

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



December 20, 2001

**ITEM 1****1/23/2002**

TO: PARTIES OF RECORD IN INVESTIGATION 00-05-020

This is the proposed decision of Administrative Law Judge (ALJ) DeUlloa previously designated as the principal hearing officer in this proceeding. It will be on the Commission's agenda at the next regular meeting, which is scheduled for January 23, 2002. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting on January 23, 2002, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ LYNN T. CAREW

Lynn T. Carew, Chief  
Administrative Law Judge

LTC: avs

Decision **PROPOSED DECISION OF ALJ DEULLOA** (Mailed 12/20/2001)

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

Investigation on the Commission's Own Motion  
Into the Status, Rates, Rules, Operations, Service,  
Facilities, Contracts, and Practices of the  
Union Pacific Railroad Company in the Supply,  
Distribution, and Sale of Water by the Keene  
Water System to the Communities of Keene and  
Woodford in Kern County.

Investigation 00-05-020  
(Filed May 18, 2000)

(See Appendix B for a list of appearances.)

**OPINION FINDING KEENE WATER  
SYSTEM DEDICATED TO PUBLIC USE**

This decision addresses the issue of whether the Keene Water System operated by Union Pacific Railroad Company (Union Pacific or Respondent) has been dedicated to public use. We find that a dedication has occurred and that Union Pacific is operating a public utility water system in the communities of Keene and Woodford in Kern County.

**I. Procedural Background**

On May 18, 2000, we issued an order instituting investigation (OII) to determine whether the Keene Water System, which is currently operated by Union Pacific, is a public utility water system, as defined by Section 2701 of the Public Utilities Code.<sup>1</sup>

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<sup>1</sup> Unless otherwise stated, all statutory references are to the Public Utilities Code.

This Commission has never regulated the Keene Water System as a public utility. However, based on the information in the declarations of employees of the Department of Health Services and of Commission staff member, the OII stated that the Keene Water System may by its conduct have become a public utility as described in Section 2701 and, thus, subject to the Commission's jurisdiction. Accordingly, the Commission, on its own motion, instituted this investigation.

As noted in exhibits to our investigation, this matter is also in Kern County Superior Court where the California Department of Health Services (DHS) has petitioned to appoint a receiver. DHS has found an individual who has experience in operating the Keene Water System and who has agreed to be appointed receiver. The court ordered Union Pacific not to abandon ownership of the Keene Water System, to continue to operate and maintain it, and to continue to provide water to existing residents and customers pending the results of the Commission's investigation and further hearing on the petition.

Today's decision examines whether the operation of the water system has changed over the intervening years, as the railroad's water use for railroad operations declined and ceased altogether, and the railroad entered into agreements with various customers and modified and updated the system.

Two days of hearings were held on February 13 - 14, 2001, and two public participation hearings were held on August 4, 2000, and January 29, 2001. No customers were present at the first PPH. At the second PPH, several customers, including Bridget Beard (Beard), expressed their concerns about poor water quality, resale prospects for their homes, and the connection of Tony Martin to the line as a special favor when others similarly situated had requested and been denied a direct connection. The following parties presented testimony:

Union Pacific; the Office of Ratepayer Advocates, Water Branch (ORA); Stonybrook Corporation (Stonybrook); and Beard. The assigned administrative law judge granted Stonybrook and Beard leave to serve testimony late and ORA leave to serve supplemental testimony. Parties filed opening briefs on March 12, 2001, and reply briefs on March 19, 2001.

## **II. Historical Background**

Union Pacific and its predecessor have operated the Keene Water System for over 80 years. Originally, the system served the railroad's steam locomotives. The Keene Water System is the sole remaining segment of Southern Pacific Transportation Company's (SP)<sup>2</sup> former water supply line that ran from Tehachapi to Caliente. The water supply line was installed in the early 1900's.

During the era of steam locomotives, SP constructed, operated and maintained a water system mainly for the purpose of supplying water for steam locomotives and railroad facilities. A pipeline carried water from the City of Tehachapi to railroad facilities in Keene. During this time, the railroad provided water to a variety of users.

In the 1960's, with the retirement of steam locomotives, the railroad's need for water in the area substantially diminished. SP continued to supply water to its existing customers, and provided water to certain additional neighbors when they encountered difficulties with their own water supplies.

In 1972, this water supply system was deemed a public water system subject to the State's drinking water regulatory program, and a public water supply permit was issued to Keene Water System. The Kern County

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<sup>2</sup> In 1996, Union Pacific merged with SP, and thereby acquired the Keene Water System.

Environmental Health Services Department administered the State's Safe Drinking Water Programs for water systems in Kern County with fewer than 200 connections (such as Keene). On July 1, 1993, DHS assumed those responsibilities and commenced direct regulatory oversight of the safety of the Keene Water System's supply.<sup>3</sup>

Stonybrook filed a complaint at the Commission in 1989. We required SP to supply water to Stonybrook during the pendency of the complaint. We dismissed the complaint in 1997, without prejudice, for lack of prosecution. Union Pacific's witness Whitcomb notes that Union Pacific continued to provide water to Stonybrook, as Union Pacific and Stonybrook worked to find a new owner for the Keene Water System.

### **III. Position of Union Pacific**

In early 1994, SP abandoned the pipeline that brought water down the railroad's right of way from Tehachapi to Keene. Union Pacific alleges this occurred in order to lower tunnels on the rail line to allow for double stack containers carried on rail cars. The water line from Tehachapi was destroyed.

In 1994, following the removal of the water line, SP drilled new water supply wells in Keene, which were tied into the existing water storage and distribution system. In 1997, Union Pacific (which had merged with SP in 1996) performed substantial repairs to the system. At that time, Union Pacific was not using the water for its own needs. Union Pacific asserts it spent \$609,226 to

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<sup>3</sup> Regulation by DHS is more limited than the regulation to which the Keene Water System would be subject if found to be a public utility. As a "public water system," the Keene Water system will continue to be subject to the State's drinking water standards regardless of whether it is a public utility.

replace the original water distribution lines in order to bring the water system into compliance with the requirements imposed by DHS.

The record discloses several agreements under which SP or Union Pacific has provided water from the Keene Water System. A summary of these agreements is contained in Appendix A. Union Pacific argues that these agreements demonstrate that Union Pacific never intended to dedicate its water system to public use. Rather, Union Pacific contends that these agreements show an explicit intent to provide water only as an “accommodation” under Section 2704.

#### **IV. Position of ORA**

ORA contends that by “developing, storing, supplying, distributing and selling water for irrigational, municipal and domestic use” the Keene Water System has become a public utility water system subject to the Commission’s regulation. ORA argues that Union Pacific’s claim that water is provided only as an accommodation should be dismissed because water was provided following abandonment in 1994 of the pipeline from Tehachapi.

Further, ORA argues that Union Pacific drilled new wells for the exclusive purpose of serving existing Keene Water System customers. ORA also argues that since Keene Water System no longer provides any service to Union Pacific, the system has been dedicated to public use.

#### **V. Position of Stonybrook Corporation**

Stonybrook asserts that the act of deliberately engaging in the business of producing and selling water to residents in Keene and Woodford constitutes a dedication of the Keene Water System for public use, and thereby subjects the system to the jurisdiction of this Commission.

Stonybrook also claims a dedication has occurred because the operation of the Keene Water System has been for the “sole and exclusive” benefit of the communities of Keene and Woodford. Further, a dedication has occurred because Union Pacific drilled new wells to provide water to the community of Keene and not to support any railroad operation. Specifically, Stonybrook asserts that by the abandonment of the Tehachapi pipeline in 1994 and the development of a new water system and sources so as to continue to supply water to Keene and Woodford customers, Union Pacific showed its intent to act as a public water utility regardless of its contractual relationships, and in fact dedicated its system for the public’s benefit.

Stonybrook also asserts that Union Pacific’s predecessor, SP, dedicated the Keene Water System facilities for public use when it submitted an application dated November 22, 1996, to the Kern County Board of Supervisors for a non-exclusive road franchise agreement to construct a new delivery line for the Keene Water System, on a Kern County roadway. In its franchise application, SP represented to the Board of Supervisors that the new pipeline would be used to “furnish water for railroad use and for community use.”

## **VI. Position of Beard**

Beard contends that Union Pacific’s operation of Keene Water System falls within the statutory definition of a water utility. Beard contends that Section 2704 does not exempt Union Pacific because the water is not “primarily used for domestic or industrial purposes” by Union Pacific. Beard argues that once the railroad was no longer the primary user of the water distributed by the Keene Water System, the railroad’s sale of the water distributed by the Keene Water System no longer qualified as an “accommodation” as defined in Section 2704, and the railroad became a public utility under Section 2701.

## VII. Discussion

Before we decide whether a dedication of property to public use has occurred, we note the impact our decision will have on the local community. The record reflects that most of the housing in Keene was built by the railroad for its employees. The railroad subsequently sold those houses to non-employees. Nothing provided prospective house buyers with constructive notice of the railroad's intention to provide the water strictly on a surplus basis and as an accommodation. Most current homeowners purchased their homes believing the railroad would continue to provide water for the community. Currently, the community is highly dependent on the Keene Water System for its water needs since every resident of Keene and Woodford except the U.S. Postal Services uses water from the Keene Water System.

The key issue is whether the Keene Water System is a "public utility" under the Public Utilities Code. If it is, the system comes under our jurisdiction. The Commission's power to regulate corporations operating water systems relies chiefly on Sections 216 and 2701. Sections 216 lists the different types of public utilities and includes, in relevant part:

"(a) . . . every . . . water corporation . . . where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any . . . water corporation . . . performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that . . . water corporation . . . is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

Section 2701 defines a Commission-regulated water utility:

"Any person, firm, or corporation . . . owning, controlling, operating, or managing any water system within this State,



who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter.”

Sections 216 and 2701 must be read in conjunction with Section 2704, which contains exceptions to Commission jurisdiction, for situations where the owner of a water supply provides surplus water or water as an “accommodation”:

“Any owner of a water supply not otherwise dedicated to public use and primarily used for domestic or industrial purposes by him or for the irrigation of his lands, who (a) sells or delivers the surplus of such water . . . or (c) sells or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water . . . is equally available, is not subject to the jurisdiction, control, and regulation of the commission.”

Another exception to Commission jurisdiction results from judicial decisions. Specifically, in 1912, the California Supreme Court applied a requirement of common law, not expressed in these statutes today or as previously codified, that conditions public utility status on the “dedication” of utility property to the public use. (See *Thayer v California Development Co.* (1912) 164 Cal. 117.) Later, in *Allen v. Railroad Commission* (1918) 179 Cal. 68, 85, the Court wrote that “to hold property has been dedicated to public use is not trivial thing . . . and such dedication is never presumed without evidence of unequivocal intention.” The Court later explained that the act of dedication occurs if someone had:

“held himself out, expressly or impliedly, as engaged in the business of supplying [a service or commodity] to the public as a class, not necessarily to all of the public, but to any

limited portion of it, such portion, for example, as could be served by his own system, as counterdistinguished from his holding himself out as serving or ready to serve only particular individuals, either as a matter of accommodation or for other reasons peculiar and particular to them.”  
(*Van Hoosear v Railroad Commission* (1920) 184 Cal. 553, 554.)

In *Richfield Oil Corp. v Public Utilities Commission* (1960) 54 Cal.2d 419, the Court reviewed the case law and left the dedication doctrine intact. The Court concluded that “the Legislature by its repeated reenactment of the definitions of the public utilities without change has accepted and adopted dedication as an implicit limitation on their terms.” (*Id.* at 430.)

While we acknowledge that dedication is a prerequisite to declaring a water system to be a public utility, dedication can be manifested in many different ways. Whether or not dedication has occurred is a factual question. (*Haynes v. MacFarlane* (1929) 207 Cal. 529, 532.) Where dedication has occurred, it may be either express or implied, and in the latter case, “it may be inferred from the acts of the owner and his dealings and relations to the property.” (*Cal. Water & Tel. Co. v. Public Utilities Commission* (1959) 51 Cal.2d 478, 494; see also *Yucaipa Water Co. No. 1 v. Public Utilities Commission* (1960) 54 Cal.2d 823.)

Neither Union Pacific nor its predecessor has manifested an *express* intent to dedicate the Keene Water System to public use. To the contrary, the agreements contained in Appendix A reflect a written intent on the part of Union Pacific and its predecessor to provide water only as an accommodation. Therefore, if we are to find that a dedication has occurred, it must be implied from the acts of Union Pacific or its predecessor. Here, there is a long course of conduct by Union Pacific and SP from which implied dedication arises. For example:

- since the 1960s, water has been sold for the primary use of the community and not the railroad;
- in 1994, existing plant was removed and replaced with a new well for the primary benefit of the community and not the railroad; and
- in 1996, SP applied for a non-exclusive franchise agreement to construct a pipeline on county roadway to furnish water for railroad and community use.

In this instance and many others, the Commission and the courts have found dedication implied by conduct. For instance, in *Producers Transp. Co. v. Railroad Commission* (1917) 176 Cal. 499, the dedication of an oil pipeline to a public use was implied from the corporation installing the pipeline via eminent domain. This case parallels *Producers Transportation*. There, the Court stated that a “potent reason” for upholding the finding of implied dedication was the fact that petitioner availed itself of the right of eminent domain in condemning property for the right of way over which it constructed its pipeline. The Court stated such action:

must be deemed conclusive evidence of a dedication of such property to public use, since it could not have exercised such right other than in “behalf of a public use” (Code Civ. Proc., sec. 1238), as “an agent of the state or person in charge of such use.” (Civ. Code, sec. 1001.)

A similar rationale applies to franchises. Municipalities grant franchises for the purpose of furnishing a service or commodity for the public use. (*See* Cal. Gov. Code Section 26001.)<sup>4</sup> Public use is defined as “a use which concerns the

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<sup>4</sup> Cal. Gov. Code § 26001 says in relevant part,

“Any general law applicable to the granting of franchises by municipal corporations and counties throughout the State for purposes involving the furnishing of any service or commodity to the public or any portion thereof shall be complied with in the granting of any franchises by the board of supervisors.”

*Footnote continued on next page*

whole community or promotes the general interest in its relation to any legitimate object of government.” (*Bauer v. County of Ventura* (1955) 45 Cal.2d 276, 284.) Thus, the exercise of a franchise right to install a water line is tantamount to a declaration that such property is for public use. By requesting a franchise from Kern County to build a water pipeline to furnish water for community use, Union Pacific’s predecessors implicitly dedicated the water pipeline to public use.<sup>5</sup>

Having found that a dedication has occurred, we conclude that the Keene Water System falls under the jurisdiction of this Commission as a water utility. Further, we agree with Beard that Section 2704 does not exempt Union Pacific. Section 2704 only exempts an owner of a water supply from Commission jurisdiction if such water supply is “primarily used for domestic or industrial purposes” by the owner of the water supply or for the irrigation of the owner’s lands. Union Pacific, as operator of the Keene Water System, and its predecessor cannot claim an exemption under Section 2704 since they have not been the primary user of the water supply for almost four decades.

We therefore hold that the Keene Water System is a water utility subject to our jurisdiction.

### **VIII. Remaining Issues**

In this investigation we stated we would determine whether:

- The terms and conditions of Union Pacific’s service are just and reasonable;

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<sup>5</sup> Although the franchise application states that the water pipeline will also serve the railroad, the record shows that the railroad has not primarily used its water for its own purposes since the 1960’s.

- Union Pacific should file tariffs for furnishing water; and
- Union Pacific's abandonment of service would be in the public interest.

The record is insufficient to determine just and reasonable terms and conditions for the Keene Water System.

ORA's testimony states that Union Pacific reported expenses for 1999 as \$168,078 and rate base of \$607,886 for the Keene Water System. ORA contends that the system's expenses were unreasonable given operating expenses the Commission had recently adopted for other water utilities. ORA asserts that the operating expenses of Keene Water System are 264% greater than the average operating expenses for 3 Class D (under 500 connections) water utilities for which the Commission recently adopted rates. ORA also contends that \$600,000 in rate base represented expenditures that benefited the railroad. ORA's testimony recommends that no rate increase should occur until Union Pacific files an application for a rate increase for the Keene Water System and fully supports its request.

Subsequently, ORA submitted one page of additional testimony<sup>6</sup> which recommended a quantity rate and monthly service charge as follows:

Quantity Rate:

All water, per 100 cubic feet	\$6.90
	Per Meter
	<u>Per Month</u>

Service Charge:

For 5/8 x 3/4 inch meter	\$66.00
For 3/4 inch meter	\$99.00

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<sup>6</sup> See Exhibit 2.

For	1 inch meter	165.00
For	1-1/2 inch meter	330.00
For	2 inch meter	528.00

ORA calculated the above rate and service charge by omitting \$33,118 in costs Union Pacific incurred for purchased water. At hearing, the ORA witnesses justified the deduction on a belief that higher rates would promote conservation and reduce or eliminate the need to import water (via trucks). In addition, ORA adjusted depreciation and taxes to reflect lower operating expenses. ORA's proposal also reduces plant to \$127,048 after excluding \$509,263 for replacing a water line. ORA argues that the capital addition should be disallowed because the pipeline benefits the railroad and also because the improvement was unnecessary and unreasonable. Union Pacific's witness testified that the line in question was over a 100 years old and deteriorated and needed replacement.

In its responsive testimony, Union Pacific submits that its operating expenses in 1999 were \$152,572 and that such operating expenses are representative of the actual costs of operating the water system in complying with analytical reporting requirements imposed by DHS. Union Pacific also asserts it incurred \$616,313 in capital expenditures in 1999 and 2000. Union Pacific states that these capital expenditures were incurred to satisfy DHS requirements regarding the operation of the water system.

Currently, customers pay \$4 per 1000 gallons of water used. The information presented at hearing is too preliminary to establish rates given the magnitude of the rate increase proposed by Union Pacific. We are also concerned that the operating expenses of Keene water system are 264% greater than the average operating expenses for 3 Class D water utilities for which the Commission recently adopted rates. We agree with ORA's initial

recommendation that Union Pacific should file an application to establish rates. Given the limited analysis contained in the existing record, we will order Union Pacific, which has the burden of proof on this issue, to file an application setting forth just and reasonable rates for water service to these communities. This will build on the record developed in the OIL.

Union Pacific may also file an application to transfer the system.

#### **IX. Objections to Stonybrook's Testimony**

Union Pacific objected to the admission of portions of Stonybrook's testimony. We agree with Union Pacific, and will strike those portions of Stonybrook's testimony identified by Union Pacific as argumentative and legal conclusion.

On July 11, 2001, Union Pacific also filed a motion requesting permission to suspend service to two customers. In a letter dated July 27, 2001, Union Pacific withdrew its motion.

#### **X. Comments on Proposed Decision**

On November 19, 2001, the principal hearing officer's proposed decision was filed with the Commission and served on the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Commission's Rules of Practice and Procedure.

#### **Findings of Fact**

1. Over 80 years ago, SP constructed, operated, and maintained a water system for the purpose of supplying water for steam locomotives and railroad facilities. A pipeline carried water from Tehachapi to Keene and Caliente.
2. In the 1960's, SP's need for water substantially diminished with the retirement of steam locomotives.

3. Starting in the 1990's, and continuing to the present time, the Keene Water System was and is not primarily used by SP or Union Pacific for their own domestic or industrial purposes or for the irrigation of lands owned by SP or Union Pacific.

4. In 1994, SP abandoned the pipeline from Tehachapi to Keene.

5. In 1994, SP drilled new water supply wells in Keene.

6. In 1996, SP applied for a nonexclusive franchise to build a water pipeline for community use.

7. Union Pacific (after merging with SP) performed substantial repairs to the water system in 1997, at a time when the system was no longer used in railroad operations.

8. Most current residents purchased their homes believing the railroad would continue to supply water to the community.

9. The operating expenses proposed by Union Pacific for the Keene Water System are 264% greater than the average operating expenses for 3 Class D (under 500 connections) water utilities for which the Commission recently adopted rates.

10. Customers of the Keene Water System pay \$4 per 1,000 gallons of water used.

11. The information ORA presented at hearing is too preliminary to establish rates given the magnitude of the rate increase proposed by Union Pacific.

12. The testimony of Stonybrook contains legal argument.

### **Conclusions of Law**

1. To constitute a public utility, there must be a "dedication" of property to the public use. Dedication may be express or may be implied from conduct.



2. Based on the conduct of Union Pacific and SP, the Keene Water System has been dedicated to public use.

3. The Keene Water System is a public utility water system under Section 2701.

4. Section 2704 does not exempt the Keene Water System from Commission regulation.

5. Union Pacific should file an application to establish rates.

6. Today's decision should be made effective immediately so that the operation of the Keene Water System may be swiftly brought into conformity with statutes and regulations governing public utilities.

## **O R D E R**

### **IT IS ORDERED** that:

1. Union Pacific Railroad Company (Union Pacific) shall file an application within 60 days setting forth just and reasonable rates for water service to communities of Keene and Woodford in Kern County.

2. Union Pacific may file an Application to transfer the Keene Water System.

3. The motion of Union Pacific to strike portions of the testimony of Stonybrook Corporation is granted in full.

4. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A:**  
**Summary of Agreements**  
**Between Union Pacific/Southern Pacific and**  
**Water Customers in the Kern County Communities**  
**of Keene and Woodford**

## **1. Upper and Lower Keene Groups Agreements**

Two agreements between SP and Elmer Brown (Upper Keene Group, 1954) and SP and Keene Lower Group (1960) provide:

Railroad hereby permits Licensee, as a matter of accommodation, and not as a legal right, to take and appropriate temporarily such surplus water from the water system of Railroad as is available and can be spared in the judgment of Railroad at Woodford (Keene), County of Kern, State of California; it being expressly understood and agreed that the railroad is not engaged, nor does it intend to engage, in the business of developing, supplying or distributing water to Licensee, the public or any one else for domestic, manufacturing, or any other purpose, and, in consideration of the accommodation service given by Railroad hereunder, Licensee hereby expressly waives all claim against said Railroad for failure at any time to furnish water to Licensee.

These agreements remain in effect and are subject to termination on thirty days' written notice. There is a supplemental agreement with Elmer Brown (Upper Keene Group, 1959).

## **2. National Farm Workers Service Center/Stonybrook Corporation Agreements**

SP and National Farm Workers Service Center, Inc. (the parent company of Stonybrook, hereafter referred to as Stonybrook) adjudicated their respective rights in Superior Court. The judgment entered provides that:

The NFW may continue to divert water from the SP water line at a rate not to exceed 30,000 gallons per day, expense free, until December 31, 1985. Southern Pacific and the NFW shall execute a surplus water agreement for the delivery of water

during 1986 in the form attached as Exhibit B. Southern Pacific shall have no obligation to deliver water to the NFW after December 31, 1986. (Southern Pacific Transportation Company v. National Farm Workers Service Center, Inc., Superior Court, Kern County, Case No. 179754, entered August 22, 1986.)

An emergency water agreement entered into between SP and Stonybrook on January 15, 1988, for a maximum of thirty days provides:

Railroad hereby permits Licensee, as a matter of neighborly accommodation, and not as a legal right, to take and appropriate temporarily such surplus water from the water system of Railroad as is available and can be spared in the judgment of the Railroad at B-Main Engineer's Station 13476+65.0, County of Kern, State of California; it being expressly understood and agreed that the Railroad is not engaged, nor does it intend to engage, in the business of developing, supplying or distributing water to Licensee, the public or any else for domestic, manufacturing, or any other purpose, and Railroad's water supply has not been and is not now dedicated to public use . . .

The parties entered into subsequent emergency water agreements in August, September, and October, 1988. The last agreement remained in effect until December 31, 1988.

### **3. Kern County Fire Department Agreement**

In June 1992, SP and Kern County entered into an emergency water agreement for the Kern County Fire Department to remain in effect until December 31, 1992. The agreement provides:

The Railroad hereby permits the Licensee, as a matter of neighborly accommodation, and not as a legal right, to take and appropriate temporarily such water from the water system of the Railroad

as is available and can be spared in the judgment of the Railroad at lower Keene. All water delivered hereunder shall be delivered by the Railroad to the Licensee on the downstream side of the Railroad's meter on the Railroad's pipeline at lower Keene. . . The Licensee hereby acknowledges that . . . (c) the Railroad is not engaged, nor does it intend to engage, in the business of developing, supplying or distributing water to the Licensee, the public or anyone else for domestic, manufacturing, or other purposes, (d) the Railroad's water supply has not been and is not now dedicated to public use . . .

The original agreement was amended several times to remain in effect until December 31, 1994. The agreement has expired, but Union Pacific continues to provide water to the Kern County Fire Department.

#### **4. Cummings Settlement Agreement**

SP and the Cummings entered into an agreement in the early 1980's that permitted the Cummings to connect to the railroad's water system. SP/Union Pacific and the Cummings disagreed on the specific terms of that agreement. In an April 2000 settlement agreement, Union Pacific and Barbara and Steven Cummings agreed that Cummings would be responsible for all water from and after May 1, 2000, and Cummings agreed to relinquish any disputed claimed right for the supply of water by Union Pacific to Cummings.

#### **5. Schneider and Barker (Three Peaks Ranch) Easement**

On December 1, 1997, Schneider and Barker granted Union Pacific an easement. Union Pacific agreed:

Subject to the availability of adequate water from its wells in Keene, to supply [Schneider and Barker] with water . . . [Schneider and Barker] shall have the right to not more than 48,000

gallons of water per month free of charge. If [Schneider and Barker] uses any water above that monthly amount, [Schneider and Barker] shall pay [Union Pacific] at rates equal to the rates [Union Pacific] normally charges its other water customers in the Keene area.

The easement is irrevocable.

#### **6. Tony Martin Connection**

Union Pacific provided a direct connection to Tony Martin, a former customer in the Lower Keene Group, at his request in 1997. The line to Martin was in poor condition and in serious need of replacement.

**(END OF APPENDIX A)**

## **APPENDIX B:**

### **Appearances**

**APPEARANCES**

**\*\*\*\*\* APPEARANCES \*\*\*\*\***

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**(END OF APPENDIX B)**