



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Panamint Valley Limestone, Inc.,

Complainant,

vs.

Searles Domestic Water Company, LLC (U-368-W),

Defendant.

C. 18-12-012
(Filed December 12, 2018)

**ANSWER OF SEARLES DOMESTIC WATER
COMPANY, LLC (U-368-W) TO THE COMPLAINT
OF PANAMINT VALLEY LIMESTONE, INC.**

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Dated: February 4, 2019

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Pursuant to Rule 4.4 of the Commission’s Rules of Practice and Procedure, Searles Domestic Water Company, LLC (“SDWC”) submits its answer to the complaint of Panamint Valley Limestone, Inc., (“PVL”). The Commission served Instructions to Answer on SDWC on January 4, 2019; this answer is due February 4, 2019 and is timely filed.

I. INTRODUCTION

The background set forth below provides context to this Answer. While it is not evidence, SDWC avers that if this matter proceeds to hearing, the facts set forth would be established by documentary evidence and testimony.

The Complaint fails to cite any statute or Commission order SDWC is alleged to have violated. Accordingly, the Complaint must be dismissed.¹ Moreover, as

¹ *Wave Community Newspapers, Inc. v. U.S. TelePacific Corp., dba TelePacific Communications* Decision 17-09-021 (September 28, 2017). 2017 Cal. PUC LEXIS 420 at *7 In *Wave*, the Commission stated that:

SDWC explains below, its limitation of water usage by an individual customer is embraced in a long standing tariff provision,² one most recently approved by the Commission in 2011. It remains prudent in 2018.

A. Source of Potable Water for SDWC

SDWC is a Class C water company. Since its certification in 1944³, the sole source of potable water for SDWC has been, and remains, surplus water purchased from its parent corporation Searles Valley Mineral (“SVM”).⁴ The ultimate source of that potable water is “wells located about 30 miles away at Indian Wells Valley”.⁵

“Considering that Complainant has not identified, in support of its claims, any violation of law or Commission rule or order, the Commission cannot grant relief because Pub. Util. Code § 1702 standards are not satisfied. (e.g., *Labrada v. Southern California Edison*, D.13-07-047, 2013 Cal. PUC LEXIS 387 at *7; *Rudder v. MCI Worldcom*, D.04-07-005, 2004 Cal. PUC LEXIS 354 at *5; *Colley v. PG&E*, D.02-11-005, 2002 Cal. PUC LEXIS 706, *2-3; *Allen v. Southern California Edison Company*, Decision 16-01-018, 2016 Cal. PUC LEXIS 25 at *13--14.)

SDWC will formally seek dismissal at an appropriate time.

² The provision at issue, Special Condition 3 of SDWC’s Schedule 1, has been in effect for over half a century. In *Searles Domestic Water Company*, D. 59812, 57 CPUC 585 (March 22, 1960) SDWC was authorized to file a tariff including the limitation (then numbered as Special Condition 2.)

³ “American Potash had developed the Searles Domestic Water Company (**Searles**), a California corporation, and the latter was granted a Certificate of Public Convenience and Necessity by Decision (D.) 36822 on January 12, 1944 (amended on March 19, 1944 by D.36936 to revise the service area).” *In the Matter of the Application of Searles Domestic Water Company (U-368-W), Harris Chemical Group, Inc., and INC Global, Inc. for authority to transfer control of Searles Domestic Water Company to IMC Global, Inc.* 1998 Cal. PUC LEXIS 169, *2 (Cal. P.U.C. March 26, 1998)

⁴ “When the Commission authorized public utility service by Searles Water Company, it also approved a long-term water purchase agreement by which the utility obtains all of its water from its parent company.” *In the Matter of the Joint Application of Kerr-McGee Chemical Corporation for Commission Authority to Sell and North American Chemical Company to Buy Searles Domestic Water Company* 1994 Cal. PUC LEXIS 50, *3 (Cal. P.U.C. January 19, 1994)

⁵ *Id.*

B. Price of Water Sold by SVM to SDWC

In 1994, as part of a settlement with the Commission staff, SDWC and SVM agreed to a cap on the price of water sold by SVM to SDWC. That settlement was reached in a proceeding by which the Commission authorized an indirect acquisition of the control of SDWC⁶. Subsequent acquisitions of indirect control of SDWC have left the price caps unchanged⁷.

C. Domestic Customer Base of SDWC

As its name suggests, SDWC principally serves individuals and families. Over ninety-four percent (94%) of SDWC's revenues are derived from service to residential customers. SDWC serves no "large water users" as that term is defined by the Commission.⁸

D. Volumetric Limitation Most Recently Approved by Commission

In 2011, SDWC filed Advice Letter No 54-W, a General Rate Case ("GRC"). Five months later, the Commission issued Resolution W-4888 (November 11, 2011) authorizing SDWC "to file a supplemental advice letter with the revised rate schedules attached to this Resolution as Appendix B"⁹ which was formally found to be

⁶ "Under the proposed settlement, North American [SVM] would continue to sell water to the utility under a 30-year contract, but the price of water would be capped to reflect North American electricity, payroll and maintenance costs in providing the water." *Id.*, *11. See also, Decision 98-03-069, 1998 Cal. PUC LEXIS 169 .

⁷ "In all Commission proceedings subsequent to the issuance of D.94-01-042, the applicants in those proceedings have affirmed that the transfer of indirect control for which authority was sought would have no effect on the force and effect of the 1994 settlement regarding purchased water." *Application of Searles Valley Holdings, LLC to sell and Karnavati Holdings, Inc. to buy, the Searles Domestic Water Company (U-368-W) which is located near the community of Trona, San Bernardino County* 2008 Cal. PUC LEXIS 200, *3-4

⁸ "Large water users are defined as customers, other than customers whose revenues are reported in account 470.1 [Residential, Single-family, Multiple Dwelling Units] or 470.2 [Commercial and Multi-residential Master Metered] , who use at least five times as much water as the average single-family residential customer and have a 1-1/2" or larger meter installed." CPUC Decision 16-11-006 (November 10, 2016), p. B43.

⁹ Res. W-4888, Ordering Paragraph 1.

“reasonable.”¹⁰ Page 2 of Appendix B included Special Condition 3 to SDWC’s Schedule No. 1.

SDWC, as it had in response to prior Commission decisions, filed Special Condition 3 shortly after Res W-4888 authorized it to do so. Special Condition 3 permits SDWC to limit water delivery to any customer to 8000 cubic feet/month, roughly 2.2 acre-feet/year. (By contrast, PVL seeks “approximately 42 acre-feet per year.”¹¹)

E. Prior Approvals of Special Condition 3

Special Condition 3 did not originate in SDWC’s last GRC. Indeed, at the time Appendix B was filed as directed by Res. W-4888, the text of Special Condition 3 had been a component of SDWC’s tariff for at least 50 years.¹² In the GRC prior to that resolved by Res w-4888, for example, SDWC was authorized to file the same Special Condition.¹³

F. The California Sustainable Groundwater Management Act

Three years after the Commission issued Res W-4888, the California Legislature enacted the California Sustainable Groundwater Management Act (“SGMA”)¹⁴ finding, *inter alia* that:

Excessive groundwater extraction can cause overdraft, failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence that damages infrastructure and diminishes the capacity of aquifers to store water for the future.¹⁵

Pursuant to SGMA, the Indian Wells Valley Groundwater Authority (“IWVGA”) was established.¹⁶ IWVGA is currently evaluating proposals to meet a short term goal of reducing the overdraft of the aquifer and a long term goal to bring the

¹⁰ *Id* at Finding of fact N. 16.

¹¹ Complaint, Exhibit D, p.1.

¹² See, footnote 2 *supra*.

¹³ Res- W-3985 (April 19, 1996), Ordering Paragraph 1.

¹⁴ Water Code Section 10750 *et. seq.*

¹⁵ Stats 2014, c.347, Section 1(a)(3).

¹⁶ <https://iwvga.org/general-info/>

aquifer into equilibrium. One possible means of doing so is to restrict pumping from the aquifer.

G. Department of Water Resources Designation of Indian Wells Valley Basin as “Critically Overdrafted.”

In 2016, two years after the enactment of SGMA, the California Department of Water Resources (“DWR”) issued its most recent assessment of threatened aquifers (groundwater basins) in California. DWR determined that the Indian Wells Valley Basin (Basin 6-54), the aquifer from which SDWC’s potable water supply is drawn, is one of twenty-one groundwater basins in California that are subject to “critical conditions of overdraft.”¹⁷ DWR stated that:

(A) basin is subject to critical conditions of overdraft when continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.”¹⁸

Because the Indian Wells Valley Basin is a “Bulletin 118 basin... designated as medium or high priority and critically overdrafted [it]...shall be managed under a Groundwater Sustainability Plan (GSP) by January 31, 2020.”¹⁹, less than a year from now.

Accordingly, the 8000 cf/month/customer limitation to which SDWC would subject PVL (1) been authorized by the Commission on many occasions²⁰ and (2) it is a prudent policy given the present condition of Basin 6-54 and the pendency of a GSP that will govern its use.

II. ANSWER TO SPECIFIC ALLEGATIONS

1. The assertions of Paragraph1 do not require an answer.

¹⁷ *California’s Groundwater; Working Toward Sustainability*, DWR Bulletin 118, Interim Update 2016, p. 12, Table 1.

¹⁸ *Id.*, p. 8.

¹⁹ See DWR’s SGMA webpage at:

<https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118/Critically-Overdrafted-Basins>

²⁰ See e.g. Res W-4888, Res. W-3985, D. 59812.

2. SDWC denies the allegations of Paragraph 2.
3. The assertions of Paragraph 3 do not require an answer.
4. SDWC admits the allegations of Paragraph 4.
5. Answering the allegations of Paragraph 5, of the Complaint SDWC admits that PVL seeks water service from SDWC.
6. SDWC Admits the allegations of Paragraph 6.
7. SDWC lacks sufficient knowledge to admit or deny the allegations of Paragraph 7 and on that basis denies the allegations.
8. Answering the allegations of Paragraph 8, SDWC admits that in May of 2018, Mr. Shawn Barker of PVL made an oral request for water service for a new project. When asked at that time about the volume of water needed, Mr. Barker advised SDWC that the volume would be “minimal.” Except as so admitted, SDWC denies the allegations of Paragraph 8 of the Complaint.
8.
9. SDWC admits the allegations of Paragraph 9.
10. SDWC lacks sufficient knowledge to admit or deny the allegations of Paragraph 10 and on that basis denies the allegations.
11. SDWC lacks sufficient knowledge to admit or deny the allegations of Paragraph 11 and on that basis denies the allegations.
12. Answering the allegations of Paragraph 12 of the Complaint. SDWC admits that it received the document shown as Exhibit B to the Complaint.
13. Answering the allegations of Paragraph 13 of the Complaint, SDWC admits that Exhibit C of the Complaint is true and correct copy of a letter sent by SDWC to PVL, the content of which speaks for itself.
14. Answering the allegations of Paragraph 14 of the Complaint, SDWC admits that Exhibit D of the Complaint is true and correct copy of a letter received by SDWC.
15. Answering the allegations of Paragraph 15 of the Complaint, SDWC admits that Exhibit E of the Complaint is true and correct copy of a letter sent by SDWC to PVL, the content of which speaks for itself.

16. The allegations of Paragraph 16 of the Complaint are overly vague in that they do not embrace a temporal element. On that basis, SDWC denies the allegations of Paragraph 16 of the Complaint.
17. Answering the allegations of Paragraph 17 of the Complaint, SDWC admits that Exhibit F of the Complaint is a true and correct copy of the current surplus water agreement between SVM and SDWC. Except as so admitted, SDWC denies the allegations of Paragraph 17 of the Complaint.
18. Answering the allegations of Paragraph 18 of the Complaint, SDWC admits that the 2015 Water Purchase Agreement superseded an earlier agreement entered into in 1986. Except as so admitted, SDWC denies the allegations of Paragraph 18 of the Complaint.
19. SDWC is unable to answer the allegations of Paragraph 19 which refer to no specific communication with the Commission.
20. SDWC is unable to answer the allegations of Paragraph 20 which refer to no specific communication.
21. Answering the allegations of Paragraph 21 of the Complaint, SDWC admits that it has advised the Commission that Basin 6-54, the aquifer from which SDWC's potable water supply is drawn, is one of twenty-one groundwater basins in California that are subject to "critical conditions of overdraft." Except as so admitted, SDWC denies the allegations of Paragraph 21 of the Complaint.
22. SDWC denies the allegations of Paragraph 22 of the complaint.
23. Answering the allegations of Paragraph 23 of the Complaint, SDWC avers that its sales figures are set forth in its annual reports to the Commission. Except as so admitted, SDWC denies the allegations of Paragraph 23 of the complaint.
24. Subject to Special Condition 3 of its Schedule No.1, SDWC admits the allegations of Paragraph 24 of the Complaint.
25. SDWC admits the allegations of Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint is not framed as an allegation but as a statement of what matters PVL is or is not "aware." On that basis, SDWC denies the allegations of Paragraph 26 of the Complaint.
27. Because Paragraph 27 of the Complaint does not embrace a temporal element SDWC is unable to admit or deny the allegations of Paragraph 27

of the Complaint and on that basis denies the allegations of Paragraph 27 of the Complaint.

28. Answering the allegations of Paragraph 28 of the complaint, SDWC admits that approximately thirty (30) years ago, the Kerr-McGee Chemical Corporation entered in an agreement to purchase steam from the ACE Cogeneration Company and that agreement provided for Kerr-McGee to provide ACE 180 gpm on average of potable water. Except as so admitted, SDWC denies the allegations of Paragraph 28 of the Complaint.
29. SDWC admits the allegations of Paragraph 29 of the Complaint.
30. Answering the allegations of Paragraph 30 of the complaint, SDWC admits it takes delivery of water from SVM from the pipelines that SVM used to deliver water to ACE but that delivery of water to SDWC customers is through SDWC distribution facilities.
31. SDWC admits that neither SDWC nor SVM have entered into an agreement to sell large volumes of water to any other entity since 2014. Except as so admitted, SDWC denies the allegations of Paragraph 31 of the Complaint.
32. Paragraph 32 is argument and does not require an answer.
33. SDWC denies the allegations of Paragraph 33 of the Complaint.
34. Answering the allegations of Paragraph 34 of the complaint, SDWC understands that any facility planned by SVM will use no potable water from SDWC or SVM beyond that required to serve eye wash stations or other safety related facilities.
35. SDWC denies the allegations of Paragraph 35 of the Complaint.
36. SDWC admits that SVM is the corporate parent of SDWC. The balance of Paragraph 36 constitutes legal argument and does not require an answer.
37. SDWC denies the allegations of Paragraph 37 of the Complaint.

III. SCOPING INFORMATION

The sole issue in this proceeding is whether SDWC has violated “any provision of law or of any order or rule of the commission.”²¹

SDWC agrees that this matter should be categorized as adjudicatory.

SDWC believes that this matter should be dismissed because the Complaint does not identify any “any provision of law or of any order or rule of the commission”²² that SDWC has purportedly violated. If it is not dismissed, SDWC believes that a hearing is required before the Commission may grant any relief.

IV. PROPOSED SCHEDULE

SDWC generally agrees with the schedule proposed by PVL, with two exceptions. First, the Commission’s Rules do not provide for a reply to an answer to a complaint. Moreover, at the Prehearing Conference, the Presiding Officer should establish a briefing schedule for a SDWC’s intended motion to dismiss the complaint.²³ SDWC suggests the following schedule.

Answer to Complaint	30 days after service by the Commission
Prehearing Conference (“PHC)	14 days after filing and service of Answer
Motion to Dismiss	21 days after PHC
Response to Motion to Dismiss	21 Days after service of Motion
Reply to Response	14 Days after service of Answer
Hearings	TBD

²¹ Public Utilities Code Section 1702.

²² Public Utilities Code Section 1702. See also, footnote 1 *supra*.

²³ Pursuant to Rule 11.2 a motion to dismiss must be made at least five days prior to the first day of any scheduled hearing.

V. COMMUNICATIONS WITH DEFENDANT

Communications with Defendant should be directed to:

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VI. AFFIRMATIVE DEFENSES

SDWC raises the following affirmative defenses as required by Rule 4.4:

The complaint fails to comply with Section 1702 of the Public Utilities Code because the complaint does not “set . . . forth any act or thing done or omitted to be done by . . . [SDWC] . . . in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission”²⁴

VII. RELIEF REQUESTED

SDWC denies that any relief is warranted.

²⁴ See, e.g., *Wave Community Newspapers, Inc v. U.S. TelePacific Corp., dba TelePacific Communications* Decision 17-09-021 (September 28, 2017). 2017 Cal. PUC LEXIS 420 at *3-4. *Reddy v. Southern California Edison Co.*, D. 16-04-023 (dismissing a complaint for failure to state a cause of action under Section 1702); *Labrada v. Southern California Edison Co.*, D. 12-11-028 (same).

Respectfully submitted February 4, 2019 at San Francisco, California.

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By /s/ Thomas J. MacBride, Jr.

Thomas J. MacBride, Jr.

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2203/007/X203788.v1

VERIFICATION

I, Matthew J. Dowd, state that I am an officer of Searles Domestic Water Company LLC to wit, Vice-President, Secretary and General Counsel. I am authorized to make this verification on its behalf. I have read the foregoing answer and know its contents. The statements in the answer are true of my own knowledge, except as to matters therein that are stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 1st day of February, 2019, at Montvale, New Jersey 07645.

By Matthew J. Dowd
Matthew J. Dowd, Vice-President, Secretary
and General Counsel, Searles Domestic Water
Company LLC