

**ORIGINAL**Decision No. 45105

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.  
 )

In the Matter of the Application of  
 WALTER GREENING, doing business as  
 NORWALK WATER COMPANY, for a certificate  
 of public convenience and necessity to  
 extend water service into additional  
 territory at Norwalk, California.

) Application No. 30966  
 ) As amended.  
 )

In the Matter of the Application of  
 LEIBACHER WATER COMPANY (ERNEST LEIBACHER)  
 for a certificate of public convenience  
 and necessity.

) Application No. 31320  
 ) As amended.  
 )

WALTER GREENING, doing business as  
 NORWALK WATER COMPANY,  
 Plaintiff

vs.

SOUTHLAND WATER COMPANY,  
 a corporation,  
 Defendant

) Case No. 5229  
 )  
 )

ERNEST LEIBACHER, doing business as  
 LEIBACHER WATER COMPANY,

Complainant

vs.

SOUTHLAND WATER COMPANY, a corporation,  
 Defendant

) Case No. 5235  
 )  
 )

In the Matter of the Application of  
 SOUTHLAND WATER COMPANY, a California  
 corporation, for a certificate of public  
 convenience and necessity to authorize  
 the operation of a water system as a  
 public utility, and for authority to  
 issue and dispose of its securities.

) Application No. 31531  
 ) As amended.  
 )

Gordon & Knapp, by Hugh Gordon and Wyman C. Knapp, for Samuel I. Berg, doing business as Rivera Water System, applicant, and protestant in Applications Nos. 30966 and 31531; Faries and McDowell, by McIntyre Faries, R. H. Nicholson, and Edgar Skelton, for San Gabriel Valley Water Company, as protestant in Application No. 31160; Gordon Greening and Everett Clark, for Walter Greening, doing business as Norwalk Water Company, applicant, and complainant and protestant in Applications Nos. 31160 and 31531; M. Lewis Lehman for Excelsior Water Company, protestant as to Applications Nos. 31160 and 30966; Gibson, Dunn & Crutcher, by George H. Whitney, for Ernst Leibacher, doing business as Leibacher Water Company, complainant and protestant as to Application No. 31531; Masco Fujishige, in propria persona, and for other property owners; protestants as to Application No. 30966; Cameron & Honberger, by Herbert Cameron, for Southland Water Company, a corporation, applicant and defendant and protestant as to Applications Nos. 31160, 30966, and 31320; Gail B. Selig for Park Water Company, protestant.

#### O P I N I O N

Applicant Berg seeks authority to serve as a public utility water corporation in the San Gabriel Valley in an area which appears to be four separate or different territories. The first lies north of the Santa Fe railroad tracks, and between the Rio Hondo and San Gabriel Rivers. The right to extend additional service into the first, or northerly, territory was denied by Decision No. 44706, dated August 22, 1950, and, consequently, will not be discussed further herein. The second territory, within which this applicant seeks certificated rights, lies between the Santa Fe tracks and those of the Pacific Electric Railway Company, and is generally bounded on the west by Paramount Boulevard, and on the east by the San Gabriel River. This territory is on the east and west of his certificated area in the town of Rivera, and there is no protest to granting him rights here. The next, or third, territory, in

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which applicant Berg seeks a certificate of public convenience and necessity, lies east of the San Gabriel River and south of the Pacific Electric Railway tracks, and is bounded on the south by Little Lake Avenue, and generally on the east by the Southern Pacific tracks and Norwalk Boulevard and Garfield Avenue. Likewise, there was no protest to granting him rights in this third area.

The disputed, or fourth, area, as to which certificated rights are sought by Mr. Berg, lies south of Little Lake Avenue and north of Firestone Boulevard and Crewe Street extended, and is bounded on the east by Pioneer Blvd. Applicant Greening requests a certificate of public convenience and necessity with regard to a portion of that territory sought by Mr. Berg, lying southeast of the Southern Pacific tracks, and south of Kenny Street extended, as well as additional territory between Firestone Boulevard and the tracks of the Santa Ana branch of the Southern Pacific Company. The rest of the new territory which applicant Greening seeks, on behalf of his Norwalk Water Company, lies outside the so-called fourth territory and between his presently certificated area and that of the Excelsior Water Company, and the territory lying to the east as far as the grounds of the Norwalk State Hospital. This latter territory is bounded on the south by Imperial Highway and on the north by Beaty Street extended. The application of Mr. Greening was opposed by Southland Water Company and by the Excelsior Water Company, as well as by applicant Berg and certain landowners hereafter discussed.

The portion of applicant Berg's so-called disputed territory lying west of the Santa Ana Freeway route, Orr and Day Road and the Southern Pacific railway tracks is also sought to be served by applicant Leibacher. This applicant at present holds a certificate granted by Decision No. 41625, dated May 25, 1948, on Application No. 29220, authorizing him to serve a 6 $\frac{1}{2}$ -acre parcel of land east of Hoxie Avenue and south of Kenny Road. The Leibacher application was opposed by applicant Southland Water Company.

Applicant Southland Water Company seeks a certificate of public convenience and necessity authorizing it to serve as a public utility water corporation within tracts numbered 16161, 16767, 16362, 16645, 16361, 16360, and 16230. These tracts are located within the area sought to be certificated by applicant Leibacher. Said applicant, in addition, requests permission to issue for cash, to nine named individuals, thirty-two shares of stock, of a par value of \$100 each, without any selling expense to the corporation. The application of Southland Water Company for a certificate of public convenience and necessity was opposed by applicants Berg, Leibacher, and Greening. The protest of Firestone Water Company was withdrawn when it moved to dismiss its own application to serve in this area. The latter company's Application No. 31702 was ordered dismissed by Decision No. 44930, dated October 24, 1950.

By its complaint in Case No. 5229, applicant Greening prays a temporary restraining order and other relief to prevent said Southland Water Company from laying pipes in Tract No. 16161,

which was alleged to be owned by Charm Cottages, Inc. The Commission, by the order in Decision No. 44768, dated September 11, 1950, denied the request for a temporary restraining order, and, further, ordered that said case, as well as Application No. 30966 and Application No. 31531, be consolidated for hearing.

By his complaint in Case No. 5235, applicant Leibacher prays a temporary restraining order to prevent said Southland Water Company from constructing or laying water mains, pipes, services, and other facilities for the service of water in Tract No. 16230, or elsewhere in the proposed service area of complainant Leibacher, as requested in said Application No. 31320. By unnumbered order of the Commission, dated October 9, 1950, the request for said last-mentioned temporary restraining order was denied, and the matter was, like Case No. 5229, set for hearing on October 11, 1950, and Southland Water Company was required to file its answer. Said answer was thereafter duly filed on October 17, 1950.

Public hearings were held in Los Angeles on the application of Mr. Berg before Examiner Rowe, on July 5, 6, and 7, 1950, and on the above-numbered applications and cases on October 11, 12, 13, 17, and 19, 1950, on which latter date all of the above matters were duly submitted. By stipulation, the evidence in each of the above matters may be considered by the Commission in the determination of all said proceedings.

According to the evidence, applicant Berg is in a position to serve water adequately to the public in the areas above referred to as the second, third, and fourth territories.

The public witnesses who appeared expressed without exception the desire that, as to the second and third territories, they be served by his water system. The so-called second territory is adjacent to Berg's original service area, and public convenience and necessity require that it be served by him. While no one appeared and testified as to Tract 16806, lying east of his service area and between that and the Ashmun Mutual Water Company area, its accessibility to both areas makes it important as a connecting link, and in the absence of adverse testimony this tract should be included in his service area.

A part of the third territory is comprised of the Ashmun service area. The system of the Ashmun Mutual Water Company has been acquired by the Rivera Water System, and public convenience and necessity require that its water customers receive uninterrupted service from the present owner. The remainder of the third territory, according to the undisputed testimony of the public witnesses, also should be included in the Rivera Water System's water service area. This applicant will, therefore, be granted a certificate of public convenience and necessity to operate as a water corporation in the so-called second and third territories above described.

As to the fourth territory described, and as heretofore referred to above, it will be discussed in connection with the application of Norwalk Water Company, the application of Leibacher Water Company, and that of Southland Water Company, as well as with the complaint matters above entitled.

Walter Greening, doing business as Norwalk Water Company, requests a certificate of public convenience and necessity to operate in a territory adjacent to his presently certificated area, as heretofore herein described, and also the territory between Southern Pacific Company's Santa Ana Branch line tracks and Firestone Boulevard, and between his certificated area and Hoxie Avenue. At the hearing, Rivera Water System withdrew its protest to Mr. Greening's application, and amended the Rivera Company's application so as to exclude from its request all land lying south and east of the Southern Pacific Company's Whittier Branch right of way which runs northeasterly.

This stipulation left only Southland Water Company, Excelsior Water Company, and certain landowners represented by Masco Fujishige, as protestants of the Greening application.

/ The protest of Excelsior Water Company must be considered in the light of the fact that its certificate of public convenience and necessity was granted upon condition that it should not make extensions into contiguous territory without first having obtained authority therefor from this Commission<sup>(1)</sup>. No such authority has been granted or requested.

The protest of Southland Water Company will be sustained as to the tracts of land lying in the area southeast of said Southern Pacific Company tracks, which are hereinafter included in the certificated area granted to said protestant. According to the testimony of public witnesses, the rest of the area sought

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(1) Decision No. 43944, dated March 14, 1950, on Application No. 30570.

to be certificated by applicant Greening is required by public convenience and necessity, except as indicated on Exhibit "A" attached hereto. Norwalk Water Company is now serving both Mrs. Jeannette Ermigarat and John Ermigarat with water for household and dairy purposes. Each resides east of Norwalk Boulevard, and each stated that he desired such service to continue but was unwilling to have his land certificated at this time. It appears that these water users are entitled to the continuance of such service by the Norwalk Water Company. The request of these landowners and of the other landowners, such as Mr. Fujishige and those he represented, that their land be not now included in the certificated area of the Norwalk Water Company will be honored, and their land excluded from such applicant's certificated area.

Applicant Leibacher requests a certificate of public convenience and necessity authorizing him to serve water as a water corporation in the so-called fourth territory lying west of the Southern Pacific Company's Whittier Branch right of way running northeasterly from Firestone Boulevard and west of Orr and Day Road, and of the Santa Ana Freeway route. This applicant, doing business as Leibacher Water Company, has been operating a small water system in a parcel of land containing  $6\frac{1}{2}$  acres<sup>(2)</sup>. Half

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(2) Decision No. 41625, dated May 25, 1948, on Application No. 29220.



of this parcel has been subdivided as Tract No. 13654 into eleven residential lots. At present applicant is serving thirty-two customers.

This applicant testified that he is now serving all residents in the area south of Tract No. 13654, as far as Firestone Boulevard. He is also serving a small parcel located on the west side of Hoxie Avenue across from said Tract No. 13654. In addition, this applicant is serving water to land east of said tract south of Kenney Street and west of Studebaker Road, as well as a parcel north of Kenney Street across from the land last described. No public witnesses appeared on behalf of this application. The Leibacher system does not appear to be constructed in a manner to justify substantial expansion. Public convenience and necessity require that Leibacher Water Company continue to serve within all the territory above described as now served by it. There is no basis in the record for granting to this applicant the large area sought by him to be served. Consequently, this application will be denied except as to the area in which he now actually serves.

Applicant Southland Water Company has been formed, and will be owned, by men who are engaged in extensive subdivision of land east of the San Gabriel River, south of Little Lake Road, west of Pioneer Boulevard, and north of Firestone Boulevard. Its application was amended at the hearing to specifically request authority to serve Tracts Nos. 16161, 16767, 16362, 16360, and 16361, owned by affiliated companies, and Tracts Nos. 16230 and 16645, which are owned by subdividers who have entered into

contracts with this applicant to install water facilities, and have requested it to serve water therein. Public convenience and necessity require this applicant to serve said tracts, and a certificate authorizing such service will be granted to it.

Southland Water Company, from evidence of record, will be properly managed and can be adequately financed to serve the public efficiently in all the subdivisions above enumerated. Its request for authority to issue \$3,200 par value of capital stock at this time will be granted. This amount, advanced by the persons named as receiving stock, if the issue is authorized, has been spent for organization of the corporation and some other proper preliminary expenses, such as engineering and construction.

South of Little Lake Avenue the Commission finds, from the evidence of record, that public convenience and necessity require that applicant Berg be authorized to supply water as a public utility to tracts numbered 16796, 15563, 13788, 16706, 16589, and 16785. Said tracts will, therefore, be included in the area authorized to be served by this applicant.

Applicants Norwalk Water Company, Leibacher Water Company, and Rivera Water System, expect to charge the rates now

established in their published tariffs in the territory hereinafter included in their respective service areas. The rates proposed by applicant Southland Water Company are similar to the rates in effect in the general territory and will be established in the following order for the service to be rendered by this applicant.

Each of the certificates of public convenience and necessity hereinafter granted is subject to the following provision 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."

As the two complaint matters above entitled sought orders restraining Southland Water Company from the construction of any facilities pending the hearing and determination of their respective certificate applications, and such service rights are here established, the complaint matters will be dismissed.

#### O R D E R

Public hearing having been held in the above-entitled matters, and said matters being submitted and the Commission being fully advised,

IT IS HEREBY ORDERED:

#### I

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Samuel I. Berg, doing business as Rivera Water System, to operate as a public utility water system for the distribution and sale of water within the territories hereinbefore described as requiring service by said applicant, and as delineated on a map marked Exhibit "A" attached hereto, provided, however, that said certificate of public convenience and necessity herein granted to Rivera Water System is

subject to the condition that said applicant shall not make extensions of service into other territory contiguous to any of the certificated area described, without authority therefor first having been obtained from this Commission.

(2) That, except as authorized in this order, the application of Samuel I. Berg, doing business as Rivera Water System, Application No. 31160, as amended, be, and it hereby is, denied.

(3) That a certificate of public convenience and necessity be, and it hereby is, granted to Walter Greening, doing business as Norwalk Water Company, to operate as a public utility water system for the distribution and sale of water within the territory hereinbefore described as requiring service by said applicant, and delineated on a map marked Exhibit "A" attached hereto, provided, however, that said certificate of public convenience and necessity herein granted to Norwalk Water Company is subject to the condition that said applicant shall not make extensions of service into other territory contiguous to any of the certificated area described, except that now served without authority therefor first having been obtained from this Commission.

(4) That, except as authorized in this order, the application of Walter Greening, doing business as Norwalk Water Company, Application No. 30966, as amended, be, and it hereby is denied.

(5) That a certificate of public convenience and necessity be, and it hereby is, granted to Ernst Leibacher, doing business as Leibacher Water Company, to operate as a public utility water system for the distribution and sale of water within the territory hereinbefore described as requiring service by said

applicant, and delineated on a map marked Exhibit "A" attached hereto, provided, however, that said certificate of public convenience and necessity herein granted to Leibacher Water Company is subject to the condition that said applicant shall not make extensions of service into other territory contiguous to any of the certificated area described, without authority therefor first having been obtained from this Commission.

(6) That, except as authorized in this order, the application of Ernst Leibacher, doing business as Leibacher Water Company, Application No. 31320, as amended, be, and it hereby is, denied.

(7) That a certificate of public convenience and necessity be, and it hereby is, granted to Southland Water Company, a California corporation, to operate as a public utility water system for the distribution and sale of water within the territory hereinbefore described as requiring service by said applicant, and delineated on a map marked Exhibit "A" attached hereto, provided, however, that said certificate of public convenience and necessity herein granted to Southland Water Company is subject to the condition that said applicant shall not make extensions of service into other territory contiguous to any of the certificated area described, without authority therefor first having been obtained from this Commission.

(8) That applicants Samuel I. Berg, Walter Greening, and Ernst Leibacher, are each authorized and directed to place in effect throughout the territory described in the certificate granted to the respective applicant above named, his present rates, rules, and regulations effective in his presently certificated area.

(9) That Southland Water Company be, and it is authorized and directed to file the flat and meter rate schedules set forth in Exhibit B attached to this order, to be effective on or before the date service is rendered to the public, together with rules and regulations and tariff service area maps acceptable to this Commission and in accordance with the requirements of General Order No. 96.

(10) That each of the above-named four applicants, within forty (40) days after the effective date of this order, shall file with this Commission four (4) copies of a suitable map drawn to an indicated scale of not less than six hundred (600) feet to the inch, and delineating thereon by distinctive markings the exact boundaries of his or its respective 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.

(11) That, after the effective date hereof, and on or before sixty (60) days after said effective date, applicant Southland Water Company may issue and sell to the persons named in its amended application its capital stock in the respective face amounts therein set forth opposite their respective names and for the sums so set opposite their said names, for cash and without selling expense, and use the proceeds to finance, in part, the cost of its water system, and to maintain and improve its properties and provide working capital, it being the opinion of the Commission that the money procured, or to be procured, through the issuance of said shares of stock, is, and has been, reasonably required by applicant for organization expenses, engineering expense, and certain proper construction, and that

such purposes are not, in whole or in part, reasonably chargeable to operating expenses or income.

(12) That said Southland Water Company shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, so far as applicable, is made a part of this order.

IT IS FURTHER ORDERED:

II

(1) That the complaint of Walter Greening, doing business as Norwalk Water Company, in Case No. 5229, be, and the same hereby is, dismissed.

(2) That the complaint of Ernst Leibacher, doing business as Leibacher Water Company, in Case No. 5235, be, and the same hereby is, dismissed.

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

Dated at San Francisco, California, this 5<sup>th</sup> day of December, 1950.

R. E. Indurana  
Justice J. Casper  
Dean A. Lowell  
Harold P. Hicks  
Kenneth H. Potter  
COMMISSIONERS

# SERVICE AREAS

RIVERA WATER SYSTEM    SOUTHLAND WATER CO    LEIBACHER WATER CO    NORWALK WATER CO  
 TERRITORY SERVED BETWEEN RIVERA AND NORWALK  
 LOS ANGELES COUNTY  
 NOVEMBER 30, 1950

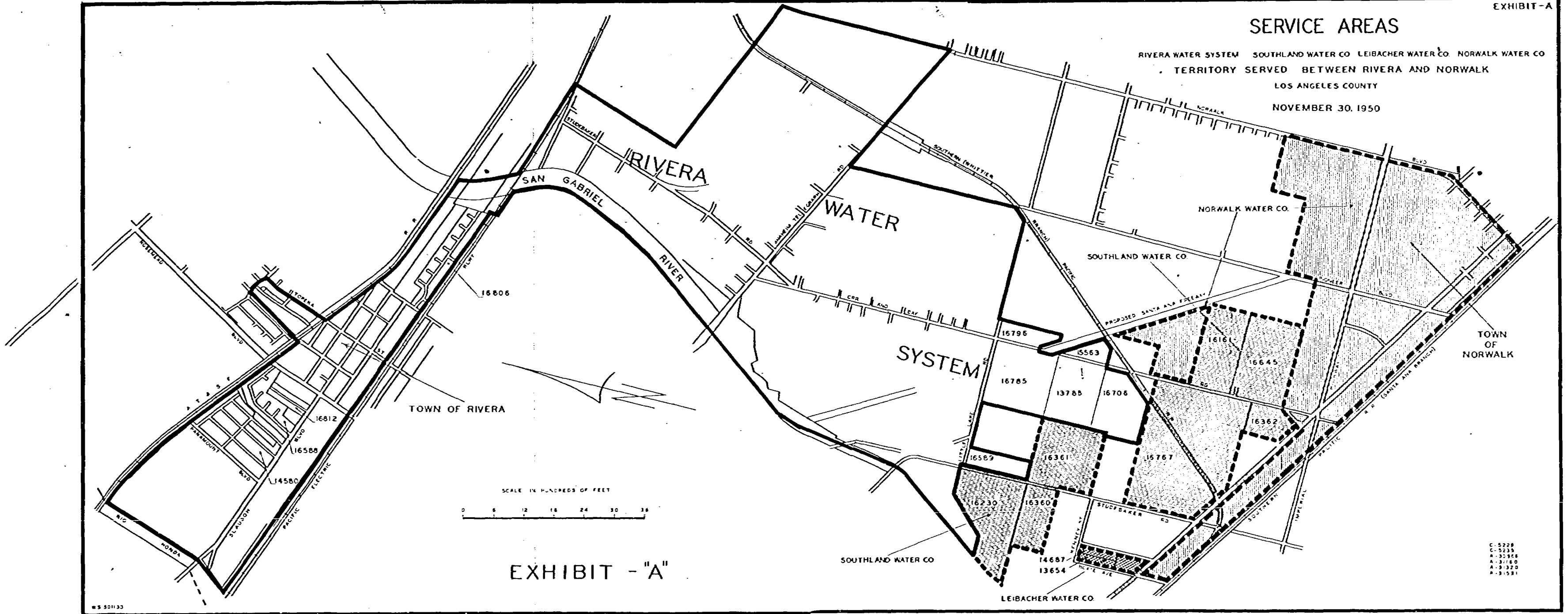


EXHIBIT - "A"

C-5228  
 C-5235  
 A-31180  
 A-31320  
 A-31581



Schedule No. 1

FLAT RATES

APPLICABILITY

Applicable to all service rendered on a flat rate basis.

TERRITORY

Within the territory set out in the Tariff Service Area Map attached hereto.

RATES

Per Month

One single residence on one lot . . . . .	\$2.25
Each additional residence on same lot . . . . .	1.50
Restaurants . . . . .	4.50
Service stations. . . . .	4.50
Stores, markets and other business, each. . . . .	3.60

SPECIAL CONDITIONS

1. All water service not covered by the above flat rates shall be supplied on a measured basis.

2. Meters may be installed at option of utility or customer for above classifications, in which event, service will thereafter be rendered only on the basis of Schedule No. 2 - Metered Service. When customer desires to change from flat to metered service, request must be made in writing.

*New*

Schedule No. 2

METERED SERVICE

APPLICABILITY

Applicable to all service rendered on a measured basis.

TERRITORY

Within the territory set out in the Tariff Service Area Map attached hereto.

RATES

Minimum Monthly Charges:	<u>Per Meter</u> <u>Per Month</u>
For 5/8 x 3/4-inch meter . . . . .	\$1.50
For 3/4-inch meter . . . . .	1.80
For 1-inch meter . . . . .	2.10
For 1 1/2-inch meter . . . . .	3.00
For 2-inch meter . . . . .	3.90
For 3-inch meter . . . . .	6.00
For 4-inch meter . . . . .	9.00

The Minimum Monthly Charges will entitle the consumer to that quantity of water which that monthly minimum charge will purchase at the following Monthly Quantity Charges:

Monthly Quantity Charges:

First 1,000 cubic feet or less . . . . .	\$1.50
Next 1,000 cubic feet, per 100 cubic feet . . . . .	.15
Next 1,000 cubic feet, per 100 cubic feet . . . . .	.14
Over 3,000 cubic feet, per 100 cubic feet . . . . .	.12

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