

**ORIGINAL**

Decision No. 44706

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

San Gabriel Valley Water Company

Complainant

vs.

Whittier Water Company

and

Samuel I. Berg, doing business as  
Rivera Water System

Defendants

Case No. 5211

In the Matter of the application of  
Samuel I. Berg, doing business as  
Rivera Water System, for a certificate  
of public convenience and necessity.

Application No. 31160  
As Amended.

Faries & McDowell by McIntyre Faries, R. H. Nicholson  
and Edgar Skelton, for San Gabriel Valley Water Company, as appli-  
cant in Application No. 30617, complainant in Case No. 5211, and  
protestant in Application No. 31160. Gordon and Knapp by  
Hugh Gordon for Samuel I. Berg, doing business as Rivera Water  
System, protestant in Application No. 30617, defendant in Case  
No. 5211 and applicant in Application No. 31160, and also for  
Whittier Water Company, defendant in Case No. 5211. Kenneth  
K. Wright for Pico County Water District of Los Angeles County,  
protestant in Applications Nos. 30617 and 31160.

O P I N I O N

The Commission in its Decision No. 43857, issued February 21, 1950, in Application No. 30617, granted San Gabriel Valley Water Company, a certificate of public convenience and necessity to construct and operate a public utility water system within a defined territory. The certificated area is generally located north of the Santa Fe tracks and between the San Gabriel River and the Rio Hondo Channel. Within 10 days before the effective date of the order, Samuel I. Berg, doing business as Rivera Water System and supplying domestic water as a public utility in and around the unincorporated town of Rivera, petitioned the Commission for rehearing in respect to said Decision No. 43857, on the alleged grounds that the territory granted the San Gabriel Valley Water Company embraced his public utility service area; that said petitioner was not served with a copy of the application, nor notified of the hearing of the matter and, therefore, had been unable to appear and present evidence of the scope of his public utility water operations; and that petitioner was presently operating water facilities and serving customers, and was ready and willing to serve additional portions of the territory located between the San Gabriel River and the Rio Hondo Channel that adjoins the area he presently serves, but lying within the area certificated to San Gabriel Valley Water Company.

The Commission, after considering Mr. Berg's petition, issued its Decision No. 44103, on April 25, 1950, denying a rehearing with respect to Decision No. 43857, but reopened

Application No. 30617 for the purpose of determining whether the certificate granted to San Gabriel Valley Water Company by said Decision No. 43857 should be modified or amended in order to avoid any conflict between the authority granted by said decision to San Gabriel Valley Water Company and any operating rights of petitioner.

On March 24, 1950, Samuel I. Berg filed Application No. 31160, which was amended on June 9, 1950, to include additional territory in the area granted San Gabriel Valley Water Company. The application asked for a certificate to serve territory adjoining the area presently served by him north of the Santa Fe Railroad and located within the area certificated to San Gabriel Valley Water Company in said Decision No. 43857, together with a territory located east of the San Gabriel River and south of the Santa Fe Railroad and extending southerly to Firestone Boulevard.

Before these service area matters could be heard, San Gabriel Valley Water Company filed a complaint, Case No. 5211, alleging that the certificate granted it in Decision No. 43857 included Tracts Nos. 16320 and 16366, and that Rivera Water System has been transferred to and is being operated by Whittier Water Company or its agent, Garnier Construction Company, and that Whittier Water Company or Garnier Construction Company, or their agents, have contracted to install and are now installing mains in the two tracts covered by the certificate. The Commission is asked for an immediate restraining order against Whittier Water Company and Samuel I. Berg,

doing business as Rivera Water System, or their agent, Garnier Construction Company, or any other agent or employee, from installing pipe lines or facilities or from distributing water in any territory in the area covered by the San Gabriel Valley Water Company certificate, and directing the defendants to remove immediately all mains or services installed therein.

On June 23, 1950, the Commission issued its Decision No. 44435, as subsequently amended by Decision No. 44436 on June 26, 1950, directing Samuel I. Berg and Whittier Water Company, and each of them directly or through agents, affiliates, or employees, to cease and desist and to refrain from extending water mains or facilities to, or from furnishing new water service in, Tract No. 16320 and Tract No. 16366.

Public hearings were held on June 27 and 28, 1950, in the above-entitled matters before Examiner Rowe in Los Angeles. Stipulations were entered into between the interested parties providing for the presentation of evidence and for a separate decision on the issues involved in connection with the service area dispute between the Rivera Water System and San Gabriel Valley Water Company.

Counsel for Pico County Water District withdrew from the instant proceeding, as the District was not concerned with this territory south of its borders.

The record shows that a certificate of public convenience and necessity was granted by the Commission in its Decision No. 21988<sup>(1)</sup>, issued January 7, 1930, in Application

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(1) This proceeding made a part of record by reference.

No. 16041, to Michael Reicheal, a predecessor in interest of Mr. Berg. At that time the town of Rivera was a very small community and the system was supplying 82 consumers. No definite boundaries were established for the certificated territory, but authority was granted to operate a public utility water system in the town of Rivera, Los Angeles County. The map of the system filed in connection with the certificate proceeding shows a 2-inch pipe line extending northerly along Topeka Street under the Santa Fe Railroad tracks, and water was apparently delivered to consumers residing in that territory. The town was subdivided in 1887 and the map indicates that a portion of the town located north of the Santa Fe tracks and on both sides of Topeka Street was a part of the original townsite. The water system serving the townsite was installed in 1921. During the years of 1948 and 1949, the service north of the tracks was extended by Mr. Berg at his own cost from Topeka Street to Cravell Street, which is located 300 feet west of it. A 3-inch pipe line 340 feet long in Rex Road connects the 2-inch line on Topeka to a 3-inch line on Cravell. There are approximately 1,300 feet of 1½- and 3-inch pipe line on Cravell which serves 25 consumers. There are 800 feet of 2-inch pipe line on Topeka Street which presently serves 10 consumers, two being located on the east side of the street and a third being located on property fronting on the Rivera-Los Nietos Road. This was the extent of the service furnished on approximately June 1, 1950.

The company's annual report filed with the Commission, as of December 31, 1949, showed fixed capital installed as \$31,560, operating revenues and operating expenses as \$4,288 and \$3,011, respectively, resulting in a net revenue of \$1,277 for the year. There were 176 consumers, mostly south of the Santa Fe tracks, being served at the end of the year, all at metered rates.

On or about June 1, 1950, Mr. Berg delegated the operation of the water system to Garnier Construction Company, a corporation. This company reads the meters, does the billing, keeps the books, makes all repairs, and installs all necessary operating and fixed capital facilities. This company performs a similar service for other small water utilities located in the same general territory. Mr. Camille Garnier, a partner and manager of this company, is the president of Whittier Water Company, which, by Decision No. 43857, dated February 21, 1950, was permanently enjoined from extending its water system into, and from serving water in, the territory now being considered. Garnier Construction Company was likewise restrained by Decision No. 43375, dated October 11, 1949, which was made permanent by said Decision No. 43857.

On or about May 31, 1950, Mr. Berg received a request to extend water service into Tract No. 16366. This tract is generally bounded on the west by Topeka Road, on the south by the Santa Fe Railroad, on the east by Parsons Boulevard, and on the north by Rex Road. The tract has an area of approximately 45 acres and has been subdivided into 227 lots. The

three consumers served east of Topeka Street are located outside the boundaries of the tract. Only one of the properties presently served is a part of the subdivision. The extension was made into the tract without Commission authority on the theory of statutory right, as it adjoined the area presently served. An agreement with Halper Construction Corporation, the subdivider of the tract, under Mr. Berg's extension rule, was entered into on June 8, 1950, and provided for the installation of a distribution system throughout the subdivision. The contract was negotiated for Mr. Berg by Garnier Construction Company. The sum of \$20,849 was advanced by the subdivider to cover the cost of the installation, and the necessary pipe was obtained for the project and some of the connecting mains had been installed, but only 100 feet of pipe was laid within the tract when construction was stopped because of the cease and desist order issued by the Commission. A 6-inch pipe line approximately 1,200 feet long had previously been installed northerly along Fassons Boulevard to Rex Road for the purpose of serving five residents on Rex Road with water for domestic purposes, as their well supply had either failed entirely or was about to fail. This main can be used to supply water to Tract No. 16366, as it is located along the tract's eastern boundary. No water has been delivered to any of these residents because of the Commission's order. This line crosses the Santa Fe Railroad tracks and is connected to newly acquired or to be acquired wells located south of the railroad tracks on the property of Mr. Berg.

Mr. Berg testified that he was ready and willing to extend water facilities into any subdivided land located within the territory he requested to be certificated. He particularly mentioned Tract No. 16320 which is located north of the existing service area, and of Tract No. 16366. No request by the owner has been made to serve this latter tract, and no pipes have been laid in it. Mr. Berg stated that at present he had three wells supplying the Rivera section, and that sufficient water was available to supply the territory he requested to be certificated in this section.

During March, 1950, Mr. Berg caused a corporation to be formed, named Rivera Water System, to which he proposes to transfer all his existing water properties. He is now president of the corporation, his wife, Lila Berg, is secretary-treasurer, and L. J. Eccleston, a former owner of the system, is vice president. In order to finance the expanded operations of the system, Mr. Berg entered into an agreement with a group of five persons to purchase the corporation stock. Some of these persons own stock in the Whittier Water Company, although the largest amounts are to be advanced by those not interested in that corporation. These parties have offered to advance \$85,000 to the new company and take stock in exchange. The sum of \$70,000 has been advanced to Mr. Berg to retire existing indebtedness, which includes cost of acquisition of new wells, pumping plants, new pipe lines, and other construction, and payment of Berg's indebtedness to L. J. Eccleston, from whom Berg acquired the system. The remaining \$15,000



being advanced to the company will be used as working capital. All of the stock in the company will be exchanged for the funds advanced.

Mr. Berg testified that he has given a note to run for less than a year for this sum of \$70,000. This note will be exchanged for a like face amount of the new company stock when and if the Commission approves the acquisition of the utility by the corporation. Mr. Berg and other witnesses for the new organization stated that the new company would not be merged with Whittier Water Company, but that it would be operated as an independent corporation.

Officials of San Gabriel Valley Water Company testified that they had no knowledge of the Rivera Water System serving any consumers north of the Santa Fe tracks, and under the circumstances agreed that the area actually being supplied by Rivera Water System should be excluded from the San Gabriel territory granted by the Commission. The territory referred to is specifically delineated on the map attached to the order herein made. However, San Gabriel objects to any further expansion by the Rivera Water System into San Gabriel's certificated territory.

Witnesses for San Gabriel Valley Water Company testified that the owners of Tract No. 16366 had requested their company to notify the Real Estate Commission that it would serve the tract and to make a bid for installing pipe lines in the subdivision. The estimated cost of the system had been prepared and totaled \$19,268, and this information, together with form of contract covering the installation, was mailed to the tract owners on May 17, 1950. However, it developed that a contract was entered into between the

subdivider and Rivera Water System providing for piping the tract at an estimated cost of \$20,849, or some \$1,580 in excess of the San Gabriel bid.

A portion of Tract 16320 has already been subdivided as Tract No. 15627 and is now being served by San Gabriel Company. Maps filed as exhibits show that existing San Gabriel Valley Water Company pipe lines were installed in Tract 15702 which is within approximately 800 feet of Rex Road, the north boundary line of Tract No. 16366. A contract has been entered into for piping Tract No. 16564 which is opposite the north portion of Tract No. 16366, and construction is being withheld pending completion of installation of sewer lines in the tract. When Tract No. 16564 is piped, the San Gabriel Company will be able to serve five residents on Rex Road badly in need of water because their wells have failed. Witnesses for San Gabriel testified that it was ready and willing to serve the territory allocated to it by the Commission's decision in the certificated matter, and that it has an adequate water supply and distribution mains of sufficient capacity to provide the service. Witness for the property owners on Rex Road stated they desired service from any source available. They had applied to the San Gabriel Company about a year ago and before the certificate was issued, but were informed that its pipe lines were then too distant to extend the service economically. As the Rivera Company mains are now located in front of their premises, they feel that quicker service can be supplied by that company.

The record is clear that there is a great deal of activity in the Rivera section in developing new subdivisions which are largely an extension of the development of the territory south of the town of Pico. This expansion in building is the result of the continued demand for new housing and of the accessibility of this area to Los Angeles through existing and projected highways.

The Commission, in dealing with applications by water companies to serve as public utilities, seeks as far as practicable to keep each utility operating in a defined territory that permits reasonable growth and expansion of service. Where authority is sought within overlapping territory, the Commission weighs various factors such as public interest, location of present service areas and lines, areas into which the respective companies may logically be expected to expand, the ability of applicants to serve, the matter of rates, and the desirability of keeping the respective systems as integrated as possible.

In view of the assertion by Mr. Berg that he was not advised of the application of San Gabriel Valley Water Company, No. 30617, the Commission has reopened that proceeding to ascertain whether Decision No. 43857 should be modified so as to determine within the overlapping territory sought by these two water utilities which should receive authority to serve the consumers therein. For this purpose the rights of both applicants will be considered as if no certificate had been granted to San Gabriel Valley Water Company in this area.

By the same reasoning the rights of that company will not be considered prejudiced in favor of Mr. Berg by the fact that Mr. Berg, who by that time was aware of the certificate granted the San Gabriel Company, sought, under color of the provisions of Section 50 (a) of the Public Utilities Act, to invade the territory awarded to it. By no reasonable construction of said Section 50 (a) may it be said that the Legislature intended to ~~imply~~ nullify the authority given the Commission in this very section to determine the territory to be served by utilities by also authorizing a competing utility to enter the certificated area of another company and race for the right to serve new customers therein. While the proceeding has been ordered reopened, the certificate granted the San Gabriel Company has remained effective. Therefore, Mr. Berg, in laying new service pipes and mains into that certificated area, has acted without right and at his peril.

It is true that Mr. Berg, before the certificate of convenience and necessity was granted to the San Gabriel Company, had for a long time maintained a water service to some customers north of the Santa Fe tracks. However, these services are inadequate for the purpose, and any extensions could only be made by laying new and adequate pipes, replacing the old, or perhaps by merely bypassing them. The pipes which crossed the tracks were so inadequate that it would be unfeasible to make any extensions from them. From an engineering standpoint those existing lines formed no basis for a physical extension. This is demonstrated by the fact that Mr. Berg, as well as his agent,

Garnier Construction Company, in seeking to extend service into the area north of the tracks have laid, and proposed to lay new and much larger and more adequate facilities. Mr. Berg, acting through the agency of Mr. Garnier's firm of Garnier Construction Company, must be charged with full knowledge of the certificated rights of San Gabriel Valley Water Company in this territory. Mr. Berg's practical transfer of control of his water system to Mr. Garnier, who is closely connected with Whittier Water Company, cannot be disregarded by the Commission. The fact that a contract for this construction was negotiated with the subdividers of Tract No. 16366, who were financially connected with Mr. Garnier and Whittier Water Company, can amount to no justification to Mr. Berg. Laying pipes in this area, known to be certificated to another utility, was not an extension contemplated by Section 50(a) of the Public Utilities Act.

The Interim Order in the Commission's Decision No. 44435 in Case No. 5211 will, therefore, be made permanent except that the temporary service now being furnished to the contractor of the subdividers in Tract No. 16366 may be continued until San Gabriel Company can install facilities to provide the service. If reasonable terms cannot be made for acquiring the facilities installed by Rivera Water System, said facilities shall be removed.

Application No. 31160, as amended, alleges that the presently certificated area of Rivera Water System lies between the tracks of the Santa Fe and the Pacific Electric Railway Companies, and between the Rio Hondo and San Gabriel Rivers. The area certificated was originally defined as the town of Rivera. There was some evidence that the townsite may have extended for a short distance north of said tracks of the Santa Fe Company.

The order now made in these proceedings will determine only the extent to which Rivera Water System may now lawfully supply water within areas which have heretofore been included in the certificate granted to San Gabriel Valley Water Company. The San Gabriel Valley Water Company has agreed that the Rivera Water System has actually been serving that area lying north of the Santa Fe tracks along Topeka Street and Cravell Street which is delineated upon the map attached to the order made herein as Appendix A, and San Gabriel Valley Water Company is willing that the certificate granted it in Decision No. 43857 now be amended by excluding therefrom that particular area.

Application No. 31160 of Rivera Water System, as amended, will be denied as to all areas north of the Santa Fe tracks between the San Gabriel River and the Rio Hondo Channel, with the exception that Rivera Water System may continue to supply water within that area delineated on the map attached to the order as Appendix A. Said Application No. 31160, as it applies to other territory, will be disposed of by subsequent order of the Commission upon the completion of hearings on said application and related matters.

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, hereby declares and orders as follows:

I

IT IS HEREBY ORDERED AND DECLARED

- 1.. That the Commission's Decision No. 43857, issued February 21, 1950, granting San Gabriel Valley Water Company a certificate of public convenience and necessity,

shall be modified to exclude from the boundaries so certificated the area being served by Samuel I. Berg, doing business as Rivera Water System, said area being delineated in Appendix A of this order, which appendix is hereby made a part of this order by reference.

2. That in so far as Application No. 31160 applies to the territory covered by the certificate heretofore granted San Gabriel Valley Water Company by Decision No. 43857, as said decision is amended by ordering paragraph 1 above, said Application No. 31160 be and it hereby is denied.

## II

It is ordered that the restraining order contained in Decision No. 44435, issued June 23, 1950, as amended by Decision No. 44436, issued June 26, 1950, ordering Samuel I. Berg and Whittier Water Company, a corporation, and each of them, directly or through agents, affiliates, or employees, immediately to cease and desist from extending water service into Tract No. 16366 and Tract No. 16320, be, and it hereby is made permanent, provided, however, that Samuel I. Berg may continue serving water in said Tract No. 16366 on a temporary basis to the contractor constructing houses for the subdivider of said tract until such time as San Gabriel Valley Water Company can either acquire said facilities now installed or install its own facilities to serve said tract.

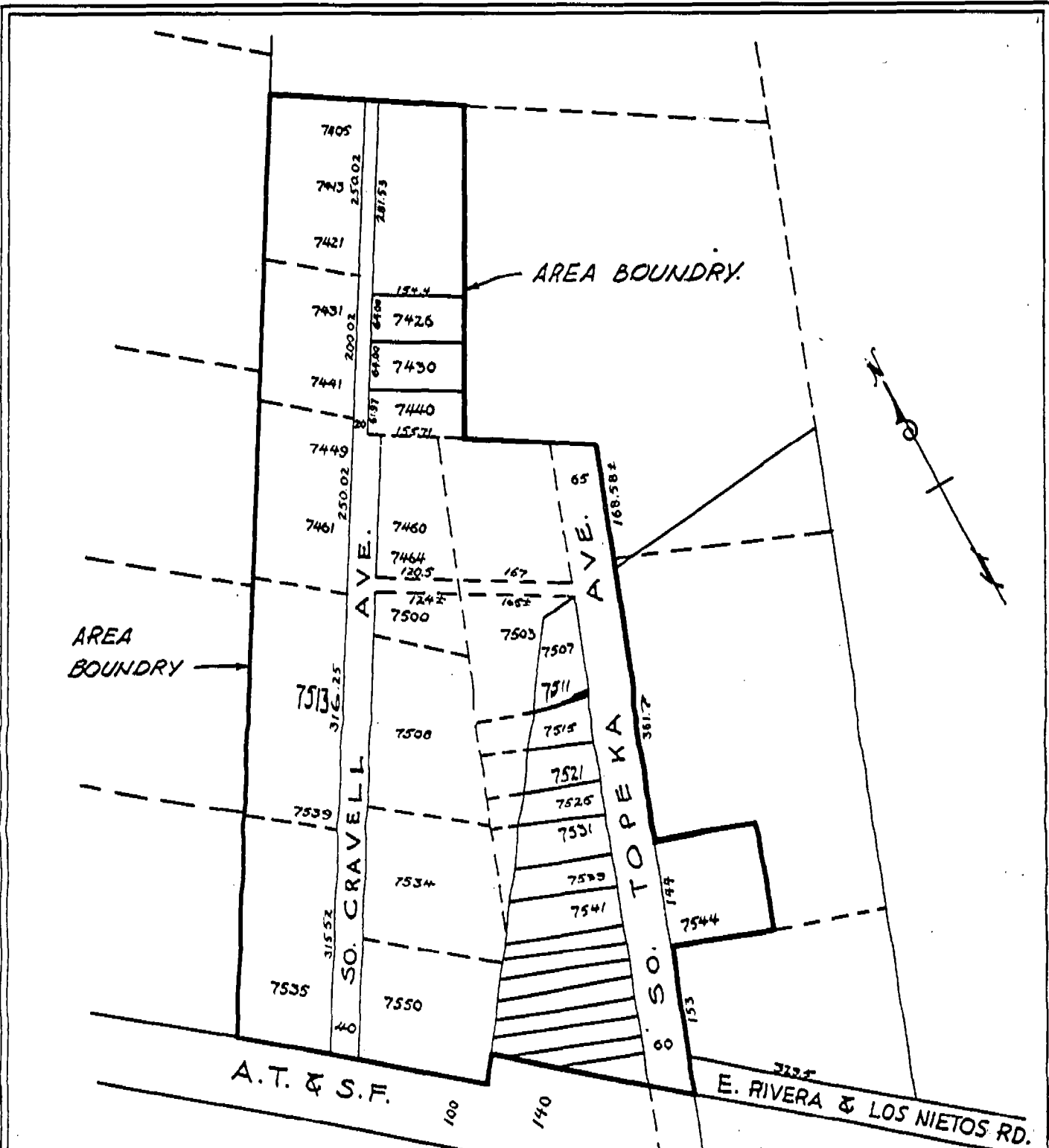
The Secretary is directed to cause certified copies of this order to be served upon the parties to these proceedings.

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

Dated at San Francisco, California, this 22nd day of August, 1950.

R. Z. Johnson  
Justus J. Curran  
Donald R. ...  
Harold P. ...  
Samuel ...  
Commissioners.





**MAP**  
 SHOWING  
 AREA EXCLUDED FROM TERRITORY  
 DEDICATED TO SAN GABRIEL VALLEY W. CO,  
 BY DEC. 43857 - APPLICATION DATED FEB. 21, 1950.

