

Decision No. 45258

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHLAND WATER COMPANY, a California)
 corporation, for a Certificate of)
 Public Convenience and Necessity, as)
 an extension of service area.)

Application No. 32295

Herbert Cameron, attorney, for applicant;
Gordon & Knapp by Wyman C. Knapp, for
 Rivera Water System, protestant as to
 Tract No. 16589 and the so-called Shoemaker
 Property; William Stava for the Commission
 staff.

O P I N I O N

Southland Water Company, a corporation, owner and operator of a public utility water system serving certain territory in the vicinity of Norwalk, Los Angeles County, California, by the above-entitled application, filed April 11, 1951, seeks a certificate of public convenience and necessity to extend its service area. The areas into which said extensions are proposed are further delineated on the map attached to the application as Exhibit A.

Public hearings in this matter were held before Examiner Warner on May 16 and 17, 1951 at Los Angeles, California.

Southland Water Company, a California corporation, was incorporated January 27, 1950, and was granted a certificate of public convenience and necessity by the Commission's Decision No. 45105, dated December 5, 1950, in Application No. 31531 As Amended, Application No. 31160 As Amended, Application No. 30966 As Amended, Application No. 31320 As Amended, Case No. 5229 and Case No. 5235. Samuel I. Berg, doing business as Rivera Water System, Walter Greening, doing business as Norwalk Water Company,

Ernest Leibacher, doing business as the Leibacher Water Company, and applicant were granted certificates of public convenience and necessity by said decision covering the territories delineated on the map attached to the order in said decision as Exhibit A thereof. Each of said applicants, including Southland Water Company and Rivera Water System, was specifically ordered not to make extensions of service into other territory contiguous to any of the certificated area described therein, except that territory then served, without first obtaining authority therefor from this Commission. By said decision applicant was authorized to serve Tracts Nos. 16362, 16645, 16161, 16767, 16361, 16360, and 16230.

In its application herein, applicant requests authority to serve a proposed school site lying easterly of Studebaker Road, at Kenny Street, between Tracts Nos. 16767 and 16361. Applicant also requests authority to serve Tract No. 16589, together with an unsubdivided parcel of land adjacent thereto comprising 20 acres and known as the so-called Shoemaker property. This tract and property lie at the southeast corner of Little Lake Road (Florence Avenue) and Studebaker Road and are adjoined on the west by Tract No. 16230, on the southwest by Tract No. 16360 and on the south by Tract No. 16361. It should be noted that Rivera Water System was certificated, by Decision No. 45105, to serve Tract No. 16589, comprising 100 lots with 99 homes being constructed thereon. In its application herein, applicant asks the Commission to reconsider such certification and instead to grant applicant a certificate of public convenience and necessity to serve said tract.

As alleged at the hearing by several witnesses for applicant, applicant was requested, by the subdivider, Fergus Homes, Inc., a California corporation, to furnish water service in Tract No. 16589, and on March 20, 1951, applicant entered into a contract, filed at

the hearing as Exhibit No. 2, to furnish water service to said tract, such contract to be contingent upon the securing by applicant of authority from this Commission for applicant to so serve. By said contract, applicant also agreed to pay Fergus Homes, Inc., at least \$9,300, and not to exceed \$11,250, for a water system to be constructed by Fergus Homes, Inc., in Tract No. 16589. The agreement expressly provided for its automatic termination and cancellation should Southland Water Company not be granted authority by this Commission to extend its service area into Tract No. 16589. The record shows that Fergus Homes, Inc., contracted for the construction of the water system with the contracting firm of Cannell and Losch but that no construction of facilities was effected for reasons which will be disclosed hereinafter.

The record shows that prior to the commencement of subdivision construction by Fergus Homes, Inc., and in October, 1950, preliminary water service and construction arrangements were verbally discussed between Fergus Homes, Inc., and C. A. Garnier, President, of Rivera Water System.

The record does not show why Fergus Homes, Inc., entered into a contract with applicant herein in preference to Rivera Water System. A witness for applicant testified that there had been a misapprehension on the part of the president of Fergus Homes, Inc., regarding the identity of the public utility water company agent authorized to contract with him for water service to his tract. Also, there is an intimation in the record that the estimated construction costs of the proposed water system as preliminarily presented to the subdivider by Rivera Water System were considered excessive by the subdivider, and that, subsequently, he was presented with a lower estimate by applicant. Charges were made in the record by a witness for applicant that many attempts

had been made by the subdivider to reach a representative of Rivera Water System by telephone, without success, and that the subdivider was in immediate need of securing water for construction purposes, and for that reason, he had turned to applicant for temporary water service, and had simultaneously contracted with applicant for permanent water service.

We conclude that the evidence relating to the tentative and quasi-contractual relation entered into between applicant and Fergus Homes, Inc., is irrelevant; that the subdivider should have been referred by applicant to Rivera Water System; and that no application for water service in a rival territory should have been accepted by applicant. The record shows that not until April 12, 1951, did the subdivider make a formal application to Rivera Water System for water service.

We further conclude that applicant's argument that, in effect, it was driven into a contract with the subdivider because Rivera was either not ready, unwilling or unable to furnish water service, is not valid. We find no dereliction of responsibility by Rivera Water System to carry out its obligation to furnish water service to the subdivider in any portion of its certificated area.

With further respect to Tract No. 16589, the record shows that the subdivider thereof entered into a contract, dated April 15, 1951 with the Rivera Water System to construct a water system therein at an estimated cost of \$10,200, and that the subdivider made a \$4,000 cash deposit in accordance therewith. The record further shows that construction of the water system was started on April 23, 1951 and that it was to have been completed on May 18, 1951 with the exception of the placing in operation of a well located on Lot 27 of the tract. This well, purchased

by Rivera Water System from the subdivider for \$2,580, is an old well and may be 30 to 45 years old. It has had the sand pumped out and cleaned. Rivera Water System has installed, temporarily, in said well a pump driven by a 5 horsepower motor capable of producing about 150 gallons per minute, and plans to install therein a pump driven by a 25 horsepower electric motor capable of producing between 400 and 600 gallons per minute. The record further shows that should this well prove to be inoperative, water will be obtained from another source of supply, and that an adequate source of water supply will be made available to occupants of the homes under construction in Tract No. 16589 on the date on which such homes are ready for occupancy. There is, therefore, nothing in the record to warrant the Commission's abdicating its Decision No. 45105 as requested by the application herein.

Southland Water Company furnishes water service to between 200 and 300 consumers in the tracts herein enumerated within its service area, and the record shows that, as of the date of the hearing, there were many homes under construction and that there were many more upon which construction has been completed and which are ready for occupancy. The potential consumer capacity of the tracts is more than 1,500 consumers.

Applicant's source of water supply consists of three drilled wells located at various places throughout the service area as shown on the map attached to the application as Exhibit A. Their total production capacity is in excess of 1,900 gallons per minute. This production capacity is considered to be adequate for the service area as now comprised and for the service area extension to the school site as requested. Automatically controlled pressure tanks are located at each of the wells.

Applicant's distribution system consists of 4-inch, 6-inch, and 8-inch mains with copper service connections.

Applicant proposes to charge its presently filed rates in the proposed extended area.

The record shows that the request to serve the proposed school site ^{changed} should be granted and the order will so provide.

With respect to applicant's request to extend its service area into the so-called Shoemaker properties, the record shows that these properties are now devoted to an orange grove with a newly constructed steel fence surrounding the properties and that there was no request for furnishing of water service to such properties by the owners thereof, and the order herein, therefore, will deny applicant's request for permission to so extend.

The Commission has considered the request for a certificate of public convenience and necessity and is of the opinion that it should be granted in part and denied in part 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 of such certificate of public convenience and necessity or right.

The action taken herein shall not be construed to be a finding of the value of the property herein described.

O R D E R

Southland Water Company, a corporation, having applied to the Commission for a certificate of public convenience and necessity to extend its service area, and for the Commission to reconsider its Decision No. 45105, dated December 5, 1950, in Applications Nos. 31160, 30966, 31320, 31531, each As Amended,

and Cases Nos. 5229 and 5235 with respect to Tract No. 16589, Los Angeles County, public hearings having been held, the matter having been submitted, and now being ready for decision,

IT IS HEREBY FOUND AS A FACT that public convenience and necessity will require the extension of the public utility water system now operated by Southland Water Company into and to include the school site as delineated on the map attached to the application herein and as further described in the opinion herein; and

IT IS HEREBY FURTHER FOUND AS A FACT that public convenience and necessity do not require the extension of the public utility water system now operated by Southland Water Company into Tract No. 16589 and, at this time, into the immediately adjoining territory to the east thereof, comprising 20 acres known as the so-called Shoemaker property; therefore,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is granted to Southland Water Company to extend its presently operated public utility water system into and to include the school site as hereinbefore described.

IT IS HEREBY FURTHER ORDERED as follows:

1. That applicant shall file within forty (40) days after the effective date of this order, four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, delineating by appropriate markings the various tracts of land and territory served, and the locations of the various properties of applicant.
2. That applicant shall file four copies of tariff service area map acceptable to this Commission and in accordance with the requirements of General Order No. 96.

IT IS HEREBY FURTHER ORDERED that the request of Southland Water Company for a certificate of public convenience and necessity to extend its presently operated public utility water system into and to include Tract No. 16589 be and it is denied, and that its

request to extend its service area into the immediately adjoining territory, to the east thereof, comprising 20 acres known as the so-called Sheemaker property be and it is denied without prejudice.

IT IS HEREBY FURTHER ORDERED that the request of Southland Water Company for the Commission to reconsider its Decision No. 45105, dated December 5, 1950 and thereby grant it a certificate to serve Tract No. 16589, is hereby denied.

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

Dated at San Francisco, California, this 29th day of May, 1951.

R. T. [Signature]
Justice J. Casper
Harold P. Kula
Wm. H. [Signature]
John E. [Signature]
 Commissioners.