

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4427
October 16, 2003

R E S O L U T I O N

**(RES. W-4427), NACIMIENTO WATER COMPANY, INC. (NWC).
ORDER APPROVING EXTENSION OF SERVICE AREA AND A
CONTRACT ARRANGEMENT ADDRESSING SPECIFIC
PROVISIONS FOR HANDLING THE PROCEDURES OUTSIDE
TRADITIONAL MAIN EXTENSION CONTRACT IN TARIFF RULE
NO. 15.**

SUMMARY

By Advice Letter No. 25, filed on September 16, 2003, NWC seeks Commission authorization to extend its service area to provide water service to a proposed subdivision development consistent with the contract executed by the developer and NWC. Commission review and authorization is required because the water service contract is not limited to the established provisions for main extension contracts incorporated in Tariff Rule 15. Certain contract terms dealing with monetary provisions and the transfer of water rights from the developer to NWC require specific conditional approval. This resolution grants authorization of the service area extension and approval of the contract subject to conditions.

BACKGROUND

NWC is a Class C utility and serves approximately 580-metered customers in a service area at Lake Nacimiento near Paso Robles located near Oak Shores, Cantianas Campground, and vicinity, San Luis Obispo County. The majority of NWC's customers are members of Oak Shores Community Homeowner Association.

NWC requests approval of its service area extension and a contract between the developer of the subdivision encompassing the new service area and NWC.

Normally, a utility extension of service area to provide service to a new subdivision involves a written agreement that conforms to the traditional main extension contract incorporated by Tariff Rule 15. In those cases, a Commission decision or resolution is not required. In this case, Commission authorization of the contract between the developer of the subdivision and NWC is required because of specific terms in the contract dealing with monetary provisions and the transfer of water rights from the developer to NWC.

NWC's existing service area includes San Luis Obispo County Tracts 378, 379, 380 and 381, Oak Shores. This service area was authorized by Commission Decisions (D.) 77062 (April 7, 1970); D.77671 (August 25, 1970), and D.78922 (July 13, 1971). The new service area would encompass 60 lots located in San Luis Obispo County, proposed Tract 2162, Phase I, which is adjacent to Tract 381 of NWC's existing service territory.

The contract between NWC and the developer, Jonatkim Enterprises (a California general partnership) was executed on August 8, 2003. It addresses the following issues: (1) Agreement to supply water; (2) Regulatory approval; (3) Construction of water supply facilities; (4) Payment and contributions by subdividers; (5) Will serve letter and commencement of service; (6) Escrow; (7) Bonds; (8) Insurance; (9) Indemnity; (10) Representations and warranties of supplier; (11) Representation and warranties of subdivider; (12) Termination; (13) Option to extend and assignment, and (14) General. The provisions under Regulatory Approval expressly clarify that the agreement, at all times, is subject to the Commission's approval, and to changes or modifications that the Commission "may, from time to time, issue or direct in the exercise of its jurisdiction." A similar provision notes the regulatory authority of the California Department of Health Services (DHS).

DISCUSSION

In order to obtain approval to build a subdivision, the developer must obtain approval from the County to record a final map of its tract plan. On June 10, 1996, the Planning Commission of the County of San Luis Obispo duly considered and conditionally approved the application of Oak Shores Development Company, for a vesting tentative tract map for Tract 2162. The local homeowners association, Oak Shores Community Association, and Jim Marshall appealed the Planning Commission's decision to the San Luis Obispo County Board of Supervisors. A public hearing was duly noticed and conducted

by the Board of Supervisors on July 23, 1996. The Board of Supervisors, after having heard, and considered all protests and evidence, including the Final Environmental Impact Report and Supplemental Environmental Report, issued Resolution 96-354, dated September 24, 1996 which affirmed the earlier decision of the Planning Commission to conditionally approve the application of Oak Shores Development Company.

The Planning Commission's conditional approval of Tract 2162 included, but was not limited to the requirement that:

“Prior to the recordation of the final map, the developer shall document to the county Environmental Health Department and County Engineering, the availability of sufficient water to supply water to the subdivision. The Developer shall document a good faith effort to integrate the subdivision with the Nacimiento Water Company to provide water prior to recordation of the final map for the first phase and subject to the Public Utilities Commission (PUC) approval.”

Water Division (Division) has reviewed the Water Supply Questionnaire included in the advice letter filing and determined that NWC has adequate supply to meet the maximum day demand and fire flow requirements of the planned subdivision Tract 2162, Phase 1. The Department of Health Services has also considered NWC's water supply and agrees that there is an adequate supply for the proposed subdivision.

The Division has also reviewed the water supply contract. Section 4.03-Transfer of Water Rights of the Contract - provides that, as further condition precedent to NWC's filing with the Commission, the developer shall upon recordation of final map, transfer to NWC water rights to Nacimiento Lake water which the developer holds under an allotment from Monterey County in the amount of one half of an acre-foot per year per subdivision lot. The Division concurs with the provision of the water right transfer in the contract and recommends that it should be approved.

The contract further provides as follows: Section 4.01-Payment of Money to Supplier by Subdivider - requires the developer, upon the recording of final map, to pay NWC: (a) One hundred thirty thousand dollars (\$130,000); (b) One thousand dollars (\$1,000) for each water service contemplated, with minimum of

one service for each lot created by the Final Map, excluding lots or parcels designated on the map as unavailable for residential construction; (c) One thousand dollars (\$1,000) for each additional water service contemplated for landscape maintenance, utility service, or marina service. In addition, within four years after the recording of the final map, the developer is required to bond an additional five thousand dollars (\$5,000) per each subdivision lot and additional service. The Division recommends approval of the contract subject to special conditions consistent with traditional Rule 15 requirements that are in the public interest. All the payments from the developer paid to NWC under Section 4.01 should be booked as contributions or held in a separate account and used only for construction of facilities related to the service of water to the development by NWC's water system unless otherwise ordered by the Commission. Because there are no contract provisions that require a refund of developer paid funds, the plant constructed with payments from the developer should be permanently excluded from rate base for ratemaking purposes. Furthermore, in the event of future sale, contributed plant should not be included in the utility evaluation.

Finally, the contract provides: Section 4.02-Subdivider to Require Facility Fee Payments by Lot Purchasers - requires the developer, as a condition of sale of any and all lots sold by the developer individually or in bulk, to require lot purchaser or purchasers to execute a written covenant to pay NWC three thousand dollars (\$3,000) for such facilities fee or fees as may be approved by the Commission and charged by NWC at the time of water meter installation. Division recommends that before this provision is implemented, the amount of the facilities fees should be subject to reasonableness review and the Commission's express approval. In the event of contract termination, the agreement provides that NWC will keep funds and water rights previously transferred. In that event, the utility should seek specific authority from the Commission regarding appropriate use of the funds.

It is reasonable for the current rates effective September 26, 2000 to apply to the customers of subdivision Tract 2162, Phase I. The estimates of revenues generated from new connections in subdivision Tract 2162 should be taken into account in NWC's ongoing general rate case.

The Division recommends extension of the service territory and approval of the contract as in the public interest.

NOTICE

A notice of the proposed service area extension was mailed to the developer and the San Luis Obispo Local Agency Formation Commission (LAFCO). No customers are currently served in subdivision Tract 2162.

COMPLIANCE

There are no outstanding compliance issues. Service is satisfactory. There are no significant service problems requiring correction action.

FINDINGS

1. The Division recommends approval of extension of Nacimiento Water Company's service area and contract agreement between Nacimiento Water Company and the developer, Jonatkim Enterprises, subject to conditions.
2. Normally, a utility extension of service area to a new subdivision involves a written agreement that conforms to the traditional main extension contract incorporated by Rule 15. In those cases a Commission decision or resolution is not required.
3. In this case, Commission authorization of the contract between the developer of the subdivision and Nacimiento Water Company is required because of specific terms in the contracts terms dealing with monetary provisions and the transfer of water rights requires specific conditional approval.
4. In order to obtain approval to build a subdivision, the developer requires approval from the County to record a final map of its tract plan.
5. On June 10, 1996, the Planning Commission of the County of San Luis Obispo duly considered and conditionally approved the application of Oak Shores Development Company, for a vesting tentative tract map for Tract 2162.
6. The Planning Commission's conditional approval of Tract 2162 required that, prior to recordation of final map, the developer document a good faith effort to integrate the subdivision with Nacimiento Water Company to provide water prior to recordation of the final map for the first phase of the

subdivision and subject to the Commission approval.

7. The utility's Water Supply Questionnaire shows that Nacimiento Water Company has adequate water supply to meet the maximum day demand and fire flow requirements for the new subdivision.
8. Section 4.03-Transfer of Water Rights of the Contract, provides that the developer shall upon recordation of final map, transfer to Nacimiento Water Company water rights to Nacimiento Lake water developer holds under an allotment from Monterey County in the amount of one half of an acre per year per subdivision lot. The Division recommends that the provision of the water rights transfer in the contract be approved.
9. Section 4.01-Payment of Money to Supplier by Subdivider, requires the developer, upon the recording of final map, to pay Nacimiento Water Company one hundred thirty thousand dollars (\$130,000).
10. Section 4.01 requires the developer, upon the recording of final map, to pay Nacimiento Water Company one thousand dollars (\$1,000) for each water service contemplated, with minimum of one service for each lot created by the Final Map, excluding lots or parcels designated on the map as unavailable for residential construction.
11. Section 4.01 requires the developer, upon the recording of final map, to pay Nacimiento Water Company one thousand dollars (\$1,000) for each additional water service contemplated for landscape maintenance, utility service, or marina service.
12. The developer is required to bond an additional five thousand dollars (\$5,000) per each subdivision lot and additional service.
13. The Division concurs with this deviation to the standard Main Extension Rule, but recommends that all the payments from the developer paid to Nacimiento Water Company under Section 4.01 be booked as contributions or held in a separate account and used only for construction of facilities related to the Nacimiento Water Company's water system.

14. The plant constructed with payments from the developer should be permanently excluded from rate base for ratemaking purposes.
15. Section 4.02 -Subdivider to Require Facility Fee Payments by Lot Purchasers - requires the developer, as a condition of sale of any and all lots sold by the developer individually or in bulk, to require lot purchaser or purchasers to execute a written covenant, to pay Nacimiento Water Company three thousand dollars (\$3,000) for such facilities fee or fees as may be approved by the Commission and charged by Nacimiento Water Company at the time of water meter installation.
16. The Division recommends that the amount of the facilities fees should be subject to Commission approval as indicated in Section 4.02 of the Contract.

THEREFORE IT IS ORDERED THAT:

1. Nacimiento Water Company shall be authorized to extend its service territory map as requested in Advice Letter No. 25, with the following conditions:
 - a. The San Luis Obispo County authorizes the developer to record the final map for Tract 2162, Phase 1.
 - b. All funds received by Nacimiento Water Company, pursuant to the water supply contract approved herein shall be used for the purpose of providing water service to Phase 1 of Tract 2162 as described in the final map approved by the San Luis Obispo Planning Commission and booked as contributions or held in a separate account and used only for construction of facilities related to the service of water by Nacimiento Water Company to Tract 2162, Phase 1. If funds transferred to Nacimiento Water Company pursuant to the water supply contract are not used for that purpose for any reason, included but not limited to, the premature termination of the project, Nacimiento Water Company shall seek this Commission's approval to otherwise dispense of the funds.
2. The plant constructed with payments from the developer or purchases of lots in Tract 2162, Phase 1 should be permanently excluded from rate base for ratemaking purposes.

3. Unless otherwise authorized by the Commission, the current rates effective September 26, 2000 shall apply to the customers of subdivision Tract 2162, Phase I.
4. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 16, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners