

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission' own)
 motion into whether existing standards)
 and policies of the Commission)
 regarding drinking water quality)
 adequately protect the public health and)
 safety with respect to contaminants such)
 as Volatile Organic Compounds,)
 Perchlorate, MTBEs, and whether those)
 standards and policies are being)
 uniformly complied with by)
 Commission regulated utilities.)

FILED
PUBLIC UTILITIES COMMISSION
MARCH 12, 1998
SAN FRANCISCO OFFICE
1.98-03-013

ORDER INSTITUTING INVESTIGATION

I. Preliminary Statement

The Commission and the California Department of Health Services (DHS) have worked together for many years to ensure that the drinking water that customers of California's public utilities receive is safe. The ongoing regulatory role of the Commission and the DHS is pervasive, and they have worked together to assure the delivery of safe drinking water at reasonable rates to California's private water utility customers.

Within the last 8 months, complaints by numerous plaintiffs for negligence, wrongful death, strict liability, trespass, public nuisance, private nuisance and injunctive relief, have been filed in the Superior Courts of California against Southern California Water Company (SCWC), San Gabriel Valley Water Company (SGVWC), Citizens

Water Company of California and its parent Citizens Utilities Company (Citizens) and Suburban Water Company (Suburban). The plaintiffs allege that they are, and at all relevant times have been, customers of these water companies; that for a period of many years SCWC, SGVWC, and Suburban have delivered and continue to deliver to them contaminated water from wells. If the plaintiffs in these law suits ultimately prevail and are awarded the relief they are seeking, the financial, operational, and safety implications are potentially enormous for these water utilities and their customers, for regulatory agencies and for the Commission's jurisdiction over water supply, water services, treatment standards, and Commission regulated water rates in California.¹ These complaints raise public concerns over the safety of the drinking water supplies of these utilities.

Thus, public concerns over the safety of drinking water require a full-scale investigation by the Commission into whether the standards and policies of the Commission regarding drinking water quality adequately protects the public health and safety with respect to certain substances, such as volatile organic compounds (VOCs) and Perchlorate, and whether these standards and policies have been uniformly complied with by the Commission-regulated utilities.

On January 21, 1998, the Commission adopted Resolution No. W-4089 authorizing SCWC to establish a memorandum account related to the lawsuits filed against it, and in that resolution we also authorized Suburban and SGVWC to file advice letters to activate similar memorandum accounts because of similar multi-party lawsuits filed against them.

These Superior Court cases allege that water provided by the water utilities is harmful or dangerous to health because the water contains substances such as VOCs

¹ These law suits are Adler, et al., v. Southern California Water Company; Kristin Santamarie, et al., v. Suburban Water Systems, et al., including San Gabriel Valley Water Company and Southern California Water Company, filed in Los Angeles County; Boswell v. Suburban Water Systems, et al., and Allen, et al., v. Southern California Water Company, Arden-Cordova Water Service, Citizens Utilities Company, filed in Sacramento County.

and Perchlorate. Because of the claims in the Superior Court cases relating to water quality, public health and safety, and the operations and practices of the public utilities subject to this Commission's jurisdiction, the Commission intends to pursue its jurisdiction by investigating the operations and practices of the named defendant public utilities and all other Class A and B public utility water companies, their compliance with this Commission's standards and policies regarding water quality, and whether those standards and policies regarding water quality continue to be adequate to protect the public health and safety with respect to substances such as VOCs and Perchlorate. We are limiting this investigation to our Class A and Class B utilities because they have the financial ability to respond to this investigation and because they serve over 90% of all public utility water customers in this state.

II. The Commission's Jurisdiction and Authority

Under Article XII, Section 6, of the State Constitution, this Commission is empowered to establish rules for the utilities, including water utilities, subject to its jurisdiction. Section 451 of the Public Utilities Code requires public utilities to furnish and maintain such adequate, efficient, and reasonable service, equipment, and facilities as necessary to promote the health and safety of its patrons, employees, and the public. The Legislature has vested the Commission with both general and specific powers to ensure that public utilities comply with that mandate. (Public Utilities Code Sections 701, 761, 762, 768)

By Decision No. 53204 dated June 12, 1956, this Commission adopted General Order No. 103, Rules Governing Water Service, Including Minimum Standards for Design and Construction. By Commission decision or resolution, General Order No. 103 has been amended and updated on a number of occasions, most recently by Resolution No. W-3770 dated May 7, 1993. General Order No. 103 provides in Section II, Standards of Service as follows:

I. Quality of Water

a. General. Any utility serving water for human consumption or for domestic uses shall provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color and turbidity. Any utility supplying water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Health Services. It is not intended that any rule contained in this paragraph II 1 shall supersede or conflict with an applicable regulation of the State Department of Health Services. A compliance by a utility with the regulations of the State Department of Health Services on a particular subject matter shall constitute a compliance with such of these rules as relate to the same subject matters, except as otherwise ordered by the Commission." (Emphasis added.)

In furtherance of the Commission's policies and requirements embodied in General Order No. 103, the Commission has established additional policies, requirements, and water quality and water treatment standards, and guidelines governing the operations and practices of water utilities subject to this Commission's jurisdiction, including, but not limited to the following:

- a. The Commission adopted Guidelines for Water Quality Improvement projects on December 8, 1986. The guidelines govern the procedures water utilities will follow to identify necessary facilities for water quality improvement projects to assure that such projects are designed and constructed to comply with the Commission's policies, requirements, and standards and are constructed in a cost-effective manner.
- b. The Commission adopted a Service Improvement Policy on June 15, 1983 that requires water utilities to identify the most cost-effective alternatives for dealing

with water service problems, including contamination. The Service Improvement Policy was incorporated into the Guidelines for Water Quality Improvement Projects referred above.

c. The Commission entered into a Memorandum of Understanding with DIIS, effective February 1987 and updated in November 1996, setting joint goals to assure that water utilities regulated by the Commission are maintaining safe and reliable water supplies and doing so through cost-effective procedures for monitoring, testing, and treating water supplies to assure compliance with drinking water standards.

d. The Commission's Risk and Return Report in 1990 addresses the development of drinking water quality standards, new testing procedures, and the application of drinking water standards to large and small water utilities.

e. In D. 94-06-033, the Commission concluded that drinking water quality standards would require water utilities to invest between \$50-200 million over the "next several years" for water treatment facilities to continue to meet drinking water standards.

f. In Resolution No. W-4013 in 1996, the Commission authorized water utilities to establish memorandum accounts to record and recover expenses incurred in complying with the United States Environmental Protection Agency's (EPA) drinking water regulations and the DIIS' testing and regulatory fees.

g. The Commission, in a series of individual utility rate decisions dating back several decades, has ordered both the method and the actual dollar costs of water treatment which then are translated into specific rate recovery formulae. These decisions and orders are based upon the Commission regulatory policy of equating the relative cost of treatment to the ability of

communities to absorb the cost of varying treatment levels, consistent with public health and safety and drinking water quality standards set by this Commission.

III. The Purpose of the Commission's Investigation

Pursuant to our constitutional and statutory mandate, the Commission is obligated to ensure that regulated water utilities furnish and maintain service as necessary to "promote the safety, health, comfort, and convenience of its patrons, employees, and the public." We have sought to achieve these public health and safety objectives by requiring water utilities to comply with the laws, regulations, and drinking water standards of the DHS and the EPA and the requirements of the federal and state Safe Drinking Water Acts. Generally, we have deemed the compliance by water utilities with those standards to be compliance with the Commission's rules relating to water quality and public health and safety.

With this Order Instituting Investigation (OII) the Commission continues its ongoing jurisdiction and commences an investigation to review the policies, requirements, standards, and guidelines the Commission applies to Class A and Class B water utilities regarding water supply and water quality. In particular, the Commission will examine the operations and practices of the Class A and B water utilities and determine whether they are and have been in compliance with the Commission's policies, requirements, standards, and guidelines which require that the water provided by the water utilities be wholesome, potable, and in no way harmful or dangerous to health. In this investigation we will review our policies regarding drinking water standards and consider whether that policy needs to be amended or augmented. We will review the extent to which occasional excursions of contaminant levels above regulatory thresholds occur and whether our policies and standards should be amended to account for those incidents, taking into consideration economic, technological, and public health and safety issues, and compliance with Public Utilities Code Section 770.

We also intend to examine the methods, extent, and cost of a utility's proposed water quality improvement projects. We undertake this examination to determine whether water quality projects are designed in a cost effective manner so as to not unduly burden ratepayers with costs in excess of the amount necessary to comply with our standards. We are very cognizant that in addition to establishing standards for the design, construction, and operation of water systems, including safe drinking water standards, we must also set the rates these water utilities charge their customers for service. In setting those rates, we must account for the reasonable costs incurred by water utilities in complying with applicable drinking water standards and approve proposed expenditures for water quality improvements that are designed to comply with our water quality standards.

In conjunction with DHS, we apply drinking water standards on a statewide basis to assure uniformity of compliance among almost 200 water utilities we regulate. Without our existing authority to set and enforce uniform standards, we could not effectively implement uniform statewide water rate-setting policies, and water utilities would be uncertain about required design standards and whether we would approve water rates to cover the costs of necessary water quality improvement projects. This uncertainty would result in chaotic and inconsistent practices among water utilities and the potential that needed water quality improvement projects would be deferred indefinitely, or not built at all. In certain areas, scarce water supply resources would be severely jeopardized. Such a result is not acceptable. As a consequence, the constitution and laws of California confer on this Commission (in coordination with DHS) the jurisdiction and authority, unhindered by local agencies, authorities, or courts, (other than the Supreme Court in appropriate circumstances), to set and enforce standards to assure that water utilities provide water that is wholesome, potable, and in no way harmful or dangerous to health but still at an affordable cost to consumers.

Given DHS's current role in setting water quality standards and the Memorandum of Understanding between the two agencies, we are also inviting DHS to

participate in this investigation. Their input would be invaluable as we examine compliance with safe drinking water standards. We are asking that they provide us with information as to the safe drinking water standards that they set and the reasons for these standards. In addition, it would be useful for us to know how they go about setting these standards, and once they are set, how they are enforced. Finally, we would like to hear from them how our cooperative efforts can enhance our joint responsibilities of assuring the delivery of safe, potable drinking water to the customers of our public utility water utilities.

IV. Actions to be Taken

By issuing this OII, we require all Class A and Class B water utilities to prepare and file a compliance filing regarding their past and present operations and practices with respect to the safe drinking water standards, the quality and safety of water distributed to their customers, and compliance with the Commission's policies, requirements, standards, and guidelines governing water quality and safety. The information we are seeking is set forth in Appendix A.

The compliance filings will be reviewed by the Commission's Water Division staff and as necessary, by the Legal Division staff, to evaluate the water utilities' compliance with this Commission's policies, requirements, standards, and guidelines. We also expect Water Division staff to schedule onsite inspections of the water utilities' plants to gather information about the availability of continuing water supply, and concerning water system operations and compliance with the Commission's policies, requirements, standards, and guidelines relating to the quality of drinking water provided by Class A and B water utilities. In conducting their review of the water utilities' compliance filings, the Water Division staff may request additional information from the water utilities as may be necessary.

We expect the Water Division to prepare a report of their initial findings and conclusions, and recommendations by the middle of November, 1998. This report

may also recommend that the water utilities prepare and file additional reports regarding their compliance with this Commission's policies, requirements, standards, and guidelines regarding water quality, safety and supply. This report will be mailed to all participants in this proceedings.

We will evaluate this report and determine what further action, if any is necessary in order to assure California ratepayers that they are receiving safe drinking water supplies from their water utilities. It is our express intent to determine whether our drinking water standards adopted in concert with the safe drinking water standards established by the EPA, the DHS and the federal and state Safe Drinking water Acts are adequate and sufficient with respect to substances such as VOCs, Perchlorate, and any other and any other contaminants such that the water utilities' compliance with those standards has fulfilled our mandate to ensure the provision of water that is wholesome, potable, and in no way harmful or dangerous to health. We will also determine whether additional or different drinking water quality standards should be adopted by the Commission to protect the health and safety of the public served by the water utilities, consistent with Public Utilities Code Section 770.

V. Categorization and Preliminary Scoping Memo

In 1996, Governor Wilson signed into law SB 960, which establishes new procedures (effective January 1, 1998) for the Commission in handling formal proceedings that go to hearing. We have adopted rules implementing SB 960, and this part of the OII addresses SB 960 procedures as applied to this proceeding. These procedures are found in Article 2.5 of our Rules of Practice and Procedures.

We do not anticipate any need for hearings to receive either "adjudicative facts" or "legislative facts" as defined in Rules 8(f)(1) and 8(f)(2), but we will make our final determination on whether to hold hearings in this proceeding after reviewing the filings by the respondents due July 15, 1998, and the issuance of the Water Division report due November 16, 1998. If any party to this proceeding believes that an

evidentiary hearing is required in this proceeding, that party must state that belief in its comments. The comments must expressly request an evidentiary hearing and justify the request by (1) identifying the material disputed facts, and (2) explaining why a hearing must be held. Also, the comments must describe the general nature of the evidence the party proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing will be waived if the party does not follow the above procedures for requesting one.

We preliminarily determine this to be a quasi-legislative proceeding, as defined in Rule 5(d). Commissioner Henry M. Duque and ALJ Patricia Bennett are the Assigned Commissioner and Administrative Law Judge, respectively.

The scope of issues to be considered in this proceeding is as described in previous portions of the OII. (See Sections III and IV above.) SB 960 states the legislative policy that the Commission complete proceedings in the quasi-legislative category within 18 months. After issuance of the Water Division report on November 16, 1998, our goal is to make our final determination in this proceeding within 6 months thereafter, i.e., by May 16, 1999.

The actual schedule of events, and whether we can achieve our goal for completing the proceeding, depends in significant part on the adequacy of the information submitted by the participants and any hearings are held. We therefore ask the parties to propose schedules in comments with their responses to Appendices A and B. A final schedule will be developed after issuance of the Water Division's report.

IT IS HEREBY ORDERED that:

1. An investigation on the Commission's own motion is instituted to consider the following issues of regulatory policy and action:

- a. Are the prevailing drinking water standards safe, including those relating to VOCs and Perchlorate and any other known contaminants?

b. Are water utilities complying with prevailing safe drinking water standards, including those relating to VOCs and Perchlorate and any other known contaminants?

c. Are water quality standards adequate and safe, including, without limitation, whether the maximum contaminant levels (MCLs), Action Levels, and other Safe Drinking Water Act requirements relating to substances such as VOCs and Perchlorate, and any other contaminants, such that these standards adequately protect the public health and safety?

d. What appropriate remedies should apply for non-compliance with safe drinking water standards?

e. The extent to which the occurrence of temporary excursions of contaminant levels above regulatory thresholds, such as MCLs and action levels, may be acceptable in light of economic, technological, public health and safety issues, and compliance with Public Utilities Code Section 770.

2. Within 120 days of the effective date of this order, the Commission regulated Class A and Class B water utilities are to make initial compliance filings as set forth in Appendix A.

3. The Commission's Water Division shall review the initial compliance filings provided on Ordering Paragraph 2 above, and not later than 120 days after the period specified in Ordering Paragraph 2 above, make an initial report to the Commission on:

a. The status of their review of the initial compliance filings and whether additional compliance filings will be required;

b. A proposed schedule for the additional compliance filing;

c. Additional issues, questions and recommendations to be considered in this proceeding.

4. All Class A and Class B water companies are hereby made respondents to this OII. (See Appendix C.)

5. The California Water Association is made a respondent to this OII.

6. The Executive Director of the Commission serve a copy of this order on all Class A and Class B water utilities.

7. The Executive Director of the Commission shall extend an invitation to the Director of the Department of Health Services to participate in this investigation as set forth in Appendix B and serve copies of this order to attorneys representing the complainants in the pending lawsuits cited in footnote 1.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

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

I will file a written concurrence.

/s/ JOSIAH L. NEEPER
Commissioner

APPENDIX A
Questions for the Utilities

For each of your separate districts, over the last twenty-five years:

1. What contaminants did you test for and when?
2. How did you know what to test for?
3. What were the standards (MCLs) for each contaminant?
4. What entity/company performs sample taking?
5. What entity/company performs your required testing?
6. How did you test for each of these contaminants?
7. What reports did you (or a contractor) create and who were they sent to?
8. What tests, if any, indicated failure to meet standards in effect at the time of the tests? List each failure by type of test, date of test, district and location, standard applicable at the time, results of the test, and corrective action taken.
9. What reports (if any) indicating you did not meet standards were not filed correctly or in a timely manner (list reports)?
10. What did you do if the levels exceeded standards?
11. What information did you provide the customers, and when?
12. Did you take any actions that were not specifically required by DHS in testing or treating the water or notifying the public?

End of Appendix A

APPENDIX B**Questions for the California Department of Health Services****Procedural Questions**

1. What responsibilities did the various agencies (EPA, DHS, CPUC, Utilities, Congress, the California Legislature, public, etc.) have with respect to contaminants, testing and treatment?
2. What contaminants are regulated (SDWA)?
3. What contaminants are the water companies required to test for?
4. How have you informed the utilities what to test for and how to test?
5. Since 1974, what does the "state-of-the-art" allow for in testing contaminants? (What can be detected and at what levels?)
6. What contaminants exist in the water of Commission-regulated companies?
7. How do the utilities report the existence of these contaminants?
8. How do the utilities know what to do when contaminants were discovered?
9. How do you know when the water was contaminated?
10. How do you know the utilities reacted properly when contaminants were discovered?
11. If you know a utility has not reacted properly, what do you do about it?
12. What actions are required of the utilities in addressing various contaminants in addition to testing and treatment?
13. What actions, if any, should the utilities have taken independently in addressing various contaminants?
14. What impediments exist, if any, limiting the utilities' actions?

Scientific Questions

1. What is known about the health effects of VOCs and Perchlorate contaminants in drinking water supplies?
2. What was the expected danger to the various sectors of the public of these contaminants at various contaminant levels?
3. What treatment technologies existed to treat for these contaminants?
4. How effective are these technologies?
5. What was the interaction, if any, between various contaminants that increased or decreased health risks compared to a contaminant in isolation?
6. What are the health impacts, if any, of various treatment technologies themselves?
7. For the various health impacts that these contaminants or various treatment technologies could cause, what are other causes of these health impacts?
8. How prevalent are the other causes?
9. How effective are these other causes in causing health impacts compared to the effectiveness of the contaminants?

10. Presently, what are the responsibilities of utilities to the public in the area of contaminated water?
11. Are those responsibilities adequately defined and imposed? Are their adequate resources and penalties to make sure the responsibilities are carried through?
12. If utilities were deficient in any of their responsibilities, what action should be taken?
13. What contaminants were known to exist in water but weren't regulated? Why weren't they regulated?
14. Should the utilities have any additional responsibilities in this area?
15. If so, what action should be taken, and by whom, to define those responsibilities?

Policy Questions

1. Is the present regulatory situation adequate to protect public health?
2. What improvements or actions, if any, should be taken in the future to increase public health protection?
3. What, if any, impediments exist to prevent these actions from being taken should be done about those impediments?
4. What actions can be taken to remove these impediments?
5. Who should take the action?

End of Appendix B

A P P E N D I X C

(WTA 345)

APPLE VALLEY RANCHOS WATER CO
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DOWNEY, CA 90241

(WTA 60)

CALIFORNIA WATER SERVICE CO
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1720 NORTH FIRST STREET
SAN JOSE, CA 95112

(WTA 210)

CALIFORNIA AMERICAN WATER CO
JOHN BARKER
880 KUHNY DRIVE
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(WTA 87)

CITIZENS UTILITIES CO OF CALIF
L. J. D'ADDIO
PO BOX 15468
SACRAMENTO, CA 95851

(WTA 330)

DOMINGUEZ WATER CORPORATION
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LONG BEACH, CA 90810

(WTA 162)

GREAT OAKS WATER CO
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PO BOX 23490
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374 WEST SANTA CLARA ST
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SANTA CLARITA WATER CO
W. J. MANETTA, JR.
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(WTA 133)

SOUTHERN CALIFORNIA WATER CO
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(WTA 339)

SUBURBAN WATER SYSTEMS
ROBERT L. KELLY
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COVINA, CA 91724

(WTA 342)

VALENCIA WATER CO
ROBERT DIPRIMO
24631 AVE. ROCKEFELLER
VALENCIA, CA 91355

(WTB 206)

ALCO WATER SERVICE
ROBERT ADCOCK
249 WILLIAMS ROAD
SALINAS, CA 93906

(WTB 327)

COUNTY WATER CO
JOHN A. ERICKSON
11829 E. 163 STREET
MORWALK, CA 90650

(WTB 811)

DEL ORO WATER CO., INC.
ROBERT S. FORTINO
DRAWER 5172
CHICO, CA 95927

(WTB 331)

EAST PASADENA WATER CO
SHIRLEY KING
3725 EAST MOUNTAIN VIEW AVENUE
PASADENA, CA 91107

(WTB 135)

ELK GROVE WATERWORKS
J. B. JONES
9257 ELK GROVE BLVD
ELK GROVE, CA 95624

(WTB 136)

FRUITRIDGE VISTA WATER CO
ROBERT C. COOK, JR.
1108 SECOND STREET, STE 204
SACRAMENTO, CA 95814

(WTB 75)

HILLCREST WATER CO., INC
DARYL MORRISON
707 NO GEORGE WASHINGTON BLVD
YUBA CITY, CA 95993

Commissioner Josiah L. Neep, Concurring:

I concur with the proposed OII.

This investigation is primarily and directly caused by a series of complaints filed at the Superior Court of the State of California for the City of Los Angeles. The gravamen of the complaints in these cases alleges that certain named water companies under our jurisdiction and other named defendants that are not regulated by this Commission caused the supply and delivery of contaminated water so as to cause harm to the plaintiffs; and that plaintiffs were exposed and continued to be exposed to toxins that are harmful to humans.

We open this OII and assert that the Commission's statutory jurisdiction require this agency to investigate whether the regulated water companies are in compliance with our current water quality standards which are routinely and normally derived from the work of the Environmental Protection Agency and the California Department of Health Services. EPA and DHS have important jurisdiction in this field. However, this Commission does have a fundamental duty to require the safety and reliability of water service as well as to ensure the economic viability of the water companies. It is in this sense, the Commission's regulatory jurisdiction may be viewed as an umbrella responsibility for the regulated water utilities ensuring safe and reliable water for the public at reasonable prices.

My support of the OII is based on the understanding and expectation that the scoping of the issues in this OII will specifically focus on investigating whether the water supplied to the public by (Class A and B) investor owned water utilities contains toxins and other substances at levels exceeding the California regulatory limits as set by us through the work of the EPA, the DHS or any other governmental agency. The cooperation of these two sister agencies is in my view critical to the successful completion of this investigation as the necessary technical skills for the endeavor we are undertaking in this

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investigation resides in the two agencies. The results of this investigation should lead us to conclude whether the utilities are in compliance with the current water quality standards and also whether the standards should be changed or augmented; and if we find that they are out of compliance, we shall consider what actions the Commission should take to enforce the standards, and order other remedies for an immediate correction of deficiencies in their operation. The paramount concern has to be about the protection of the public health.

Because the allegations stem in part from the complaints filed at the Superior Court in Los Angeles, the investigation will benefit from the participation of all concerned who wish to participate.

Our duties in this OII are therefore (1) to determine compliance by utilities with current water quality standards to the extent that these standards cover all known and alleged contaminants; and (2) to consider ameliorative actions as warranted by the findings of the investigation including any appropriate changes to those standards as applied by us.

I would like to thank Commissioner Duque, his advisor Tim Sullivan, and the Water Division for the work they have done in bringing this OII to the Commission.

/s/ JOSIAH L. NEEPER
Josiah L. Neeper
Commissioner

San Francisco, California
March 12, 1998