on his view that 40 HP was desirable. He sponsored Exh. 25 comparing proposed water rates (but used District's experienced monthly usage of 18 Ccf rather than Applicant's stated 20.83 Ccf.), and Exh. 26 which compared Dominguez contract price to revenues. Crew conceded that one of Applicant's proposed wells alone could provide enough water to keep the two planned reservoir tanks filled on an average use day, absent a fire demand; and that with both wells operating on a maximum one day with a fire, the system would be okay.

Crew also sponsored Exhibit 24 comprising three segments, which compared costs. The first compared District's estimate of its cost to connect its systems to the Ranch project; the second was District's estimate of what it would cost Applicant to build a utility system to serve the Ranch; and the third was District's estimate of what it would cost the developer (regardless of who served) to construct the distribution lines, services, meters, and hydrants. District's

estimate for it to serve (1 + 3) was $4,927,035; District's estimate of Applicant's cost to serve (2 + 3) was $5,103,333.

Mortazari, District's director of water resources management and resources, a licensed professional civil engineer with BS, MS, and Ph.D. degrees in civil engineering, 12 years of private and public engineering experience, and four years of research experience, testified regarding the District's facilities, reliability, and sources, and of the groundwater levels, quality, and production data in the McCanna Ranch area. He told of District's different sources and flexibility to use them; of District's wells in the area sub-basin; its capability to blend the water (some of which is marginal) from these wells with MWD water. He conceded concerns regarding future reliability of MWD supplies, but told of MWD's development of an Integrated Resources Plan to combine imported, local storage, and reclaimed water, and of MWD storage plans. He also described District's plans to develop additional groundwater resources and plans to treat brackish water for domestic use in the future. With regard to McCanna Ranch, he told of the existence of a trough extending southwest from Lake Perris under the ranch,[17] and of his understanding that that portion of the sub-basin has high quality groundwater compared to other sub-basin areas, possibly due to leakage from Lake Perris and percolation and fringe subsurface flows, and that as long as that source continues it would be a reliable source for the McCanna Ranch

[17] Exh. 28, a geographical study entitled "Delineation of a Buried Channel Southwest of Perris Dam, Riverside County, California (May 11, 1993, revised August 24, 1993)" was prepared for District under supervision of Mortazari to make a detailed gravity study of the area west of Perris Dam to locate the possible extension of a buried stream channel first discovered by the Dept. of Water Resources (DWR) in 1967 prior to construction of the dam. DWR's work confirmed the existence of a buried stream channel under the dam site with a maximum depth of about 350 to 400 feet.

property. He further stated that if District obtained the underlying Ranch water it could be put directly into District's system after chlorination and ammonia treatment. He testified that so far District has not tried to acquire any of the 20,000 acre feet of water (identified in District's 1991 water supply plan), and distanced himself from the Garner Groundwater Development Team's June 16, 1994 draft report (Exh. 21) that had concluded that it "may not be in the District's best interest to recognize any Barratt claims of the water rights in McCanna Ranch." This report sought senior management direction on how best it should proceed in order to acquire a well for the District. He testified that District's Board made the decision to proceed by eminent domain to obtain a well site on Ranch property.

C. Branch Evidence

Branch introduced no witnesses of its own. Instead, it relied upon extensive cross-examination to develop the record. However, Branch did enter its September 27, 1996 Report as Exhibit 1.

Exhibits

A total of 29 exhibits were received into evidence during the evidentiary hearing.

Post Hearing Closing Briefs

All parties submitted concurrent closing briefs on November 22, 1996.

A. Applicant's Closing Brief

Applicant framed much of its argument based upon the criteria in Application of Bakman Water Co. (Supra.) Applicant contends that the result that is most consistent with the best interests of those members of the public who will purchase homes in the tract at issue, and use the water service therein,

should determine which utility serves. Merely because District has transmission mains in the area and sells to independents and its own customers should not control. The best interests of those who will be the customers should be determinative.

Applicant states that its evidence shows it has a reliable and sufficient source of water on-site; high quality water. It asserts that District's motive in protesting its application is sheer greed, fueled by District's very real concerns over uncertain future supplies from MWD. It asserts that District seeks to obtain that source under the Ranch for little or nothing, and would then sell it back to the McCanna customers at high rates.

Applicant states its evidence rebuts District's contentions of inferior design, noting Applicant's unrebutted assertion that its design and construction will meet General Order 103 standards. The system will be professionally operated and maintained. And Applicant again notes the financial guarantees by Applicant's corporate parents that reasonably guarantee the system's economic viability.

Applicant stresses that its $367,522 pass through improvement costs to homebuyers would be significantly less than the $3,065,626 that District would impose. And regardless who serves, the normal subdivision costs of contributed in-tract facilities, approximately $1,924,320, are the same. If Applicant serves, utility plant costs in rate base are only charged back over an extended period in the form of depreciation and return on investment included in PUC approved water rates.

Applicant rejects District's assertions that it underestimates costs. Based on its own experience at the Ranch, its well drilling costs assertedly are accurate. Its liquid chlorination treatment costs were not questioned. Tank construction estimates are reasonably based on Howard's experience elsewhere

and that Applicant's labor costs are less than District's. Applicant insists its overall estimate of $1,636,800 provides an accurate projection of expected rate base.

Applicant contends Resolution M-4708 should not apply. It is a Class C water system and financially viable with its operating costs guaranteed by a giant parent with an excellent reputation.

Applicant denies that its certification would result in wasteful duplication, inferior facilities, or inferior service. The on-site distribution system is essentially all supplemental, that to serve District would have to install additional costly transmission piping and would be diverting storage capacity planned in its 1990 Master Plan for other needs.

Finally, however, on brief Applicant added to its hearing advocacy of "levelized" rates, and would accept adoption of a rate structure based on "saturation adjustment," together with a proposed mechanism to implement it. As an attachment to the brief, Applicant included tables similar in format to those set forth in Howard's Exhibit 4. For reasons not stated, these new projections and the resulting rate schedule used 20 Ccf per month, replacing the previously used 20.83 Ccf used by Howard during hearing.

B. District's Closing Brief

District argued that Bakman (supra) is not applicable to the present case, rather that Ventura County Waterworks District vs. Public Utilities Commission (1964) 61 C. 2d 462 applies. There Justice Traynor stated at 66:

> "It is for the Commission to decide whether the public convenience and necessity require the certification of a private water utility when service by a public water district is also available, but it can properly make its decision only after considering what the alternatives are."

District also relies upon Re San Gabriel Valley Water Company (1950) 50 CPUC 406, and other Commission decisions to the point that invasion of a service territory cannot be in the public interest when duplication of service and inferior service may result. It argued that the service area proposed by Applicant is entirely within the 555 square mile area wherein District provides services, and that District has in place storage and transmission facilities than can deliver to the Ranch. District states it is ready, willing, and able to serve in the Ranch under the same terms and conditions it requires of all new developers. It asserts that certification of Applicant would result in wasteful duplication of facilities.

District argues that Applicant manipulated is proposed rates by not providing for a reasonable initial rate of return, and by use of a higher consumption rate than experience warrants, thus, artificially reducing the commodity charge by spreading the fixed cost components over more units. District states Applicant's estimated infrastructure and operating costs are understated. District states that it is a "real water district" with employees, experience, and facilities, while Applicant is a "paper company."

District points out that for the first eight years, the average rate of return would be less than half that currently authorized for a Class D water company of Applicant's size, and that it only gets to this average rate by making unwarranted assumptions about the speed and extent of buildout, noting the depressed Southern California housing market of prior years. It questions the Barratt guarantee as any real protection for ratepayers.

District argues that Applicant would provide "inferior service," touting its gravity flow capability out of storage, while Applicant must have one well working in order to meet maximum day demand plus fire flow. It stresses

the close availability of its service crews in Perris, where as Applicant proposes to rely upon Dominguez crews an hour distant.

District questions Applicant's water rights, and points out that no health department permit has been obtained. Finally, District contends that the Applicant has not complied with CEQA requirements in that no subsequent environmental documents have addressed the proposed change in water service supplier, which it infers is a substantial change. It argues that the private interest of Applicant's parent corporation, a housing contractor, should not be confused with the public interest.

C. Branch's Closing Brief

The brief reflected Branch's position change during the evidentiary hearing from its prehearing report posture of opposition to certification, based upon what it perceived as Applicant's proposed operation in District's area of service, and its apparent inability to initially provide reasonable rates and still derive a fair rate of return, to a qualified acceptance of certification.

On one hand, in view of a possible sale to Dominguez later, Branch perceives the situations as changed; since Dominguez is a Class A utility, Resolution M-4708 by its own terms would not apply. Branch concludes that with Dominguez reserves and experience, the ratepayer could expect adequate and reliable service. And also, the issue of enforceability of the Barratt guarantee would then be moot. Moreover, in view of a potential sale to Dominguez, Branch considers that adoption of a "saturation adjustment" alternative rate structure would facilitate an orderly transition to Dominguez.

On the other hand, should the Commission grant the application and authorize "levelized" rates, Branch would recommend restrictions, including a limit on return during the eight initial years to that return authorized Class C

utilities; no imposition of "connection fees" or "facilities fees"; no memorandum accounts for recovery or repairs; no Consumer Price Index rate increases, or use of other mechanisms available to small utilities.

Branch recommends conditioning approval to the requirement that rate base and expenses be adjusted by the ratio of actual served customers at any given time to the buildout total.

Post Hearing Reply Briefs

The parties submitted concurrent reply briefs on December 16, 1996.

A. Applicant's Reply Brief

Applicant stressed its contention that the best interest of the ratepayers to be should determine who should serve the Ranch, not the fact that the Ranch lies within an area where District supplies most of the water to independent entities as well as to its own customers. Applicant stresses that it can supply service to the Ranch homeowners at substantially less cost, and also without the huge up-front costs that homebuyers would have to pay if District serves. Applicant states that its system is designed to meet all Commission General Order 103 requirements,[18] and that its estimates of infrastructure and operating costs are based upon its expert's recent experience with similar investor owned water utilities, and are not constrained (as is District) to union labor costs. Applicant continues to rely upon Bakman (supra) as controlling, and notes the Commission statement in Bakman that "no logical reason appears why

[18] As well as the standards of the American Water Works Association; Applicant also states that the system can provide the required 1,500 gpm fire flow and the maximum day demand, and can also provide the fire flow and average day demand with one well out of service. In recognition of its need for qualified operations, personnel (enunciated as far back as April 1996), Applicant contracted with Dominguez.

the same criteria should not be weighed by the Commission where the utility's rival is a public agency rather than another public utility."

Applicant rejects District's contention that service by Applicant would be duplicative, stating that none of District's facilities were built to serve the specific Ranch area; that if Applicant serves, District is left with no unused facilities as the result. In either case, the in-Ranch infrastructure would be built, and Applicant's storage tanks merely leave District free not to have to add more storage so soon to serve District needs elsewhere. Either way, a well or wells would be constructed, as District also has plans to tap the Ranch water supply if it is to serve. Applicant points up District's future source supply problems, citing District's own admission's of questionable future supplies derived from District's present 80% reliance upon MWD, as well as the virtual certainty of MWD having at least to double the costs for the untreated water it sells to the District.

Applicant repeats that there will in fact be a market for the Barratt homes, and points out that District must also believe it as it also wants to serve the Ranch project, and also projects that its own demands for water will more than double by 2010. Applicant also repeats that it applied in April 1999 to the State Water Resources Control Board (SWRCB) to appropriate water from the subterranean stream under the Ranch, and is in the process of obtaining the requisite permits and license.

Finally, Applicant again asserts that CEQA has been complied with; that both the City of Perris with its project EIR, and District with its Negative Declaration, found no significant environmental effect in drilling a well in the same area and extracting water from the same underground source. Applicant asserts that any environmental compliance requirements remaining would be purely technical.

In conclusion, Applicant asks that initial rates be set based upon the "Saturation Adjustment" attachments to its Opening Brief.

B. District's Reply Brief

States that Applicant's Closing Brief only adds more reasons for denial of a Certificate. It repeats that Applicant's reliance upon Bakman (supra) is misplaced, that the appropriate standard for situations like this one is San Gabriel Valley (supra). District contends that the present situation does not involve a "new area" never before served; that here District has had a "backbone" system in place for years and that in the past has used this "backbone" system to provide service within the Ranch area, and that Applicant has not shown that District is either unwilling or unable to provide a proper water service in the Ranch.

District further argues that Applicant has not shown that it has any right to appropriate the water in the stream beneath the Ranch; that a mere application accepted by SWRCB confers no rights, and that no permit or license has been issued to Applicant. District observes that Applicant is buying land from Barratt for the reservoir and well sites and will drill two wells; thus, planning to establish its water rights through production at these wells.

District also takes issue with Applicant, charging it now manipulates proposed low rates by being willing to abandon low unreliable "levelized" rates for even lower "saturation adjusted" rates, while even under the former it would not be a viable company. It cites California Water Service Co., Inc. (1981) 5 CPUC2d 554, to the point that the Ranch system is not an appropriate case for a saturation adjustment procedure, and notes that to adopt this procedure would make the financial viability of Applicant even more dubious.

Finally, District assails RRB's change of position vis a vis Resolution M-4708 based upon a "possible sale" of Applicant's system to Dominguez, stating that any possible sale is irrelevant to this application, and furnishes no basis for ignoring the applicability of Resolution M-4708 provisions to this application.

C. RRB's Reply Brief

In form of a letter to the ALJ, RRB expressed support for the application based upon Applicant's Closing Brief request for approval of an initial rate base and a "Saturation Adjustment" formula that would adjust the rate base and associated expenses according to the number of customers receiving service at any particular time and the number of customers the system is designed to ultimately serve.

Submission

Following receipt of Reply Briefs on December 16, 1996, the proceeding was submitted for decision.

District's Motion to Strike

On December 24, 1996, District filed a Motion to Strike Tables A to I of Applicant's Closing Brief, and also Attachments A to D of Applicant's Reply Brief. Its objection was that the cited tables and attachments were attempts to add evidence to the record after the hearing, evidence which District had no opportunity to cross-examine or explain and rebut. The tables were basically revisions to the saturation adjustment proposals set forth in Howard's Rebuttal Prepared Testimony (Exhibit 4), and the additions were copies of District's Groundwater Plan documents stressing the need for groundwater supply management in view of forthcoming shortages from MWD and increasing local

municipal demands on District. One addition was a copy of District's Negative Declaration issued for the Bradley Well on the Ranch which was the subject of the District Eminent Domain action.

Applicant's reply in opposition to the Motion to Strike was late; however on June 4, 1997, the parties filed a stipulation to allow the Applicant's Reply, and the ALJ accepted the late filed Reply. The motion to Strike and Applicant's Reply were taken under submission by ALJ Weiss for resolution in the decision.

Resolution of the District Motion to Strike

The tables in the Closing Brief of Applicant present a substantially different view from those set forth in Exhibit 4 (except for Table A which is identical in both). After application of the revised "saturation adjustment" espoused in the Brief, a higher initial year rate base and operating expense provides a 36% increase in net revenue (while preserving the same percentage rate of return), and projects different monthly rates than sought at hearing in the initial years. Without opportunity to cross-examine on the tables, District is handicapped. As Rule 64 of our Rules State, while technical rules of evidence do not apply to Commission proceedings, the substantial rights of the parties are to be preserved. We should grant District's motion as to Tables B to I and they should be stricken from the record.

However, we do not agree that the four additional documents in Applicant's Reply Brief should be stricken. The three water management documents are District documents that directly pertain to District's future water supply capabilities. They are self explanatory and further District questions would add little or nothing. Lastly, the Negative Declaration is also District's own document. It supports Jacinto's testimony at hearing that at most, if Applicant rather than District were to provide the wells and supplemental

infrastructure, a Supplemental or further Negative Declaration from the City of Perris, the Project Lead Agency, would suffice with possible minor mitigation measures. As to these four additions to the Brief, the Motion to Strike should be denied.

The Compliance With CEQA Issue

The Final Environmental Impact Report (EIR) for the McCanna Ranch Specific Plan certified by the City of Perris (Exhibit 13) assumed that water service would be provided by District. The EIR assessed the impacts of developing the subdivision, including those from provision of water by the District facilities to the site, and those from the installation of the infrastructure within the Ranch project for water delivery.

If Applicant were to provide the water service, there would be changes in the overall project. Facilities that Applicant would provide that were not contemplated by the City of Perris EIR include two wells, pumps within enclosures, two reservoirs, a building to house an emergency generator, four booster pumps, one fire flow pump, and miscellaneous chlorination equipment.

First raised during the Jacinto testimony in hearing, the impression was that the City of Perris would prepare or certify any subsequent environmental documents necessary to address the proposed change. But nothing was forthcoming. Raised again in District's Closing Brief, attention was focused on the issue of CEQA compliance. As a responsible agency under CEQA, with discretionary approval authority over this aspect of the Planned Community Project, this Commission must review and assess the impacts from the proposed change, and determine whether additional environmental documentation is required. Accordingly, ALJ Weiss referred the matter for review and assessment

as required under CEQA to the Commission's Environmental Program Section (Environmental Section).

After discussions between Applicant and the Environmental Section, Applicant filed an initial Proponent's Environmental Assessment (PEA) in 1997. In response to requests for additional information, amendments followed before Applicant filed its final amended PEA. The Environmental Section reviewed the PEA and all amendments and prepared an Addendum to the Final EIR for the 1988 McCanna Ranch Specific Plan. This Addendum for McCanna Ranch EIR (SCH #87011910, attached to this decision as Appendix A, concluded that the types and extent of impact which would be incurred under Applicant's service proposal were accounted for in the City of Perris EIR, with only the timing and location within the assessed area slightly different. It states that its analysis indicates that the incremental changes under Applicant's proposal involve no new environmental impacts and require no mitigation measures. Accordingly, the Addendum concludes that pursuant to Section 15168 (c)(2) of the CEQA Guidelines, no additional environmental documentation is required.

Discussion

As relevant herein, Pub. Util. Code § 1001 provides that no water corporation shall construct a water system without first having obtained from this Commission a certificate that the public convenience and necessity requires such construction.

In SoCal Water Company (1980) 3 CPUC2d 379, at 386, the Commission had occasion to again note that a feature of our regulation from its inception has been that direct competition in the same geographic area between two utilities, regardless of whether one is publicly owned, is wasteful and counterproductive.

Our basic concern is that public policy disfavors the waste of resources that occurs if there is a duplication of utility service facilities.

In addition, from the Commission's inception it has followed a policy of protecting an incumbent utility from invasion by would be competitors so long as the incumbent is doing its duty in provision of adequate service at reasonable rates (Pacific Gas and Electric Company vs. Great Western Power Company (1912) 1 CRRC 203).

However, a caveat to the policy laid down in Pacific Gas and Electric (supra) was enunciated two years later by the Commission in Oro Electric Corporation (1913) 2 CRRC 748, where the Commission stated:

> "A wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public."

But where both a public and a privately owned utility propose to serve new vacant territory, it is for this Commission to decide whether the overall requirements of public convenience and necessity require the certification of a private water utility when service by a public water district is also available. This decision can only be made after considering what the alternatives are (Ventura County Waterworker). (Supra.)

By the present application, the Commission is requested to grant a certificate to the Applicant, a newly constituted water corporation organized by and wholly owned by Barratt, the American division of a major British development company, and to approve Applicant's request to provide water

service to Barratt's proposed subdivision, the Ranch. Applicant has no prior experience in provision of public utility water service, but has employed well qualified outside expert assistance in the design of its proposed system, and stated in its application that it would either provide a staff of highly qualified operating personnel, or contract out the operation and maintenance to a qualified operator contractor. It has since elected the latter course.

District protests the application based upon the fact that the proposed subdivision is sited on 246 acres that are located within the 555 square mile area in western Riverside County that since 1950 has been the area where District operates. District contends that it is ready, willing, and able to serve the Ranch area, and further asserts it already provides service therein. Within the 555 square mile area, in latter years District has constructed and operates treatment and storage facilities, as well as an extensive transmission pipeline grid so as to be able to transmit and deliver water on a wholesale basis, either as the exclusive supplier, or as an emergency or supplemental supplier, to independent water purveyors scattered through the extensive area. These independent purveyors include water districts, municipal water systems, mutual water companies, and a federal entity. District also operates a proprietary service providing direct retail sales to approximately 76,000 residential and commercial ratepayers scattered through about half of the 555 square mile area.

In many respects, District operates like a water broker. It obtains about 20% of its water supplies from proprietary sources and purchases the 80% remainder from MWD. It then treats and stores the water before delivery to its independent customer purveyors, or to its own proprietary customers.

Applicant contends that as it can offer substantially lower rates to the prospective subdivision home buyers because of its fortuitous location atop a reliable and readily accessible source of very high quality water, the fact of

District's ability and willingness to serve should not be determinative of who should serve; that the basis for determination of who should serve should be the public interest of the homeowners buying into the new subdivision who will receive and have to pay for the service. Accordingly, the Applicant relies upon the seven factors the Commission applied in Bakman (supra) as supportive of its candidacy to serve.[19] Its conclusion, based upon these factors, is that service by the District would be needlessly excessive cost-wise to the new homeowners.

On the other hand, District contends that Applicant's reliance upon Bakman (supra) is misplaced; that Bakman (supra) dealt with conflicting claims where service to a new and heretofore unserved area was at stake, whereas the Ranch is undoubtedly within District's general area of service, and District claims to have been providing service thereon, and to be presently serving it. District relies upon San Gabriel (supra) as the controlling authority. Therein the Commission held that the mere preference of the developer is insufficient to be a basis for certification; that when duplication of facilities results and inferior service may result, conflicts for territory cannot be in the public interest. And finally, the Commission held that where there would be invasion of a territory being served by another, the would-be intruder must prove that the serving district is either unwilling or unable to properly serve.

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[19] The seven factors applied in Bakman (supra) were:

1. The financial soundness and managerial ability of the utility;
2. The adequacy of its water supply;
3. The adequacy and cost of the proposed new system;
4. Utilization of the new system in providing additional facilities for the existing system;
5. The proximity of the new area to the logical operating territory of the utility;
6. The level of rates to be charged new customers; and
7. The preference of the developer.

Branch's initial position was for denial, observing that in view of the very large initial rate base to be installed up front, Applicant could not become self sufficient before the sixth year. And even if it could become financially viable sooner, with less than 500 customers, to certify it as a Class D utility would conflict with Resolution M-4708. However, later in the hearing process, when the possibility of a sale of the new system to Dominguez (a Class A water utility) was introduced, Branch concluded that with a Saturation Adjustment application, viability with adequate and reasonable service would be reasonably assured. Accordingly, Branch changed position and would recommend approval, but conditioned upon application of a "Saturation Adjustment" concept applicable to rates.

The Resolution M-4708 Issue

Issued August 28, 1979, Commission Resolution M-4708 enunciated a Commission policy to deny certification to small Class D water companies which (1) are likely to be unviable, or marginally viable, or provide inferior service, or (2) while marginally viable, are in areas that can be served by another public utility or district willing to serve.

For reasons we set forth below, we conclude that Resolution M-4708 does not apply in this situation.

By the very terms of the Resolution, it applies only to Class D corporations. These have less than 500 connections. Applied literally, no start-up water corporation's system, regardless of its anticipated completion size, could ever be certified as more than a Class D, nor could it be "viable" financially at start. We must use common sense and look to the reasonableness of expectations and projects based upon up-front investment, plans, market prospects, and the

financial ability, resources, and track record of the developer. Financial viability is not determined by the immediate return on investment alone.

As construction begins, Applicant initially must have less than 500 connections. But it plans to build 170 homes a year until buildout is attained at 1,356 homes. Thus, it expects to reach Class C water system status (over 500 homes) by the end of the third year. That would be its permanent class as there are no plans nor space to expand beyond. But unlike the usual small developer start up, with a water system with limited capacity being expanded section by section in the future should sales materialize, and with the developer of limited financial means, Barratt is a major home builder. It has constructed over 12,000 homes in California. It has invested over $10 million already on this Ranch project, and before the first home will be sold, will have invested $17 million. And Barratt's instrument, the Applicant, will up front install a complete water system at a cost exceeding $1.6 million. With the "levelized rates" proposed, Applicant's system would begin making some profit when 160 homes are sold. This will not reflect the return on investment we authorize Class C water utilities. But by the sixth year, it is expected to. Applicant and its parent Barratt have stated their recognition and acceptance of the fact that during the start-up years, it cannot and should not expect a normal return on Applicant's investment. They realize they must lose money the first year at least, and earn less than normal for the next few years. This prospect they view as the norm for any new service operation.

But Barratt insists that this Ranch project will be completed. It points out the fact that during its 18-year history, it has never failed to complete a project. And to even get back its investment thus far, it recognizes that it must sell more than a few homes. And in order to realistically price them, most of the 1,356 homes projected must be completed and sold before Barratt obtains a

profit. In view of Barratt's financial ties, there appears little danger of an uncompleted project because of lack of developer strength (Barratt: British parent, Barratt PLC, has over ½ billion dollars in net worth). And the British parent, apart from advancing all funds needed for capital investment, will guarantee operating expenses until such time as Applicant has break even cash flow for three years and is debt free. The Barratt PLC Resolution of October 3, 1996 (Exhibit 16) filed stating financial support is as reliable a statement of intent as could be anticipated in this context regarding future support. Barratt PLC is not in business in California for this project alone. Thus, the system proposed by the Applicant for the Ranch is only in the most technical sense "non-viable" or "marginally viable." The Commission would be hard pressed to certify a more reliable and financially sound developer proposing to install a new water system.

Nor is the proposed water system of Applicant one that would provide "inferior" service. As discussed further on, as designed the proposed system meets our General Order 103 specification as well as the standards of the American Water Works Association. It will not provide gravity flow as District would provide, but numerous systems today in Southern California also do not, but are still reliable. Generator back-up is provided for emergency outages. Applicant stated it would provide a staff of qualified water operating personnel or contract the service. It has contracted for Dominguez to operate the system. Thus, qualified professional operations service is reasonably assured.

Thus, the system proposed by Applicant is not that which Resolution M-4708 was promulgated to avoid. Taking these facts into consideration, this system reasonably partakes of the nature of a Class C system in our consideration, and Resolution M-4708 is not applicable.

The Threshold Service Territory Invasion Issue

District, relying upon San Gabriel (supra), strongly contends that the application should be denied as Applicant proposes to invade District's service territory, and to serve the Ranch area where District claims it already provides service. District argues that certification would result in a wasteful duplication of facilities, and that furthermore, these proposed facilities are inferior to those District would provide. District insists that it stands ready, willing, and able to serve the Ranch project. However, this proceeding presents some material distinctions from the usual territorial invasion cases.

First of all, District is not the usual water utility with a monopoly on providing service in the area it claims as its service territory. Purchasing over 80% of its water supplies from MWD, another district, through its extensive storage and transmission grid, it resells water on a wholesale basis to any independent local water purveyor entity, whether it is a municipal utility, a mutual, a district, or a governmental entity in the area. In addition, it operates its own retail proprietary service to residential and commercial customers in the territory. But by no means does it have a monopoly on service to all the people within the large 555 square mile area it claims as its territory. While some of the wholesale customers, for example, the City of Perris, depend upon District as their sole supply source, others such as the Cities of San Jacinto and Hemet, the Lake Hemet Municipal Water District, and the Nuevo Water Company - (a mutual), have their own basic supply source, and merely purchase either supplemental or emergency supplies from District. And its own proprietary service for retail customer serves in only about half the area it claims as its service area.

Secondly, District's assertion that it "currently serves" the area of the Ranch property is at best thin in substance. It would be more appropriate to say it "is ready to serve." Back during the 1955-1975 period, District did provide domestic water service to four homes located within the Ranch property. But these buildings are long gone. While some service pipes to the locations apparently remain, if not salvaged or abandoned, presumably they might be replaced or reactivated if there were individual homes there to serve. But these can no longer be such customers as the area will now be a development subdivision with its own distribution service. In addition, during the 1967 pre Perris Dam period when the local water table dropped, curtailing local well agricultural supplies, District put in three agricultural services to serve two farming operations. Again, these three services are now not in operation. Today, the Ranch area is farmed by AgriEmpire under lease from Barratt until the development begins, and Barratt provides the water to AgriEmpire from one of the early farm wells it has refurbished on the Ranch, and from a new well it constructed.

In order to provide service to the Ranch Subdivision system District would have to install 10,600 feet of new 12, 16, and 21-inch transmission pipelines to interconnect to the Ranch. This in addition to the internal subdivision distribution system.

Thirdly, were the Applicant to serve the Ranch project, there would not be a waste of resources from duplication of facilities, as District contends. The issue is service within only the Ranch subdivision; Applicant would not be authorized to serve beyond the Ranch nor is its proposed system designed or capable of service outside. No matter who is to serve, Applicant or District, the same additional basic on-site Ranch distribution system must be constructed. But, if District serves it must also construct $780,000 of additional pipeline facilities to

interconnect the Ranch distribution system to District's storage and transmission facilities. District would also construct a well to access the water beneath the Ranch – one of its goals here being to force Barratt to abandon its underlying water supply as a condition of District service, thus enabling District to obtain for a mere $5,000 Barratt's underlying water rights worth an estimated one to two million dollars. But the minimum cost for a District well (pursuant to Crew's estimate) would be $300,000.

If Applicant provides the service, it must construct on-site storage tanks. District already has storage tanks within a half dozen pipeline miles distance, and is also in the process of constructing additional storage. If Applicant serves, District can retain its present and under construction storage capacity for the needs elsewhere in the District system it was planned for, thus helping District to meet the projected mushrooming demand for anticipated municipal requirements. District's extensive system was not specifically planned to include the McCanna Ranch; rather its 1990 Black & Veatch Engineering Master Plan addressed the general overall plans and projected needs for the entire District. The Ranch is not mentioned in the plan. Thus, were Applicant to serve the Ranch, there would be no duplication of facilities of any significance, nor would any minor duplication be wasteful; District would not have to build as much in the future.

Fourth, is District ready, willing and able to serve the Ranch project? District provided evidence to show that it has supply sources, storage, and transmission pipelines to be able to bring water to the area of the Ranch site. But District draws 80% of its supply from MWD, obtaining the balance from groundwater sources in its territory. The status of future supplies from MWD is in question, with MWD predicting that with year 2000 demands, shortages will occur in retail supplies at least four out of five years, with shortages up to 30%,

accompanied by costs that will double in 10 years. District must develop more groundwater production despite the fact that the quality of some potential sources precludes its use. This explains District's avid interest and actions to obtain the groundwater under the Ranch with little or no compensation. After infusion into District's system, it would deliver much of this water (which requires no treatment other than chlorination) back to the Ranch subdivision, at District's higher rates. But for District service, Ranch homebuyers would be charged, besides the costs to bring service to them, large up-front connection and other charges from District. And District's rates for its water necessarily must go up substantially in the immediate future. By contrast, Applicant sits on an adequate underground source of very high quality water that is free for Applicant's pumping, and through use of which it can avoid passing on to homebuyers the high up-front District charges and fees, and also thereafter deliver water at far lower and more stable rates than District can offer.

Would Applicant's System Provide "Inferior" Service?

Applicant's proposed system was designed under the supervision of the principal of an engineering consulting firm. This principal has over 38 years of experience in all areas of water system design, construction, and operation. He is both a licensed Civil Engineer and a General Engineering Contractor.

District states that Applicant's proposed system would not meet District's design standards. It was never intended to. Applicant designed it to meet Commission General Order 103 requirements and the Standards of the American Water Works Association. District states that the system does not provide storage and delivery by gravity flow as does District's system, and is not sized as District would. But, as Applicant points out, there are many pressure systems in use that provide entirely satisfactory service, and the Northridge earthquake not

long ago provided an ample demonstration of how easily and for how long a gravity flow system can be disrupted. It is Applicant's contention that its standby generator on-site will be able to provide emergency power to handle any outages, and that if District chooses to oversize its main, that is its choice.

District further notes that while Applicant's system has to depend upon both its storage capacity and well pumping in order to meet maximum day demand plus fire flow, District's gravity flow from its voluminous storage tanks located a few pipeline miles away can alone handle this requirement, inferentially even in the event of a maximum day demand, a fire, and a well outage. Applicant concedes this, but states it would be extremely unlikely that you would have not just a power outage, but also a maximum day demand, a fire, and a well outage, all at the same time. Applicant's response is to rely upon its on-site back-up generator. While it is true that actual pump requirements will not be ascertained until the wells are drilled, Applicant based its estimate upon its experience with the on-site well it has been operating, and estimated that 20 HP size will suffice. District, based upon its experience elsewhere, estimates 30 HP. Applicant states that if experience so dictates, it would go to 30 HP. In such event, the increase in electric cost would be a maximum $2,400 annually. While the proposed system does not include a desalter, apparently necessary in District's areas, it was not included by Applicant's consultant because Howard does not consider one necessary in view of the exceptionally high quality of the underlying stream of water available to Applicant on the Ranch.

District points out that Applicant would rely upon its two wells for source of supply, but plans no inter-tie alternative. Applicant's response in that no District intertie is proposed because in order for Applicant to inter-tie to District, District would impose a fee of $1,510 for each of the 1,356 homes. This makes an inter-tie, however desirable, economically unfeasible. Applicant further observes

that while District would impose this charge upon the Ranch system to inter-tie, it has not required it of all other independent systems in District's territory.

Any questions about the ability of Applicant, with no prior operating experience, to operate its proposed system appears to be answered by Applicant's contract with Dominguez for the latter to take over operations. As a Class A water corporation with extensive experience in operation of water systems in California, it is reasonable to anticipate that the Dominquez operating service will not be unacceptable or inferior. We agree with District, however, that a possible sale to Dominguez of the system in the future is merely speculative and is not relevant to this certification proceeding.

New federal Safe Drinking Water Act requirements placed upon state health departments in 1999, and as implemented under California Health & Safety Code § 116555 (c), require DHS to encourage consolidation with existing systems, but permit DHS to consider approval of a new system which does not choose to consolidate where that new system will be either owned, operated or managed by an existing public water system that DHS has permitted. Dominguez fits that category.

In summary on the issue, we find that the system proposed by the Applicant, and the proposed service, would provide satisfactory service.

The Rate Structure Proposed by Applicant

District contends that Applicant is able to come up with a lower rate schedule than District can offer by employing "voodoo economics." It asserts that Applicant seeks to buy a certification by proposing and agreeing to unrealistic unprudent rates. It asserts that Applicant agrees to subsidize rates that result in initial losses; that it does this through artificially low returns on equity in initial years, artificially low cost estimates, and overblown consumption

estimates; and that despite economic uncertainties and inferior service, it freezes rates for eight years.

Applicant's response is that no start-up venture makes profit its first year, but that even a new system should return operating costs and depreciation after the initial year. And as the venture reaches the latter years of its buildout, it should attain a normal rate of return. Thus, looking back over the entire buildout period, the investor would be made whole and earn some return as well on his new venture.

Accordingly, by its application and during hearing, the Applicant devised and calculated a system for rates that meets those objectives. Applicant characterized this structure as "levelized" rates. Under this structure, both the commodity charge and the readiness to serve charge are fixed for the initial eight years. The homebuyer would know exactly what his costs for water service would be for his initial eight years of home ownership. And these costs are approximately 18% less than what service from the District would cost him. As we have previously observed, the service proposed to be provided would not be "inferior" as District contends; it is designed to Commission General Order Standards and also meets those of the American Water Works Association. The cost estimates of the system are not artificially low. While less than District's, it is noteworthy that one reason is that Applicant does not have the same labor costs that District incurs. And if District elects to adhere to some over sizing that is its choice. There are areas where costs may have to be higher – the size pumps, for example, but the supplemental costs for larger equipment is small, and the added electrical charges are also very small. Applicant's engineer is experienced, and with access to other small systems, has based his consumption estimate upon those other systems. However, if District's lower 18 Ccf per month consumption estimate is used, the revenue loss the first year to Applicant would

be approximately $4,200 (4.6% of total), increasing to approximately $32,000 (5.6% of total revenue) the full buildout eight year. As Applicant's parent would underwrite the system until its profitable, the risk of over estimation would be assumed by them. Only time and experience could resolve the question. But we cannot on this record conclude that Applicant has used "overblown" consumption estimates. And even were District's estimate of 18 Ccf/month applied, the cost per month of Applicant's "levelized" service to a homeowner would be 14% less than District costs.[20]

Are Applicant's proposed "levelized" rates imprudent? They take into account several factors, including the importance of recovery of the depreciation expense and recovery of operating expenses. It is not unusual or unreasonable for investor expectations to accept an initial loss year so long as it is reasonably, followed by increasing rates of return in succeeding years that soon attain normal returns. The total revenue requirement under Applicant's "levelized" structure for each of these first eight years has been determined based upon these projected rates, the estimate of homes to be sold, and consumption. This, taken with the reduction in rate base due to depreciation, would cause the nominal rate of return to increase to a point about the end of the sixth year at which time it is anticipated to reflect a 9.7% rate of return, increasing to about 13% at end of the eighth year. In all years except the first year, the Applicant would have a positive cash flow. The first year the projected loss is $3,255. "Levelized" rates

[20] Moreover, these do not include the various additional costs that would have to be passed through to the homeowner under District service. Each buyer would have passed through in the form of a higher home price, the cost per home of District's various connection fees and charges (such as the $1,500 EDU charge). Applicant estimates these would end up as additional mortgage costs of $16.99 per month per home. This contrasts with Applicant's pass through improvement cost of $2.03 per month per home.

would protect the homeowners, and as the development matures, would provide a fair rate of return to Applicant. And the financial support guarantee from Barratt's PLC provides a reasonable security blanket over the utility operations. Since Barratt PLC is a publicly owned company, with its shares regularly traded on the London Stock Exchange, it cannot afford to conduct its operations in a manner that would evidence financial weakness, failed projects, foreclosed projects or mismanaged ventures. "Levelized" rate structure adoption under the circumstances of this application would not be imprudent; rather it would be an innovative, rational approach of benefit to the potential ratepayers and to the investors in the utility,

An alternate approach was also introduced. Branch's September 27, 1996 report in part based Branch's initial opposition to certification upon the fact that under the proposed "levelized" rates, the utility could not earn a normal rate of return until the latter part of buildout, and thus would not be a "viable" entity. Concerned that the Commission might deem this the critical issue, Applicant in Prepared Rebuttal Testimony posed a possible alternate use of a "Saturation Adjustment" mechanism as an alternative. The "Saturation Adjustment" alternative rate structure would phase in the $1,663,000 cost of the utility plant to rate base, but taking into account the progressive growth of customer demand, it reflects the changing customer base use of that plant.[21]

However, Applicant's expert witness, in direct and cross-examination during the evidentiary hearing, testified that in his opinion, "levelized" rates are the most fair to all parties. While "Saturation Adjustment" rates are lower initially (but end slightly higher the eighth year of buildout), "levelized" rates,

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[21] See Footnote 11, re "Saturation Adjustment."

compared to District rates, are very reasonable and also provide the utility with a small but growing rate of return. "Levelized" rates also would pay the costs of maintenance, depreciation, and property taxes. The disadvantage of "Saturation Adjustment" rates is that during early years they do not provide enough revenue to adequately maintain the system, provide depreciation, and pay only a portion of property taxes. Yet the utility must still pay for maintenance and taxes for the entire plant. "Saturation Adjustment" rates simply allow less costs than are actually incurred.

With regard to regulatory requirements, "levelized" rates would require nothing from the Commission for the first eight years. "Saturation Adjustment" rates would require annual recalculations and Commission authorizations as expeditiously each year as possible.[22] The underlying rate base and annual depreciation and ad valorem property taxes expense change every year. The customer's readiness to serve and commodity charges also must be changed. All these would serve to place additional burdens upon the Commission and its staff. The consumer would face annual changes to this water bill with the necessity to explain why. Under "levelized" rates, this change would not occur. And if District is authorized to serve, the Commission would drop out of the picture entirely.

District posed objection to any consideration of "Saturation Adjustment" being considered in our deliberation as to who should serve. In this objection, it relied upon the Commission's statement in Cal. Water Service Co. (1981) 5 CPUC2d 544 at 556, wherein we stated that "Saturation Adjustment"

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[22] As Howard confirmed, "it would be in the interest of the company under a system of saturation adjustment to seek changes in rates as customers are added? When he answered, he stated: "As quickly as possible, yes." (T. 86.)

procedures were: "intended to be applied with great discretion to relieve rate base in situations where a utility has imprudently or injudiciously overbuilt a facility without a rational consideration of future requirements, with the result that in addition to dubious prospects of full utilization in the near future there is a strong probability it will never be used to capacity." We went on further to state that "A utility should not be penalized for construction of facilities which are prudently and judiciously sized to meet both present and rationally determined reasonable future needs (Id. at 557).[23]

The Commission finds District's objection to consideration of expanding the "Saturation Adjustment" concept to our certification deliberation to be in order. The concept was never intended to be used in these circumstances. Nothing presented by the circumstances of this application requires that the prospective rate base be relieved because of any imprudent or injudicious overbuilding or probable certainty that any of the planned system will never be used to capacity. The concept was conceived to remove existing excessive rate base where the economic impact derived from imprudent or injudicious overbuilding was critical to the ratepayers. Here, there is none of that. The Applicant is reputable, well financial, and has every reasonable assurance that the subdivision which its system is designed to serve will be constructed as planned. The prospective homeowners would not be facing the probability of having to carry the burden of a failure. Their rates under "levelized" rates

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[23] The "Saturation Adjustment" procedure was adopted as a corrective procedure in D.89321 dated September 6, 1978, in A.56543 Washington Water and Light Co., to remove from the utility's rate base certain grossly excess facilities, one a filter not even used in the utility operations, and in another instance, a plant and main far overbuilt beyond any reasonable requirement for domestic service and fire flow.

would remain stable throughout the buildout eight years, and Applicant's parent has guaranteed to carry unrealized recovery of costs of the system until the system is economically viable. The only excuse to apply "Saturation Adjustment" rates would be to shield prospective ratepayers from the virtual certainty of an uncompleted subdivision. There is none of that present here. The system is designed to be prudent and judicious.

The difference to a prospective homeowner of his water cost between application of "levelized" rates and "Saturation Adjustment" rates over the eight-year buildout period would be approximately $265. With the Barratt PLC guarantee in place, such a small difference cannot provide a basis for penalizing an applicant by denying it opportunity pending buildout to recover all of its operating costs, depreciation, and ad valorem property tax expense. Where there is no real substantial benefit to the ratepayers, there is no rational reason to place unnecessary initial financial impediments upon a system operator. When we certify an operator, the Commission wants it to succeed and become financially viable as soon as possible.

For these reasons, the Commission declines to expand use of the "Saturation Adjustment" to the situation present in this application, and will limit its consideration in the comparable rates issue to Applicant's proposed "levelized" rates.

The Public Convenience and Necessity Issue

Taking into consideration the extensive evidence and arguments of the parties as to whether Applicant or the District should be permitted to serve this new area, we turn next to the seven Bakman (supra) factors to reach these findings:

1. Applicant has the requisite financial backing and access to professional managerial ability to construct and thereafter operate the public utility water system proposed by the application.

2. Applicant has an adequate water supply present at the Ranch site.

3. Applicant's proposed new system meets both Commission and American Water Works Association standards; is adequate to provide satisfactory service; and the estimated cost of the proposed system, having been reasonably substantiated, is significantly less to the developer and prospective homeowner than would be a system and service from the District.

4. While interconnection between a system provided by Applicant and District's extensive supply grid system would principally benefit Applicant's system, the costs proposed for such interconnection by District make such an interconnection economically infeasible.

5. Applicant's proposed new system would be within a large territory where District's grid supply system offers and provides wholesale service on exclusive, supplemental, or emergency basis to different classes of independent water purveyors in the territory, as well as retail service to numerous residential and commercial customers scattered through the territory; but this is an area wherein District has no monopoly.

6. Applicant's proposed "levelized" rates for the initial eight-year buildout period would be an approximate 18% below the initial rates District can offer in that period, and Applicant's pass-through connection charges are also substantially less than those District has proposed.

7. Barratt's preference to have Applicant, its subsidiary, develop and operate a public utility water system within the Ranch, produces a result that is the most consistent with the best interests of the public who will purchase homes in the Ranch and use the water service therein.

Summary

The evidence that we have discussed and considered leads us to the conclusion that public convenience and necessity would best be served by the Commission granting certification to Applicant to construct and operate a public utility water system within the Ranch.

The Applicant should also be authorized to issue 100,000 shares of single class stock to Barratt, pursuant to provision of Pub. Util. Code § 816 et seq.

Comments of the Proposed Decision of Administrative Law Judge

As provided by Pub. Util. Code § 311 (d), the Proposed Decision (PD) of ALJ Weiss was served on the parties to this proceeding on June 21, 1999. Both the Applicant and the District submitted comments and reply comments. No comment was received from the Small Water Branch.

Applicant's comment is that the PD should be adopted without change as changes are neither necessary or appropriate, and even were Barratt's guarantee to fail, the Commission is free to modify the rate structure however it chooses, even to adopt a saturation adjustment.

District's comment asserts that the PD makes numerous legal and factual errors which lead to a wrong decision, and concludes that the application should be denied. It asserts that there is legal error in not applying Commission Resolution M-4708 to the proceeding in that Applicant will continue as a Class D water company for at least three years; that there is legal error in applying Bakman (supra) to the proposed service since Applicant is not an existing utility, and failure to properly analyze the record using the seven Bakman factors; and that there is legal error in that under District's view, as District already "serves" the Ranch area, certification of Applicant would sanction invasion of District's territory. District argues that it is not trying to "steal" Applicant's water, and

that Applicant's rate structure is implausible in that it will not provide a normal rate of return for the first six years, making Applicant too dependent upon Barratt's financial guarantee for its viability. These issues were all adequately addressed by the PD, and do not require repetition. But perhaps most significant, District's comment ignores the overlying policy on competition long ago laid down in Oro Electric Corp, supra, that while a utility's service area will be protected, this protection is always subject to contingency that if another by reason of superior natural resources can give as good service at rates materially less, the public interest requires that the intruder be given opportunity to serve.

Applicant's reply comment contends District violates Rule 77.2 by 1) repeated reargument of brief positions, 2) weighing the evidence instead of addressing facts ignored or incorrectly interpreted, and 3) arguing what Commission policy should be.

Applicant denies District's allegations of error in: status since before buildout Ranch will achieve Class C status; the applicability of Bakman since Bakman applies to any applicant, not just existing utilities; that the best interests of the homeowners lie in Applicant's lower rates and avoidance of District's high-up front costs; that District service requires assignment of Barratt's priority right to water without compensation, and that Applicant will have operating revenues sufficient to cover expenses in its second year. Applicant also stresses that Barratt cannot sell the Ranch utility and thus escape its guarantee without Commission approval.

District's reply comment's principal thrust is its assertion that Applicant tacitly concedes that Barratt's guarantee might not be performed and therefore Resolution M-4708 should apply. District repeats arguments that Bakman applies only to "existing" utilities; that Applicant's rate structure is "implausible" and will not provide a fair rate of return to give it self sufficiency,

leading to its comment on possible Commission action should Barratt's guarantee not be performed. District repeats that Applicant seeks to invade District's service territory when District is ready, willing, and able to serve.

When appropriate, changes in the text of the decision have been made to correct minor errors. No substantive changes to the decision have been deemed necessary or appropriate as the issues posed by the comments have been adequately addressed and resolved in the decision.

Findings of Fact

1. Applicant, a California Corporation, was organized and qualified by Barratt (a California subdivision development corporation) to be a wholly owned subsidiary of Barratt (itself a wholly owned subsidiary of Barratt, PLC, a multi-billion dollar, well established, British development company)) for the purpose of obtaining from this Commission a Certificate of Public Convenience and Necessity to construct and operate a public utility water system to provide water service to the 1356 home subdivision Barratt will build on the McCanna Ranch owned by Barratt near the City of Perris in Riverside County.

2. The Barratt Ranch sets atop an underground stream of exceptionally high quality water, a stream augmented by seepage from the adjacent Department of Water Resources Perris Dam before it bisects the Ranch and extends southwestward into the area of the City of Perris. The water of this stream surpasses the water quality found in adjacent areas of the same water sub-basin.

3. The Ranch lies within a 555 square mile area wherein District, owning and operating extensive water treatment, storage, and transmission pipelines, has increasingly since 1950 offered and provided exclusive, supplemental, or emergency water services to numerous, but not all, of the independently owned and operated water purveyor entities' located in the 555 square mile area, and

also provides proprietary District service to approximately 76,000 retail customers located in portions of the area.

4. District's proprietary water supply sources furnish approximately 20 percent of its requirements today, with the remaining 80 percent obtained through purchase from MWD principally, and the State Water Project.

5. District is on alert from these non-proprietary water sources that supplies in the immediate future in all probability will be curtailed. This development causes District to intensify its efforts to obtain replacements and augmented sources.

6. District's policy has been to require that developers must transfer all their underlying water rights to District in exchange for District service. In the case of Barratt would be required to contribute water rights with an estimated 15-year net present value well in excess of $1 million.

7. Apart from the water rights contribution, and contribution of the intract water distribution system and the interconnection transmission pipeline facilities from District's storage facilities a half dozen pipeline miles distant, District service would also require from Barratt payment of over $2 million for the EDU fee of District of $1,510 per unit, as well as other special charges and fees of the District.

8. Initially intending to obtain water service for its Ranch development from District, Barratt attempted to negotiate with District for an offset of the value of its Barratt's water rights for the District's EDU charge that would apply.

9. District staff broke off negotiations, concerned that any deal with Barratt could set a precedent affecting District's anticipation of acquisition of extensive water rights elsewhere in the District as agricultural owners would seek development of their lands in the future.

10. After offering Barratt a mere $5,000 for a District well site within the Ranch, which offer Barratt rejected, District by eminent domain action took a well site, but because of inadequate research ended up with a landlocked site.

11. After the foregoing developments, Barratt determined that as it already sat upon a quite adequate supply of high quality water, principles of sound economic policy dictated that it should seek Commission authorization to construct and operate its own Class C public utility water system on its Ranch.

12. On June 9, 1995, Applicant filed the present application for certification, and sought authorization to issue the 100,000 shares of its single class stock to Barratt.

13. Applicant has filed with the Department of Water Resources for a permit; will obtain from DHS a water supply permit, and will obtain a franchise from the City of Perris. The City of Perris issued a final Environmental Impact Report for the Ranch project.

14. The District filed a timely protest to the application, asserting that it was ready, willing, and able to serve the Ranch subdivision which already lay within the extensive territory it was serving, and that applicant lacked experience in construction and operation of a water system whereas District has extensive experience and personnel. District questioned Applicant's financial ability, the quality of the system proposed by Applicant, and the quality of the water source proposed by Applicant.

15. Branch's May 21, 1996 election to participate, after the filing by the parties of prepared testimony following the initial December 14, 1995 PHC, necessitated a second PHC conducted September 17, 1996.

16. In Applicant's prepared testimony it adopted and proposed use of "levelized" rates for the entire 8 year buildout period anticipated for the project. Under "levelized" rates as proposed, the monthly water charge to a homeowner

for an estimated 20.83 Ccf consumption would be $29.58, which contrasts to District's initial monthly charge of $36.39 for the same consumption estimate.

17. While Applicant accepts that as with any new start-up venture, it cannot expect the first year to receive any return on its substantial $1.6 million up-front, plant investment and indeed anticipates a $3,000 loss the initial year, the proposed "levelized" rate structure does produce sufficient funds to cover operating and maintenance, depreciation and taxes, and after the initial year is expected to produce a growing return on investment, until eight year buildout, when the return would approximate 12 percent.

18. On September 27, 1996, Branch issued its Report which, citing Commission Resolution M-4708l, recommended denial of the application because 1) the proposed Ranch serve area could be served by District which was ready, willing, and able to serve; 2) the proposed "levelized" rates were not compensatory in that they initially would not provide a fair return on Applicant's up-front plant investment; and 3) rates that could be compensatory would necessarily far exceed District rates for at least five years.

19. In response to Branch's objection to "levelized" rates, Applicant in its Prepared Rebuttal Testimony discussed, but did not recommend, adoption of possible extrapolation of the "Saturation Adjustment" concept to a start-up operation and included "Saturation Adjustment" tables to illustrate.

20. After extensive briefing, an evidentiary hearing on October 21, 22, 23, and 24, 1996 with 29 exhibits being received, was followed by further extensive briefing leading to a scheduled December 16, 1996 submission, which necessarily was delayed until August 11, 1998, for an Addendum to the McCanna Ranch EIR (SCH# 87011910) from the Commission Environmental Section on the change in supplier issue.

21. Applicant's Reply Brief contained revised "Saturation Adjustment" tables from those in its Prepared Rebuttal Testimony. District was deprived of an opportunity to test these revisions and additions in cross examination; therefore, District's December 24, 1996 motion to Strike Tables B to I should be granted. However, the remaining challenged documents are self explanatory District documents directly linked to evidence and testimony in the evidentiary hearing, and should not be stricken.

22. The public utility water system proposed by Applicant was designed and engineered by consultants well qualified and experienced in the design, construction, and operation of similar such systems, and meeting the requirements of Commission General Order 103 and the standards of the American Water Works Association, would provide satisfactory service.

23. While in some respects the system proposed by Applicant differs from the system District would install, principally in the user of gravity flow rather than a pressure system, the latter is in general use providing satisfactory service, in many areas of California and its use at the Ranch would not serve overall to make the Applicant's system "inferior" to District's.

24. Service to the Ranch by Applicant would not result in a waste of resources from any significant duplication of utility facilities.

25. While the physical location of the Ranch is within the general extensive area of Riverside County wherein the District owns and operates treatment, storage, and transmission facilities, and where District provides exclusive, temporary, or emergency water service to numerous independent purveyors in the area, and to many residential customers, District does not enjoy a service monopoly or provide service to all within the area.

26. Given the substantial financial resources behind Barratt and its history of completing all projects undertaken, its significant $10 million investment to date

in the Ranch, and its willingness to support investment by Applicant of a $1.6 million up-front plant while deferring a return on investment until the system is built out and financially viable with 1,356 units, the system proposed by Applicant is not that which Commission Resolution M-4708 was promulgated to avoid, and for the purposes of this proceeding it should be considered a Class C water utility.

27. The Final EIR for the Ranch subdivision project was certified by the City of Perris as the Lead Agency under the assumption that water service would be provided by District. Were Applicant to be authorized to provide that service instead of District, any environmental impacts associated with the change, including incremental differences in facilities, would require review and assessment by the Commission's Environmental Review Staff pursuant to CEQA Guidelines Section 15168 (c)(4).

28. Following an initial PEA filing with the Commission's Environmental Review Staff in 1997, which addressed the impacts associated with service by Applicant rather than District, and subsequent staff requests for additional information, Applicant on March 10, 1998, submitted its final amended PEA.

29. After review and assessment of the final amended PEA, the Environmental Review Staff concluded that the type and extent of the environmental impacts of providing water service to and in the Ranch had been accounted for in the City of Perris Final EIR; that only the timing and location differed were Applicant and not District to serve, and that the impacts of the additional facilities required for Applicant service were determined to be less than significant. The analysis results concluded that no new mitigation measures were required pursuant to CEQA Guidelines Section 15168 (c)(2). Accordingly, the Environmental Review Staff on August 11, 1998, issued an Addendum for

the McCanna Ranch EIR (SCH # 87011910) to that effect pursuant to CEQA Guidelines Section 15164 (a).

30. While Commission long standing policy is to protect incumbent utilities from competition from would be competitors so long as the incumbent provides adequate service at reasonable rates (Pacific Gas and Electric Co. supra), when a newcomer can by reason of superior natural advantage give the public service as good as the incumbent provides, at materially less rates, the public interest prevails, and the newcomer must be allowed opportunity to serve (Oro Electric Corp. supra).

31. Because Applicant has access to an underlying stream of very high quality water, and not being encumbered with the heavy bonded debt carried by District, Applicant can provide substantially equivalent water service within the Ranch to the future homeowners of the Barratt ranch subdivision , at rates materially less than the rates District presently charges or will have to charge in the foreseeable future; therefore Applicant should be afforded opportunity to serve the Ranch.

32. "Levelized" rates, as proposed by Applicant, would generate sufficient revenue for recovery of operating and maintenance costs, depreciation and taxes, and while Applicant would lose money the first year, that is expected and planned for because after that it will begin to earn a return on its investment, increasing each year during the 8 year buildout until it earns its full rate of return; meanwhile the homeowner is provided throughout the buildout period with a fair and reasonable monthly water cost that is constant. This is the normal expectation of doing business as a start-up company.

33. The "Saturation Adjustment" concept was promulgated to relieve ratepayers from the costs of excessive ratebase that had resulted from imprudent or injudicious overbuilding of utility plant beyond expectation of use (Cal Water

Service, supra). To extrapolate that concept to the present circumstances of this application would be actually to penalize Applicant for up-front construction of facilities which are prudently and judiciously sized and necessary to meet both the present and rationally determined reasonable future needs of the subdivision.

34. The "Saturation Adjustment" extrapolated to this situation would not allow the utility enough revenue during the early years to adequately maintain the system, provide depreciation, and pay ad valorem taxes for the entire up-front plant; it simply allows less costs than are actually incurred.

35. With Barratt underwriting Applicant's operating costs there is no rational reason also to penalize Applicant by adopting "saturation adjustment" rates merely to save a homeowner approximately $22.00 a year during the eight year buildout period.

36. "Levelized" rates require no Commission or Commission staff regulatory consideration or action during the buildout period, whereas "saturation adjustment" rates require annual consideration and action during the buildout period for adjustments to ratebase, depreciation, and taxes, and rates for homeowners.

37. Although Applicant's consultant expert discussed possible extrapolation of the "Saturation Adjustment" concept to McCanna Ranch, he specifically testified that he was recommending "levelized" rates, not "Saturation Adjustment" rates.

38. Use of "levelized" rates as proposed by the Applicant would be the most fair and equitable for all parties, the ratepayer, Applicant, and Barratt, if service is to be provided by the Applicant, and would also free up Commission regulatory Staff and resources for other matters during the anticipated 8 year buildout period.

39. The Applicant best meets the tests promulgated by Bakman (supra) to determine which of two competing entities should serve in this new subdivision area: Applicant is financially viable with its backing from Barratt; Applicant would provide equally competent management as would District; Applicant would have the lower initial capital costs which would have to be passed through to prospective homebuyer in the Ranch subdivision; Applicant service at the Ranch would serve to relieve forthcoming pressures on diminishing District water supplies and District facilities, without introducing competition elsewhere in District's area of service; Applicant would provide homeowners of the Ranch subdivision with materially lower initial and future rates than District's existing and to be anticipated future rates; and Applicant is the preference of the subdivider-developer, Barratt.

Conclusions of Law

1. Where a proposed new public utility water system can project a reasonable expectation of sufficient revenues to cover operating and maintenance costs, depreciation, and property taxes, it is not unreasonable for an investor to not expect to earn an immediate return on the investment so long as the growth of the project provides rational expectations of providing a nominal rate of return within a reasonable period.

2. A projected Class C public utility water system proposed by an investing applicant with a past successful development record, financial resources, and the ability and willingness to make the substantial up-front plant investment needed coupled with willingness to defer obtaining a rate of return on the investment initially until it is earned, is not the Applicant that Commission Resolution M-4708 was promulgated to avoid certifying.

3. The concept of "Saturation Adjustment" should not be extrapolated for use in the present application circumstances, as to do so would unfairly penalize both the Applicant and Barratt by imposing financial burdens on them for their prudent and judicious up-front investment in a complete utility plant that would be required for the Barratt subdivision; a plant that in no respect would include speculative or surplus facilities beyond the requirements of the builtout subdivision.

4. Extrapolation of the "Saturation Adjustment" concept to apply it to Applicant's proposed rate design would serve to impose unnecessary additional annual regulatory burdens upon the Commission and its staff.

5. The "levelized" rate structure proposed by Applicant for the service to be provided for the Barratt subdivision would provide fair and reasonable rates for the service to be provided for the future homeowners, and reasonable financial responsibilities for the Applicant and Barratt for the buildout period of the Ranch subdivision.

6. Under both short term and future considerations, the "levelized" rates proposed by Applicant for the future homeowners in the Barratt Ranch would be materially less, regardless of the actual level of consumption, than the rates that District service would require, and when the special charges that District service would add are taken into account, the disparity increases.

7. The City of Perris was responsible under CEQA as the Lead Agency, and performed the detailed environmental review which assessed the impacts of developing the McCanna Ranch Planned Community, and as the Lead Agency, the City certified the Final EIR (SCH #87011910) for the project.

8. As the facilities that Applicant would provide were not fully contemplated by the previously certified Final EIR, the incremental difference required further

environmental review were Applicant to provide water service to the subdivision.

9. The Addendum issued on August 11, 1998 by the Commission's Environmental Review Staff to the previously certified City of Perris Final EIR (SCH #87011910) was prepared and issued pursuant to Section 15164(a) of the CEQA Guidelines after review and analysis performed pursuant to Guidelines Section 15168(c)(4).

10. The August 11, 1998 Addendum determined that as there were no new environmental impacts and as no new mitigation measures were required as a consequence of the incremental facilities changes proposed by Applicant, no additional environmental documentation beyond this Addendum would be required were the Applicant to provide the water service to the Ranch subdivision rather than District.

11. The Commission as a Responsible Agency may adopt this Addendum to the McCanna Ranch EIR (SCH #87011910).

12. Submission in this proceeding necessarily was delayed until August 11, 1998 following filing of briefs pending clarification of the CEQA status.

13. Applicant's natural advantages, and its ability to provide water service at materially lower rates, serves under the policy set forth in Oro Electric Corp. (supra), to open the Barratt Ranch area to competitive service determinations.

14. Applicant most substantially meets the Bakman (supra) tests applied by the Commission in determining which of two competing utilities should be allowed to provide service to the new Barratt subdivision area.

15. The public convenience and necessity require that the application to construct, maintain, and operate a public utility metered water system on the Barratt McCanna Ranch be granted.

16. The "levelized" rates proposed and memorialized by Table VII-2 in Appendix D of Exhibit 2 in this proceeding, being just, reasonable, and non-discriminatory, are set forth in Appendix B to the order that follows, and Applicant should be authorized to file them with these "levelized rates thereafter to remain in effect until the proposed 1,356 unit project is built-out, or until the Applicant's rate of return reaches or exceeds 12% whichever event first occurs.

17. Applicant should be authorized to issue 100% of its authorized shares of stock to Barratt, pursuant to the provisions of Pub. Util. Code §§ 816 et seq.

18. The certificate that will be granted shall be subject to the following provisions of law:

> The Applicant shall have no power to authorize the capitalization of this certificate of public convenience and necessity, or the right to own, operate or enjoy such certificate in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate or right.

In issuing the following order, we place Applicant and its shareholders on notice that we do not regard the number of shares outstanding, the total per value of the shares nor the dividends paid as measuring the return Applicant should be allowed to earn on its investment in plant, and that the authorization being given is not to be construed as a finding of value of Applicant's stock or properties nor as indicative of amounts to be included in proceedings for the determination of first and reasonable rates.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to McCanna Ranch Water Company (Applicant) to construct and operate a public utility

water system to serve the Barratt American Incorporated (Barratt) McCanna Ranch subdivision to be constructed north of the City of Perris in Riverside County, as delineated on the map (Figures 1-2) in Appendix D to the application.

2. The authority being granted by Ordering Paragraph 1 is conditioned upon the McCanna Ranch Water Company's public utility water system being operated by Dominguez Water Corporation, or an operator with at least equivalent status and experience, and possessing a Department of Health Services permit.

3. Applicant is authorized and directed to file with this Commission, after the effective date of this order and in conformity with General Order (GO) 96-A, the schedule of rates and charges shown in Appendix B attached hereto, and upon not less than five days' notice to the Commission, to make said rates effective for service rendered thereafter.

4. Within 60 days after the effective date of this order, Applicant shall file with the Commission, in conformity with GO 96-A, a tariff service area map applicable to the area certified.

5. Applicant shall establish and maintain formal books of account in conformity with the Commission's prescribed uniform System of Accounts for Class C Water Utilities.

6. Within 150 days of the effective date of this order, Applicant shall initiate and work with the Advisory Branch of the Water Division to establish a complete tariff, including rules and forms for the water system.

7. Within 150 days of the effective date of this order, Applicant shall effect legal transfer to itself of the water system plant site and easements for the transmission and distribution systems from Barratt and/or other corporate parent entities holding title to these properties, and shall file with the

Commission a copy of each appropriate document showing such transfer; it being understand that notwithstanding the transfer prices, rates for the future following buildout of the subdivision shall be based upon the rate bases determined by the Commission.

8. The August 11, 1998 Addendum to the City of Perris Final EIR (SCH #87011910) is adopted as the independent review and Responsible Agency determination of the Commission.

9. The December 24, 1996 Motion of Eastern Municipal Water District to strike certain tables and documents appended to Applicant's Reply Brief is granted in part and denied in part; granted to the effect that Tables B to I therein are stricken, and denied as to the remaining table and documents.

10. The schedule of rates and charges authorized by Ordering Paragraph 2 of this order shall remain in effect for the entire buildout period of this project, or until the Applicant has achieved a rate of return on rate base of 12% or higher. In the latter event, Applicant shall within 90 days file with the Commission a general rate application.

11. During the buildout period while the schedule of rates and charges authorized by Ordering Paragraph 2 of this Order are in effect, Applicant shall not impose upon its ratepayers any connection or facilities fee, establish any memorandum account for repairs, or seek any increase in the rates based upon the Consumer Price Index, without obtaining prior authorization of the Commission.

12. Within 10 days of the date, Applicant shall notify the Commission's Executive Director, in writing, of the date that service is first rendered to the public by the utility system.

13. This proceeding is closed.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

APPENDIX A

PETE WILSON, *Governor*

August 11, 1998

Addendum for McCanna Ranch EIR (SCH #87011910)

To Whom It May Concern:

The proposed project involves the formation and operation of the McCanna Ranch Water Company (MRWC) whose service territory encompasses the 246-acre McCanna Ranch Planned Community within the City of Perris. The proposed MRCW will own, maintain, and operate the following facilities: wells (2), 500,000 gallon reservoirs (2), well pumps (2), enclosure for chlorination facilities and operations, booster pumps (4), fire flow pump (1), backup generator, and an underground 12 inch water transmission main.

The Final EIR for the 1988 McCanna Ranch Specific Plan was certified after a detailed environmental review by the City of Perris which thoroughly assessed the impact of developing the McCanna Ranch Planned Community. At the time that this environmental document was certified, it was assumed that the project's water service would be provided by Eastern Municipal Water District (EMWD). The Final EIR for the McCanna Ranch Specific Plan not only assessed the impacts of the provision of such water service to the project site, but also addressed the impacts of the installation of a water service infrastructure system.

The McCanna Ranch Water Company's Proponent Environmental Assessment (PEA) addresses the impacts associated with water service being furnished to the Planned Community by the Applicant MRWC instead of such water service being provided by EMWD. A PEA for the MRWC was originally submitted to the Public Utilities Commission in September of 1997. The Commission's Environmental Review Staff required additional information from the MRWC. In December of 1997, an amended PEA was sent to the PUC for further review. The PUC returned the draft with additional comments, and on March 10, 1998, the McCanna Ranch Water Company submitted their final amended PEA for Application A.95-06-024.

The facilities that MRWC will provide which were not contemplated as currently proposed by the previously certified Final EIR for the 1988 McCanna Ranch Planned Community include: two wells including pumps within enclosures, two reservoirs and a building for housing the emergency generator, four booster pumps, one fire flow pump, and miscellaneous chlorination equipment. The incremental difference created by the MRWC reservoirs and chlorination facilities arises from the timing of their construction and from the fact that the reservoirs and chlorination facilities will be built in a different location from those of EMWD. However, the four booster pumps, the fire flow pump, the generator to energize the pumps in the event of a power outage, and related facilities are additional to those that would be required for EMWD service. The impacts of these installments were determined to be less than significant.

The type and extent of the impacts incurred by the McCanna Ranch Water Company in providing services to the Planned Community were accounted for in the 1988 Final EIR for the McCanna Ranch Specific Plan. Only the timing and the location of the impacts within the assessed area differ. This addendum has been prepared and issued pursuant to Section 15164(a) of the CEQA Guidelines. An environmental impact review and analysis was conducted by Commission staff according to Guidelines Section 15168(c)(4). The results of this analysis indicated that there were no new environmental impacts and no new mitigation measures required by the incremental changes to this project as proposed by the applicant (MRWC). Thus, pursuant to the Guidelines Section 15168(c)(2), no additional environmental documentation is required.

Andrew Barnsdale
Environmental Program Manager

(END OF APPENDIX A)

APPENDIX B

McCanna Ranch Water Company

Schedule No. 1

METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The subdivision known as the McCanna Ranch located north of the City of Perris in Riverside County.

RATES

Quantity Rates	Per Meter/No.
For all water used, per 100 cu. Ft.	$ 0.70

Service Charges:

For ¾-inch Meter	$15.00
For 1 ½-inch Meter	$50.00

The Service Charge is a readiness to serve charge applicable to all metered service and to which is added the Quantity Charge computed at the Quantity Rates.

SPECIAL CONDITIONS

All bills are subject to the Public Utilities Commission Reimbursement Fee.

(END OF APPENDIX B)