

ORIGINAL

Decision No. 39971

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PAUL F. PORTER and PEGGY K. MARQUARD, a co-partnership doing business under the firm name and style "RANCHO DEL MONTE WATER CO." for a Certificate of Public Convenience and Necessity to operate a water system, and for the approval of rates.

Application No. 28024

Noland and Lawson, by S. K. Lawson, for Applicants.

California Water & Telephone Company, Protestants, by Peter A. Nenzel, Vice President, and Bacigalupi, Elkus & Salinger, by Tadini Bacigalupi, Jr.

O P I N I O N

Paul F. Porter and Peggy K. Marquard, a co-partnership, doing business under the fictitious firm name and style of Rancho Del Monte Water Co., have applied to the Public Utilities Commission of the State of California for a certificate of public convenience and necessity to operate a water system serving a large real estate project of 750 acres, now under development and on the market, said land being a portion of the old Spanish land grant known as "Rancho Los Laureles" in Carmel Valley in Monterey County. This tract of land lies on both sides of the Carmel River, twelve miles up-stream from the City of Carmel. The Commission is asked also to establish a schedule of rates for the service to be rendered.

A public hearing in this matter was held before Examiner Mackall at Monterey.

The territory for which a certificate of public convenience and necessity is requested herein is an extensive and restricted real estate development

comprising the southwesterly three-fifths of Parcel No. 3 and a certain one hundred-acre strip located in the southerly portion of Parcel No. 2 of Rancho Los Laureles. The land is now owned by Frank B. Porter and the following members of his family: Barbara M. Porter, Paul F. Porter, Peggy K. Marquard, Jet L. Porter and Floyd C. MacFarlane. The property is being developed in units. Rancho Del Monte No. 1 contains 93 acres subdivided into 47 lots. Rancho Del Monte No. 2, consisting of 50 acres, has 36 lots. Rancho Del Monte No. 4, containing 70 to 73 acres, is subdivided into 44 lots. Other units will be developed successively as the others are fully sold. Applicants asked for authority to amend their application to include within their requested service area Subdivision 3 of Lot 4B, containing 25.628 acres. This subdivision has been sold in acreage and does not belong to the Porter family. Four property owners in this tract obtain water from their own wells, one other receives water from the California Water & Telephone Company whose transmission main passes along the northerly boundary of said Subdivision 3. This acreage parcel is completely surrounded by lands owned and now under development by members of the Porter family. It is to serve future lots in this tract, in the event of a probable re-subdivision of all or portions thereof, that request is made for authority to furnish water therein.

The water supply of applicants' system at present will be obtained from a twelve-inch drilled well, 88 feet in depth, located near the Carmel River in Rancho Del Monte No. 2. This well formerly was used for agricultural irrigation purposes and while no actual figures on the well's performance were presented, Mr. Clayton Neill, a consulting civil engineer, appearing in behalf of applicants, testified as a matter of opinion that the well should develop a sustained flow of 400 gallons per minute. The testimony shows that additional wells can be drilled on other lands in the tracts to be served when required. A Layne & Bowler deep-well turbine pump, driven by a 10-horsepower electric motor, capable of pumping 100 gallons per minute against a head of 270 feet, will be installed in the well as soon as received from the manufacturer. Water will be delivered through a

six-inch distribution main into a 25,000-gallon storage tank located in Rancho Del Monte No. 1. A higher level storage tank of 2,500-gallon capacity will serve the upper zones through a booster pump with a capacity of 60 gallons per minute against a head of 270 feet, discharging through an 8-inch main.

System design calls for installation of 13,700 feet of wrapped steel pipe, varying in size from 8 to 2 inches in diameter. The pipe has now been delivered and is on the ground ready for installation which is to commence immediately. Pumps, motors and storage tanks, while ordered several months ago, have not as yet been delivered. Paul F. Porter testified that the estimated cost of the completed water system for the initial subdivided units is \$28,500, exclusive of meters and service connections.

The County of Monterey does not require a franchise for the operation or maintenance of a waterworks in subdivisions of this character. Pipelines and water mains will be installed in public streets and roadways or, when required, in private easements or rights of way available for such purposes. Necessary permits have been secured from the County of Monterey for main and pipeline installation throughout the various units of subdivided property and the required bond has been posted with the County Road Commissioner to insure and guarantee proper replacement of road surfaces.

A chemical water analysis of the well water was presented, made by the K. W. Brown Laboratory of San Francisco, and, likewise, a bacteriological analysis thereof by the Monterey County Health Officer. Both analyses reported a satisfactory water.

California Water & Telephone Company protested against the granting of a certificate to applicants. This company operates a waterworks diverting water from the Carmel River at San Clemente Dam, located approximately eight miles upstream from applicants' proposed service area. Water is transmitted through a pipeline traversing applicants' proposed service area through private rights of way lying along or adjacent to the Carmel Valley County Road and distributed to the residents of the Cities of Carmel, Pacific Grove, Monterey and adjacent and adjoining

territory. Water service to certain consumers and subdivided tracts lying both easterly and westerly of applicants' proposed service area is furnished from the transmission line running down the Carmel Valley. While neither this company nor its predecessor in interest, Monterey County Water Works, ever obtained a certificate of public convenience and necessity to operate a waterworks from this Commission, protestant claims a constitutional franchise right and a dedication of its service throughout this entire area by reason of commencement of utility water service in the year 1882 and continuous operation thereafter. Upon these grounds protestant claims the sole and exclusive right to render public utility water service throughout the Carmel Valley traversed by its mains. The boundaries of the service area of protestant utility have never been fixed by any public body.

Several other grounds of protest were presented, one of which was that California Water & Telephone Company had heretofore agreed and stood now ready and willing to pipe all of the subdivisions within the service area requested by applicants, and provide water service therein under and in accordance with its Rule and Regulation No. 19-2 governing such main extensions.

According to the evidence, the owners of this 750-acre tract of land negotiated for several months last past with the protestant company for the piping and delivering of water in the subdivided units but were unable to come to satisfactory terms of agreement. Although protestant's main transmission line runs through this 750-acre tract, one of its demands was the installation, at the subdividers' expense, of 2,000 feet of 6-inch transmission main from a tank located in an adjacent tract to the Rancho Del Monte properties. In addition, protestant could set no definite or reasonably certain date for the installation of the mains. The testimony of Mr. Frank B. Porter indicated that time was of prime consideration, lots already were being sold and water had to be furnished without delay. In view of the unsatisfactory requirements demanded by protestant, he found it would be necessary and expedient to organize a water company and install and operate a water system to serve the properties.

One further ground of protest presented by the California Water & Telephone Company was that said company claimed to own all riparian rights and rights to divert and appropriate waters from the Carmel River in all of Rancho Los Laureles, a claim not admitted by applicants. However, no evidence was presented to indicate that applicants' were not entitled to develop a supply of water from wells as they propose. In this connection it should be pointed out that this Commission is without jurisdiction to determine such issues.

According to the record in this proceeding, it is apparent that a certificate of public convenience and necessity should be granted applicants herein. In light of the contentions advanced by protestant, it should be stated that such operative rights as it may possess do not give it the sole and exclusive privilege to sell and distribute water as a public utility in the area for which applicants request this certificate of public convenience and necessity.

The Commission has considered the request for a certificate of public convenience and necessity and is of the opinion that it should be granted, subject to the following provision of law:

"That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right."

O R D E R

Application as entitled above having been filed with the Public Utilities Commission of the State of California, a public hearing having been held thereon, the matter having been duly submitted and the Commission now being fully advised in the premises,

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require, and will require, Paul F. Porter and Peggy K. Marquard, co-partners, doing business under the firm name and style of Rancho Del Monte Water Co., to construct, maintain and operate

a public utility water system in those certain tracts of land situated in Carmel Valley, County of Monterey, California, generally known as and called the Southwesterly three-fifths (3/5) of Parcel No. 3 and that certain 100-acre strip located in the southerly portion of Parcel No. 2 of Rancho Los Laureles, said property, consisting of 750 acres, more or less, and including also Subdivision 3 of Lot 4B, containing 25.688 acres, being situated in Carmel Valley, approximately twelve miles easterly of the City of Carmel in the County of Monterey, as more particularly described on the map marked Exhibit "A" attached to the application herein and delineated upon the maps filed as Exhibits Nos. 3, 4, 5, 6 and 7 in this proceeding, which exhibits are hereby made a part of this Order by reference.

IT IS HEREBY ORDERED as follows:

1. That a certificate of public convenience and necessity be and it is hereby granted to said Paul F. Porter and Peggy K. Marquard to operate a public utility water system for the distribution and sale of water within the territory hereinbefore described.
2. That said Paul F. Porter and Peggy K. Marquard are hereby authorized and directed to file in quadruplicate with this Commission, within thirty (30) days from the date of this Order, in conformity with the Commission's General Order No. 96, the following schedules of rates, which are hereby found as a fact to be just and reasonable rates, to be charged for all water service rendered to their customers on and after the first day of March, 1947.

Schedule No. 1

METERED RATES

Applicability:

For all domestic and commercial metered water service.

Territory:

In those certain tracts of land situated in Carmel Valley, County of Monterey, California, generally known as the Southwesterly three-fifths (3/5) of Parcel No. 3 and a certain 100-acre strip located in the southerly portion of Parcel No. 2 of Rancho Los Laureles, and Subdivision 3 of Lot 4B.

Schedule No. 1 - Continued

METERED RATES

<u>Rates:</u>	<u>Per Meter</u> <u>Per Calendar Year</u>
<u>Minimum Annual Charges:</u>	
For 5/8 x 3/4-inch meter . . . . .	\$12.00
For 3/4-inch meter . . . . .	15.00
For 1 1/2-inch meter . . . . .	24.00
For 2-inch meter . . . . .	48.00
For 3-inch meter . . . . .	81.00
For 4-inch meter . . . . .	129.00

The Minimum Annual Charge, payable in advance, entitles the consumer, each month, to that amount of water which one-twelfth (1/12) of that Minimum Annual Charge will purchase at the following Monthly Quantity Rates:

<u>Monthly Quantity Rates:</u>	<u>Per Meter</u> <u>Per Month</u>
First 300 cubic feet or less . . . . .	\$1.00
Next 700 cubic feet, per 100 cubic feet . . . . .	.26
Next 9,000 cubic feet, per 100 cubic feet . . . . .	.20
Over 10,000 cubic feet, per 100 cubic feet . . . . .	.15

Schedule No. 2

FIRE HYDRANT RATES

Applicability:

For all service rendered for fire hydrant purposes.

Territory:

In those certain tracts of land situated in Carmel Valley, County of Monterey, California, generally known as the Southwesterly three-fifths (3/5) of Parcel No. 3 and a certain 100-acre strip located in the southerly portion of Parcel No. 2 of Rancho Los Laurelos, and Subdivision 3 of Lot 4B.

<u>Rates:</u>	<u>Per Month</u>
Each 2 1/2-inch hydrant with 3-inch riser . . . . .	\$1.50
Each 2 1/2-inch hydrant with 4-inch riser . . . . .	2.00

3. That Paul F. Porter and Peggy K. Marquard, within sixty (60) days from the date of this Order, shall submit to this Commission for its approval four sets of rules and regulations governing relations with their consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet 8½ x 11 inches in size, delineating thereupon in distinctive markings the boundaries of their present service area and the location thereof with reference to the immediate surrounding territory; provided, however, that such map or sketch shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof.
  
4. That Paul F. Porter and Peggy K. Marquard, within sixty (60) days from the date of this Order, shall file with this Commission four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated by appropriate markings the territory presently to be served. This map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the property comprising the entire utility area of service; provided, however, that such map shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof.

IT IS HEREBY FURTHER ORDERED that for all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 11th day of February, 1947.

Harold P. Kula  
Justin F. Casner  
James H. Lowell  
A. J. Zimmerman  
Joseph P. Patten  
 Commissioners.