

ORIGINAL

Decision No. 43857

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

SAN GABRIEL VALLEY WATER COMPANY,  
Complainant,  
vs  
WHITTIER WATER COMPANY, Defendant.

Case No. 5137

In the Matter of the Application of  
SAN GABRIEL VALLEY WATER COMPANY for a  
Certificate of Public Convenience and  
Necessity in territory adjacent to its  
Whittier District.

Application No. 30617

Application of WHITTIER WATER COMPANY,  
a corporation, for a certificate of  
public convenience and necessity to  
operate a public utility water  
corporation business.

Application No. 30698

Faries & McDowell by McIntyre Faries and R. H. Nicholson  
for San Gabriel Valley Water Company as complainant,  
protestant, and applicant. Gordon, Knapp & Hennessy by  
Hugh Gordon for Whittier Water Company as defendant, and  
by Wyman Knapp for said company as applicant and protestant.  
M. I. Church and Kenneth K. Wright for Pico County Water  
District of Los Angeles County, protestant in Application  
No. 30617 only.

O P I N I O N

In Application No. 30617, San Gabriel Valley Water Company seeks a certificate to extend its water service area to include a number of described tracts of land located east of Montebello, Los Angeles County, all of which lie west of the San Gabriel River and between that river and the Rio Hondo Channel. This utility now serves parts of this general area under certificates issued by the Commission. Its application is protested by the Pico County Water District in so far as its proposed extensions include tracts that are within the declared boundaries of that district.

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In Application No. 30698, Whittier Water Company seeks a certificate to serve four parcels of land located in the southerly part of the general area covered by the application of San Gabriel Valley Water Company. With respect to these four tracts, each utility protests the application of the other, and in Case No. 5137 San Gabriel Valley Water Company complains that Whittier Water Company has unlawfully extended its mains to serve a part of this property without first obtaining a certificate from the Commission.

Public hearings were held in Los Angeles, before Examiner Rowe, on October 14 and 17, 1949, in Case No. 5137; on November 26, 1949, in Application No. 30698; and on November 14 and 23, 1949, in Application No. 30617; and both oral and documentary evidence was adduced in each matter. Briefs were filed in Case No. 5137 and in Application No. 30617, and all of the matters now stand submitted. Each of the proceedings may properly be disposed of by this decision.

The four tracts just described within which both applicants seek the right to serve will be discussed before giving consideration to the other parts of San Gabriel Valley Water Company's application. Whittier Water Company previously sought a certificate to serve two of these tracts in its Application No. 30375, and the Commission's Decision No. 43244, rendered in that proceeding along with others, issued August 23, 1949, denied the requested certificate. That decision also determined the respective service rights of these two utilities in their conflict for territory lying east of the San Gabriel River, the Commission finding it necessary to issue an order, Decision No. 43058, preliminary to its final decision, and then stated that both companies "will be expected to refrain from making any substantial extensions in any overlapping territory covered by their rival applications." A preliminary order was also issued in the present Case 5137 directing Whittier Water Company not to construct or extend its facilities west of the San Gabriel River.

Although Whittier Water Company had thus been denied a certificate to serve any part of the area here involved, and had been directed to refrain from so doing, this company has installed mains within one such parcel of land, and is supplying domestic water service therein and supplying irrigation water to another parcel. It now makes the contention that these tracts are contiguous to its present service area east of the river, and that the right to extend its water service thereto is accorded by Section 50 of the Public Utilities Act. The record does not substantiate this claim. It does not now serve contiguous land east of the river. The Judson property which lies along the east side of the river, which was once owned by Whittier Water Company, had been transferred by it to the La Mirada Mutual Water Company. The only right which Whittier Water Company retained was that of receiving water through pipes owned and controlled by the mutual company. The fact that Whittier Water Company subsequently acquired a right to drill additional wells on the Judson property, without the right to render water service therein, does not make the property a part of its existing water service system.

No evidence has been presented in the instant application of Whittier Water Company which would justify the Commission in reversing its decision of August 23, 1949, denying this utility the right to serve the territory now in dispute lying west of the San Gabriel River. Although it actually began to serve within that area under a claim of right to do so, a letter (Exhibit No. 2, Case No. 5137) addressed to the Commission by the president of this utility acknowledges that such construction of its water mains within the tract "does not establish any right with respect to future service." The letter continued, "This present construction, however, is equally adaptable for future service by whichever utility the Commission concludes should serve the area in the future. Under these circumstances, it seems clear that no prejudice will be

suffered by either ourselves or San Gabriel Valley Water Company, and that the present installation of the water mains within the tract is not inconsistent with the Commission's interim order."

In Decision No. 43244 of August 23, 1949, involving like territorial conflicts between these two utilities, the Commission said:

"In determining the respective requests of applicants for authority to serve within the overlapping territory, the Commission has weighed various factors such as public interest, location of present service areas and lines, areas to which the respective companies may logically be expected to expand, the ability of applicants to serve, the similarity of the rates, and the desirability of keeping the respective systems as integrated as possible."

The principles thus stated as guiding the Commission in delineating the rights of these two utilities in territory east of the San Gabriel River, compel the conclusion that the present application of Whittier Water Company must be denied. No change in the factual situation justifies a reversal of our prior decision denying this utility the right to serve in this disputed territory. Although a representative of the owner of the four tracts in question testified that he desired the service of Whittier Water Company, he conceded that any water company with proper facilities could serve the needs of the owner.

This leaves for determination San Gabriel Valley Water Company's request for authority to serve all the territory south of its presently certificated area between the San Gabriel River and the Rio Hondo Channel lying north of the Santa Fe Railroad tracks. Aside from the protest of Whittier Water Company applying to the four tracts of land it sought to serve, the only protestant was the Pico County Water District of Los Angeles County.

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As to the territory included in San Gabriel's application which is within the boundaries of the district, there are three areas to be considered. The first, which includes Tract No. 15662 known as the Towar Subdivision, and territory surrounding its Melita extension, are tracts into which the Commission determined by Decision No. 43302, issued September 13, 1949 in Case No. 4989, that this applicant improperly attempted to extend its water service. The protestant district has offered to refund to the subdividers of the Towar Subdivision the cost of the installation of the water system under its resolution providing for refunds similar to the utility's Rule 19. In addition, this resolution provides for refunding the cost of meters as well as the cost of pipe lines and service lines.

As the owners of this Tract No. 15662 will suffer no financial loss by denying the San Gabriel Valley Water Company authority to serve the tract, and as it appears that the district can adequately serve this tract, it will be excluded from the service area of the applicant utility. The district did not make a like offer to refund installation costs in the territory surrounding the Melita extension. Moreover, the latter territory is much nearer to applicant's present installations and so remote from existing mains of the district that the great expense of extending a pipe line from such mains would cause an unjust burden on the persons living in that territory if the San Gabriel Company were denied the right to serve them. For reasons hereafter stated with regard to other lands within the boundaries of the district which we find should be included in this utility's service area, the certificate herein granted will include the Melita extension territory.

The second area to be considered consists of land within the boundaries of the district where it does not at present have any facilities for supplying water service. An accurate statement of the

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physical and financial condition of the Pico County Water District is contained in our Decision No. 43302. As is shown by the present record, its method of operation remains unchanged except for certain changes in its line extension rules, as above noted. The evidence indicated that except for the fact that the San Gabriel Valley Water Company has been restrained by the Commission from making any further extensions within the boundaries of the district, it could have complied with many requests from owners of land for needed extensions of water facilities to serve proposed residential subdivisions. Those not presently served by the district's system express their preference for applicant's service. Also, it appears manifest that the district is not in a position to finance a substantial extension of its presently inadequate mains. At present, water pressure is inadequate to serve many new subdivisions. The rates of the district are somewhat higher than those of the company and, in addition, it could impose taxes as needed to pay the cost of new construction. This results in higher total costs to the consumers. On the other hand, San Gabriel Valley Water Company is adequately financed, and has placed water mains of ample size throughout the territory to afford an adequate water supply at proper pressure.

As held in said Decision No. 43302, the district is not a public utility within the meaning of the Public Utilities Act, and consequently the Commission is without power to prevent the extension of the district's boundaries, and of service beyond such boundaries, into territory served under certificate of this Commission by the applicant water company. Said decision restrained the San Gabriel Company from making any extensions within the district and serving any new territory, "Unless and until it secures from this Commission a certificate, or certificates, of public convenience and necessity therefor."

The practical effect of this order has been to leave the district as the only water distributing facility which could extend service to new subdivisions or new users within the boundaries of the district. The owners of land which are not presently being served by either water facility are almost unanimous in requesting service by the company. It appears, therefore, that a certificate of public convenience and necessity should be issued to San Gabriel Valley Water Company authorizing it to serve all that territory which the district is not presently serving. This will permit owners of land and subdivisions to choose the service of either the district or of the utility. It is essential that they have such choice because there is abundant evidence in this record that the district alone is incapable of serving in a proper manner all of the water customers in this rapidly developing and growing area.

The third area covered by San Gabriel Valley Water Company's application consists of land which is not presently served by the district, but is located outside of the district's present boundaries. As this territory is being developed or will be developed into home-sites it appears to be in need of service and it will therefore be included in the area to be certificated. Such authority given to the San Gabriel Valley Water Company will permit it to serve areas contiguous to the several tracts now being served by it within the same general territory, and will make its service area a reasonably integrated and economical operation.

Conflicts for territory to be served by water utilities such as the conflicts here revealed cannot be in the public interest when duplicating facilities and inferior service result. Although a water utility may rightfully make extensions of its existing system under the conditions set forth in Section 50 of the Public Utilities Act, the Commission may properly circumscribe the scope of any

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certificate granted to cover only a particularly described area without according the utility the privilege of extending beyond that described area until further permission of the Commission is first obtained. Such action must be taken when actual or potential conflicts arise. On the other hand, a certificate issued covering areas where residential development is not an immediate prospect should not be taken by the utility as assurance that the Commission may not later withdraw that grant with respect to areas not then actually occupied when the circumstances presented to the Commission in an appropriate proceeding justify such action. In this way healthy competition between utilities can be maintained, but improvident and unfair competition restrained.

The order made in these proceedings will grant a certificate to San Gabriel Valley Water Company covering the territory delineated in the attached exhibit conferring the right to make all ordinary extensions of service therein, but at the same time denying it the right to make extensions into other territory contiguous to any of the certificated area described unless authority first be obtained upon the filing of a supplemental application.

The application of the Whittier Water Company for a certificate will be denied and the restraining order heretofore issued against this utility will be made permanent.

The certificate of public convenience and necessity issued herein is subject to the following provisions of law:

"That the Commission shall have no power to authorize the capitalization of these certificates of public convenience and necessity or the right to own, operate or enjoy such certificates 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 of such certificates of public convenience and necessity or right."



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O R D E R

Public hearings having been held in the above-entitled proceedings, the matters having been duly submitted, the Commission being fully advised in the premises and having found the facts to be as set forth in the opinion hereinabove, it is hereby declared and ordered as follows:

I.

IT IS ORDERED that Application No. 30698 be, and it hereby is, denied.

II.

IT IS ORDERED AND DECLARED:

(1) That the present and future public convenience and necessity require, and will require, the operation of a public utility water system by San Gabriel Valley Water Company, a corporation, within the territory shown and outlined in Appendix "A" of this order, except for the portions thereon shown to be excluded, which appendix is hereby made a part of this order by reference.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to San Gabriel Valley Water Company, a corporation, authorizing it to operate a public utility water system in Los Angeles County within the territory shown in said Appendix "A", but not including the portions of land therein shown to be excluded from such certificated area; provided, however, that the certificate of public convenience and necessity herein granted to San Gabriel Valley Water Company shall be subject to the condition that it shall not make extensions into other territory contiguous to any of the certificated area described without authority first having been obtained from this Commission.

(3) That San Gabriel Valley Water Company, a corporation, be, and it hereby is, authorized and directed to place in effect throughout the territory described in said Appendix "A," except for the territory therein stated to be excluded therefrom, its present rates, rules, and regulations effective in this territory.

(4) That, except as authorized in this order, the application of San Gabriel Valley Water Company, Application No. 30617, be, and it hereby is, denied.

(5) That San Gabriel Valley Water Company, within forty (40) days after the effective date of this order, shall file with this Commission four copies of a suitable map drawn to an indicated scale of not less than 600 feet to the inch and delineating thereon by distinctive markings the exact boundaries of its service areas established herein; provided, however, that such filing shall not be construed as a final or conclusive determination or establishment of the dedicated areas of service, or any portion thereof.

### III.

IT IS ORDERED that the restraining order heretofore issued in Decision No. 43375, dated October 11, 1949, ordering Whittier Water Company to cease and desist from extending its water service for any purpose whatsoever in Tract No. 12553 or in any other territory lying in the service area hereinabove granted to San Gabriel Valley Water Company, be, and it hereby is, made permanent, provided, however, that Whittier Water Company shall continue serving water in said Tract No. 12553 for a period not to exceed thirty days after the effective date of this order, and on or before the expiration of said thirty-day period the two utilities shall arrange for and complete a transfer to San Gabriel Valley Water Company of the water distribution facilities installed by Whittier Water Company within said Tract No. 12553.

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The Secretary is directed to cause a certified copy of this order to be served upon Whittier Water Company, a corporation.

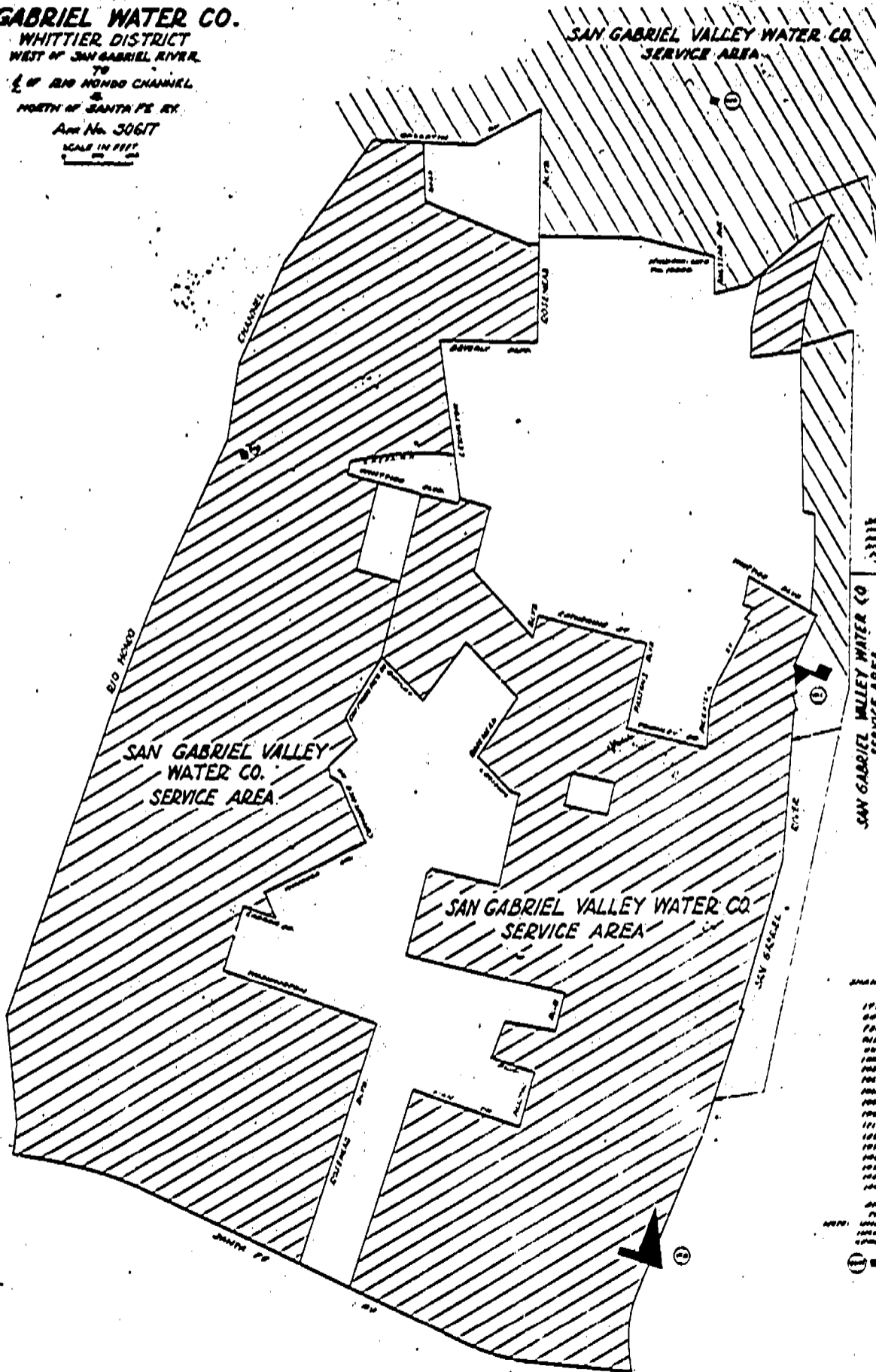
The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of February, 1950.

R. B. Anderson  
Justice F. Palmer  
Christ D. Powell  
Harold H. Hill  
Herbert H. Passet  
Commissioners.

MAP  
SHOWING  
SERVICE AREA  
**SAN GABRIEL WATER CO.**  
WHITTIER DISTRICT  
WEST OF SAN GABRIEL RIVER  
TO  
E OF RIO HONDO CHANNEL  
&  
NORTH OF SANTA FE RY.  
App No. 30617  
SCALE IN FEET

**SAN GABRIEL VALLEY WATER CO.**  
SERVICE AREA



BOUNDARY FOR SECTION NO. 30617 APPROX. FOR IN P. RIVER

BOUNDARY WITH TO SERVICE AREA FROM WEST OF SAN GABRIEL RIVER FOR SECTION NO. 30617



SMALL AREA INCLUSIONS

TRACT NO.	
1970	1001
1971	1002
1972	1003
1973	1004
1974	1005
1975	1006
1976	1007
1977	1008
1978	1009
1979	1010
1980	1011
1981	1012
1982	1013
1983	1014
1984	1015
1985	1016
1986	1017
1987	1018
1988	1019
1989	1020
1990	1021
1991	1022
1992	1023
1993	1024
1994	1025
1995	1026
1996	1027
1997	1028
1998	1029
1999	1030

AND OTHER UNDESIGNED FEATURES  
NOT SHOWN ON THIS MAP  
SHOULD BE CONSIDERED  
AS PART OF THE SERVICE AREA  
FOR THIS MAP