Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 12/12/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, rates and charges of the Hillview Water Company, Inc., a corporation, and Roger L. Forrester, the principal shareholder and president, Respondents.	Investigation 97-07-018 (Filed July 16, 1997)

OPINION GRANTING, WITH CONDITIONS, PETITION FOR MODIFICATION OF DECISION 01-10-025 REGARDING MORATORIUM ON NEW SERVICE CONNECTIONS

1. Summary

We grant the unopposed Petition for Modification (Petition) of Bradford D. Ditton, filed on August 8, 2005, subject to several conditions. The Petition seeks revision of Decision (D.) 01-10-025 to create an exception from the moratorium on new service connections in the Oakhurst-Sierra Lakes service area of Hillview Water Company (Hillview), for those, like Petitioner, who agree to drill a new well to provide water for their own supply needs and to make the surplus supply available to Hillview. We condition our approval to meet statutory requirements, particularly Pub. Util. Code § 2708's requirement that serving new demand "will not injuriously withdraw the supply wholly or in part" from existing customers. As conditioned, Hillview may modify its tariff to provide for an exemption from the current moratorium.

2. Background

The Commission issued D.01-10-025 and several other decisions during the pendency of this proceeding (I.97-07-018), a Commission-initiated investigation into Hillview's operations. The filing of this Petition has reopened I.97-07-018.

As relevant here, D.01-10-025 adopted a settlement which recommended imposition of a moratorium on new service connections in Hillview's Oakhurst-Sierra Lakes service area because of a generally constrained water supply made worse by the need to dilute high levels of uranium in part of the water supply. The decision views the moratorium as a temporary solution and states:

> A more permanent solution is needed, and we anticipate that a major component of that solution will be the addition of a treatment facility that will more effectively remove the uranium from Hillview's present supply. (D.01-10-025, slip op p. 7.)

The adopted settlement contemplated that Hillview would file an advice letter to rescind the moratorium when it obtained "an adequate supply of water as determined by the Department of Health Service." (D.01-10-025, Attachment 1, Paragraph 41.)

Hillview is a Class C water utility that serves slightly less than 1,400 customers in the foothills of eastern Madera County, southwest of Yosemite National Park.[1] Oakhurst-Sierra Lakes is one of four separate operating systems within Hillview; the others are Hillview-Goldside, Raymond, and Coarsegold Highlands. As we noted most recently in D.05-07-029, which resolved Hillview's

[1] A Class C water utility is one with more than 500 service connections but fewer than 2,000.

general rate case, the water supply for all of the operating systems comes from hard rock wells and much of it has high mineral and metal concentrations.

3. Procedural History

Following the filing of the Petition, a September 1, 2005 administrative law judge (ALJ) ruling established a means to ensure service on all persons on Hillview's moratorium waiting list and also directed Petitioner to provide additional information. Petitioner made a supplemental filing (entitled Supplemental Information) on September 29, 2005, pursuant to an extension of time from the ALJ. Hillview supports the Petition and no opposition has been filed.

4. Discussion

Pursuant to Pub. Util. Code § 2708,[2] D.01-10-025 imposed a moratorium on new service connections, sometimes referred to as hook ups, in Hillview's Oakhurst-Sierra Lakes service territory. Hillview has applied for a loan from the Safe Drinking Water State Revolving Fund (SDWRF) to finance certain

[2] Pub. Util. Code § 2708 provides:

Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any water company which is a public utility operating within this State has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation, the commission may order and require that no such corporation shall furnish water to any new or additional consumers until the order is vacated or modified by the commission. The commission, after hearing upon its own motion or upon complaint, may also require any such water company to allow additional consumers to be served when it appears that service to additional consumers will not injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility.

Footnote continued on next page

infrastructure improvements, including the drilling of some new wells to replace existing wells that are contaminated with uranium.[3] D.05-07-029, which issued in Hillview's recent general rate case, noted that the loan had been approved but not yet funded. Consequently, Hillview has had no means to abate the moratorium ordered by D.01-10-025, and new residential and commercial construction within this portion of Hillview's service territory continues to be prohibited, unless an application for water service was on file before the moratorium took effect (April 16, 2001).

Regarding the SDWRF loan, the Petition states:

> At such time as the SRF [SDWRF] is funded and the HWC [Hillview] project finally underway, the loan funds will provide far less improvement to the HWC system because of more than 5 years of delay in starting the project. Clearly the loan funds simply will not purchase now what they would have purchased years ago. Additionally SRF loans are limited in the amount that can be used to increase supply to account for growth. (Petition, II, Issue 3, text in brackets added for clarification.)

Petitioner Ditton asks the Commission to modify D.01-10-025 to create an exception from the current moratorium for those, such as himself, who agree to develop additional water supplies sufficient not only to serve the new demand that would be generated by the projects they want to build but also yield a

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[3] The Commission authorized Hillview, in D.02-11-015, to enter into a loan agreement with the Department of Water Resources to borrow $3,408,447 under the Safe Drinking Water Bond Act. The loan was expected to be used for construction of new wells, a new raw water transmission line, a new treated water transmission line, a new storage tank, and other facilities.

surplus. Developing additional water supply in the Oakhurst-Sierra Lakes area requires drilling new wells or, according to Petitioner, reconstructing existing but "old defunct Hillview wells." (Petition, III, Issue 6.) Petitioner proposes that in return for bearing the development costs and conveying any new facilities to Hillview, those generating new water supply should have their residential or commercial projects connected to Hillview's Oakhurst-Sierra Lakes system.

Hillview supports the Petition. Attached to the Petition is a July 28, 2005 letter to Petitioner from Hillview, signed by its President, Roger L. Forrester. The letter states:

> I believe that you have been very conservative in your statement regarding the SRF Project. The fact is that due to the lengthy delays in implementing the project, we will only have enough money to drill the wells and install the pipelines. It is unlikely that there will be sufficient funding for the treatment plant or additional storage as originally planned. (Petition, attachment.)

The Hillview letter encloses a Department of Health Services (DHS) document entitled "Requirements for New Wells," which describes the permit process, including the requirements for California Environmental Quality Act (CEQA) review, plan and specification approval, water source and water quality studies, and well inspections, among other things. The Hillview letter also advises:

> The Department of Health Services will assign the capacity of any new well following a ten-day pump test and then allow 50% of the assigned pumping capacity. Of that 50%, the party or parties that contribute the well will be allowed to use 50-75% of that 50% and the remaining 25-50% will directly benefit the existing customers. After the new well is placed in service, its production and water levels will be monitored and changes in the assigned capacity will be made based upon the well's long term use. (*Ibid*.)

In compliance with Rule 47 of the Commission's Rules of Practice and Procedure, which governs petitions for modification, Petitioner proposes specific wording to modify D.01-10-025, explains why he filed this Petition more than a year after D.01-10-025 issued and describes his interest in this proceeding. On the timing issue, Petitioner explains that he did not anticipate the delay in securing the SDWRF loan and the concurrent delay in the permitting and construction timeline for new facilities in the Oakhurst-Sierra Lakes service territory. Petitioner is interested because he not only has experience in developing water system infrastructure but also owns real property subject to the moratorium.

Petitioner states:

> Over the past 30 years I have "developed", [sic] an abundance of water supply facilities including, storage tank capacity, water distribution infrastructure, rights-of-way and "water lots"; real estate on which water wells or tanks, or future wells and tanks are/will be located in order to meet my water "storage and supply" requirements. I then "contributed" all of the improvements to HWC. The water that I had developed for my projects was provided to other HWC customers, as they were ready for service before I was ready and HWC water wells have dropped in production. (Supplemental Information, p. 1.)

He also explains that he owns: (1) as an individual, three small single family residential lots; (2) as President of his corporation, three small commercial lots; and (3) as a general partner, a partnership interest in one parcel of commercial property now in escrow. Building plans for the residential lots have been approved by the County of Madera but building permits cannot be issued until Hillview supplies a "will serve letter"; likewise, building plans have been approved for one of the three commercial lots but the permit requires a "will

serve letter." The partnership property (a self storage facility) is now in escrow and cannot close until the water service contingency is resolved. This property reportedly requires approximately 1.5 gallons per minute and Petitioner "deepened and completely reconstructed" the existing, but defunct, Hillview well with the expectation that he could then proceed with the development. (Supplemental Information, p. 2.) The current moratorium, however, controls all new connections.

In a prior decision concerning a moratorium in the Montara-Moss Beach District of Citizens Utilities Company, D.89-12-020,[4] the Commission examined an analogous, though not identical, request for an exemption by the developer of a proposed housing project. Like the situation before us now, the developer projected sufficient water to meet the new demand and yield a surplus to the utility's service territory. The Commission authorized the exemption, provided that the developer, among other things, bear the entire financial risk related to the new water system development and obtain all necessary permits from the DHS and other agencies. The Commission expressly required proof of compliance with D.89-12-020 and delegated certain monitoring functions to the Water Utilities Branch (now known as the Water Division.)

Unlike the situation before us, however, the Montara-Moss Beach moratorium exemption was protested. Among the several concerns was fear that the new well would diminish the single aquifer supplying other customers and/or harm an environmentally sensitive marsh under the jurisdiction of the California Coastal Commission. D.89-12-020, which issued after evidentiary

[4] 1989 Cal. PUC LEXIS 674; 34 CPUC 2d 84.

hearing on the disputed issues and full briefing, not only contains a lengthy review of the facts, but also interprets Pub. Util. Code § 2708 (the full text of which is quoted above in footnote 3), Pub. Util. Code § 453 (the prohibition on discrimination between similarly situated customers) and § 770 (requiring that Commission standards for water corporations not be inconsistent with regulations issued by the DHS). With respect to the latter two statutes, D.89-12-020 concludes that § 453 does not prevent a utility from reasonably distinguishing between a prospective customer who provides a new water supply and one who does not, and that given § 770, the Commission's interpretation of § 2708 should not ignore DHS regulations.

Regarding § 2708, D.89-12-020 states:

> [W]e will interpret PU Code § 2708 to permit a water company to hook up new customers only after the needs of existing customers are met. This interpretation will apply even where a prospective customer has water supplies it can make available to the utility to which it has applied for service.
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> Once the needs of existing customers are met, however, we will … consider requests by prospective customers for service from utilities currently subject to moratoriums on new connections. Prospective customers who can make water available to the system from which they request service may be given priority over prospective customers without access to water. (1989 Cal. PUC LEXIS 674 *15.)

Since the Commission imposed the moratorium on Hillview's Oakhurst-Sierra Lakes service territory largely due to water quality problems with some of Hillview's existing wells, and since those water quality issues have not yet been remedied, the initial issue we must address is whether the interpretation of Pub. Util. Code § 2708 articulated in D.89-12-020 bars Petitioner's request absent a

detailed showing, at this stage, of the impact of new wells on the existing system. We conclude it does not.

First, D.89-12-020 places limits on the responsibilities of the person or entity requesting the exemption:

> [W]e hold that an applicant for new service need not show that it will cure all water supply problems of a public utility water corporation before it may qualify for connection to the water system under the second sentence of PU Code § 2708. It must, however, show that the utility has sufficient water to meet the needs of its current customers, and that the applicant has demonstrable water supplies sufficient to meet its own needs adequately. (1989 Cal. PUC LEXIS 674 *18.)

D.89-12-020 does not require up-front proof of capacity before an exemption may be granted, however. Recognizing that proof of the capacity of the Montara-Moss Beach well, and its impact upon existing customers, would be unavailable until the completion of studies and tests within the purview of other agencies, including DHS, the Commission conditionally approved the Montara-Moss Beach exemption. The Commission required the developer to secure all permits and approvals required by other agencies and provided for continued Commission oversight, through staff, of the transfer to the utility of the new well and related facilities. Thus, in practical application, D.89-12-020 establishes that proof is allowed in the form of status reports, etc. provided by the developer or utility to Commission staff so that staff can monitor compliance with § 2708 and with any conditions imposed.

Turning to the water supply problems in Hillview's Oakhurst-Sierra Lakes service territory, it is clear that this small utility has few options available for financing a remedy. The delay in funding the new SDWRF loan is likely to further limit options. Against this reality, allowing individuals to develop

additional water supplies, use a portion, and contribute the rest to Hillview's system together with the facilities developed, holds conceptual promise. The critical, and at this time uncertain, question is what if any actual impact drilling new hard rock wells will have on the water supply and quality available to existing customers. It is noteworthy that no customers have protested the Petition and neither have others on the moratorium waiting list.

We will grant the Petition, subject to the same conditions imposed on the Montara-Moss Beach moratorium exemption. Though the geology and hydrology of Hillview's Oakhurst-Sierra Lakes system is not the same as the Montara-Moss Beach system, the general principle that new demand must not degrade service to existing users applies equally. Therefore, the same conditions should control. These conditions, consolidated slightly and somewhat reordered from the list in D.89-12-020, consist of the following:

- Any exemption must be based upon development of a water source, including any treatment facilities required by DHS, demonstrably adequate to meet project needs at full build out.
- All new or reconstructed wells, and any treatment facilities, must be constructed to meet all applicable water utility standards, including those of both this Commission and DHS. The sustained yields of new or reconstructed wells must be demonstrated to the satisfaction of DHS in accordance with DHS standards and regulations.
- The developer of any new water source must bear the entire financial risk and burden of that development, including any treatment facilities required.
- Either the developer of a new water source or Hillview, as appropriate, must obtain all regulatory approvals required by law, including all approvals mandated by CEQA, before Hillview may serve the developer's project.

- The Commission shall retain jurisdiction to review and approve, through its Water Division staff, any final agreements executed between a developer and Hillview regarding the facilities to be provided by the developer to Hillview.
- Before any new well is connected to Hillview's system, Hillview must submit to the Commission's Water Division evidence that DHS has approved connection of the well to Hillview's water system. The Commission shall retain jurisdiction, through the Water Division, to confirm that the evidence meets the requirements of Pub. Util. Code § 2708.
- Any project provided service under this moratorium exemption must be individually metered, either by Hillview or the developer, and individual bills must be provided for each meter.

In granting the Petition subject to these conditions, we must also authorize Hillview to modify Schedule No. 1 of its tariffs. The Petition proposes revisions of the discussion sections and other portions of D.01-10-025. We instead adopt modifications to certain ordering paragraphs of D.01-10-025 and provide specific language, in the ordering paragraphs which follow, to revise Hillview's Schedule No. 1.

5. Assignment of Proceeding

President Michael R. Peevey is the Assigned Commissioner following the resignation of Commissioner Susan P. Kennedy. Jean Vieth is the assigned ALJ in this proceeding.

6. Comments on Draft Decision

Pub. Util. Code § 311(g)(3), which does not require a comment period for uncontested matters that pertain solely to water corporations, applies to the draft decision. However, at the request of the ALJ, the draft decision was served on the parties in order to permit comment and ensure the accuracy of the draft. No comments were filed. DHS sent a letter, dated December 19, 2005, which states

its concurrence with the draft decision. We have placed the letter in the correspondence file for this proceeding.

Findings of Fact

1. Development of new water supplies that are sufficient to meet project demand and yield a surplus, without degrading water supply or water quality available to existing customers, should qualify for an exemption from the moratorium in Hillview's Oakhurst-Sierra Lakes service territory.

2. All conditions listed in the body of this decision and in the ordering paragraphs shall apply to any exemption from the moratorium in Hillview's Oakhurst-Sierra Lakes service territory.

Conclusions of Law

1. The Petition complies with the requirements of Rule 47 of the Commission's Rules of Practice and Procedure.

2. The uncontested Petition is reasonable and should be granted, subject to the conditions enumerated in the body of this decision and in the ordering paragraphs.

3. Hillview should revise its tariff as provided in the ordering paragraphs.

4. No hearings are necessary.

5. This decision should be made effective immediately to enable Hillview to revise its tariff without delay.

O R D E R

IT IS ORDERED that:

1. The petition of Bradford Ditton for modification of Decision (D.) 01-10-025 is granted, subject to the conditions set forth in the ordering paragraphs below.

2. Hillview Water Company (Hillview) shall modify its tariff to provide an exemption from the moratorium on new connections in the Oakhurst-Sierra Lakes service area. Attachment 2 of D.01-10-025, entitled Hillview Water Company, Schedule 1, Metered Service, is modified as follows:

> Moratorium
>
> No service shall be provided to any premises not previously served within the Oakhurst-Sierra Lakes Service Area as defined on the Service Area Map files as a part of these tariffs. Except, however, service may be provided to a person or entity that develops additional sources of supply adequate to serve the additional demand that the person or entity proposes to add in the Oakhurst-Sierra Lakes Service Area as well as yield a surplus for the benefit of the utility. The exemption from the moratorium shall not be granted unless the person or entity meets all conditions enumerated in Decision 06-xx-xxx.

3. All exemptions from the moratorium on new connections in Hillview's Oakhurst-Sierra Lakes Service Area shall comply with the following:

a. No exemption shall be granted except upon development of a water source, including any treatment facilities required by the Department of Health Services (DHS), demonstrably adequate to meet project needs at full build out.

b. All new or reconstructed wells, and any treatment facilities, must be constructed to meet all applicable water utility standards, including those of both the California Public Utilities Commission (Commission) and DHS. The sustained yields of new or reconstructed wells must be demonstrated to the satisfaction of DHS in accordance with DHS standards and regulations.

c. The developer of any new water source must bear the entire financial risk and burden of that development, including any treatment facilities required.

d. Either the developer of a new water source or Hillview, as appropriate, must obtain all regulatory approvals required by

law, including all approvals mandated by the California Environmental Quality Act, before Hillview may serve the developer's project.

e. The Commission shall retain jurisdiction to review and approve, through its Water Division staff, any final agreements executed between a developer and Hillview regarding the facilities to be provided by the developer to Hillview.

f. Before any new well is connected to Hillview's system, Hillview must submit to the Commission's Water Division evidence that DHS has approved connection of the well to Hillview's water system. The Commission shall retain jurisdiction, through the Water Division, to confirm that the evidence meets the requirements of Pub. Util. Code § 2708.

g. Any project provided service under this moratorium exemption must be individually metered, either by Hillview or the developer, and individual bills must be provided for each meter.

4. Investigation 97-07-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.