

ORIGINAL

Decision No. 53239

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MALIBU VISTA IMPROVEMENT ASSOCIATION,)
a corporation,)

Complainant,)

vs.)

Case No. 5739

MALIBU WATER COMPANY, a corporation,)

Defendant.)

Scott E. Gibb and C. W. McQueen for
complainant.

Trippet, Newcomer, Yoakum & Thomas,
attorneys, by Frank B. Yoakum, Jr.
for defendant.

William B. Zeman interested party.

Charles W. Drake for the Commission
staff.

O P I N I O N

Malibu Vista Improvement Association, a corporation, by the above-entitled complaint filed March 9, 1956, versus Malibu Water Company, a corporation under the jurisdiction of this Commission, seeks an order of the Commission for defendant to provide water service to complainant through a 4-inch main which is under the jurisdiction of Captain Robert E. Blair, Commanding Officer, Battery A, 551st AntiAircraft Missile Battalion, Malibu, California. The complaint was amended at the hearing by a request that the order of the Commission be made requiring defendant to furnish water service to the 18 members of the association, individually, rather than to the corporation.

A public hearing on this matter was held before Commissioner Ray E. Untereiner and Examiner Stewart C. Warner on May 4, 1956, at Los Angeles.

Allegations of Complaint

Complainant alleged that it was composed of 18 member families, including 59 people, 17 being children; that an emergency exists for 15 member families with 14 children who have no water supply at the present time; that current needs for water are being alleviated by having water trucked into the area from Calabasas, approximately 24 miles from complainant; that a 4-inch water main now exists in the vicinity of complainant; that defendant has enough water to service complainant; that complainant has requested service and has been refused service as indicated by photostatic copies of letters attached to the complaint; that complainant is contiguous to defendant's service area; and that defendant's service area is generally located about 10 miles northwesterly of the City of Santa Monica.

Answer of Defendant

Defendant answered on April 11, 1956, and alleged that the 4-inch water main which complainant asserts exists in its vicinity is a water main through which defendant serves water to the army unit referred to in the complaint; that said water main is owned by the United States Government; that it is located entirely outside defendant's dedicated service area, and that defendant has no control over it. Defendant further alleged that water service is being rendered to the United States Government on a temporary and restricted basis, and, because of the fact that said army unit is a vital part of the National Defense Program; that the army unit is receiving about 8,000 gallons per day from defendant; that the army unit has requested more water than this, which defendant has declined to furnish; that water is delivered to the army unit within defendant's dedicated service area, and it is then carried outside of the service area by means of the 4-inch main owned by the United States Government.

Defendant denied that it has enough water to service complainant in the light of potential demands to be made upon it by consumers or potential consumers within its presently dedicated service area. Defendant alleged that it was exercising sound business judgment not to extend its water service any farther due to the rapidly increasing population and the use factor and consumption of water within its dedicated area.

Defendant alleged that complainant had not requested service as required by Rule 3 of defendant's Rules and Regulations.

Defendant denied that complainant's lands, or the lands of persons whom complainant represents or for whom it seeks water service, are contiguous to the area served by defendant.

As a second defense defendant alleged that the complaint fails to state a cause of action within the jurisdiction of the Commission in that it fails to allege that any members of the complainant association occupy homes within the dedicated service area of the defendant.

Defendant alleged that the Commission is without authority or jurisdiction to compel defendant to serve the area outside defendant's dedicated service area.

As a third defense defendant alleged that to require defendant to serve persons outside of its dedicated service area would be violative of defendant's rights under the Fourteenth Amendment to the United States Constitution and under Article 1, Section 14, of the California Constitution.

Defendant prayed and moved for dismissal of the complaint and sought recovery of its costs against complainant.

Evidence of Record

Exhibit No. 1 is a copy of a letter dated March 31, 1955, from complainant to defendant, proposing to contract with defendant for a supply of water to the Los Angeles Defense Area Site Los Angeles-76-L and to complainant's members' properties located in the southeast quarter of Section 27, Range 17 West, Township 1 South. This Exhibit also contains defendant's reply dated April 5, 1955.

Exhibit No. 2 is a copy of complainant's letter to the Secretary of the Army dated May 27, 1955, together with the reply of the Office of the Chief of Engineers of the Department of the Army dated June 24, 1955. Exhibits Nos. 1 and 2 were introduced as background to the efforts of complainant to secure water service through an arrangement with defendant and the United States Government.

Exhibit No. 3 is a map of defendant's easterly portion of its service area showing the location of the United States Government pipe line from defendant's existing water storage tank, the so-called Howard Tank, to the army's NIKE site. This map shows the location of complainant's members' properties in blue dots located more or less along and in the vicinity of the 4-inch steel water line running from the Howard Tank through the United States Government pump station to the NIKE site.

The major portion of the area in which complainant's members' properties are located was subdivided as the Hume Tract located in the southeast quarter of Section 27 outside the boundaries of Rancho Topanga Malibu Sequit. The subdivider installed a complete water system including a well and a storage tank. Said water system was

completely destroyed by a fire which swept the area in 1942. Since that time the property owners have utilized water obtained from some wells in the vicinity. Said wells, with one exception, produce unpotable water in inadequate quantities and the water system distribution mains have rusted and deteriorated. One property owner is located outside the southeast quarter of Section 27 but is a member of complainant.

Exhibit No. 4 is a copy of a contract between defendant and the Department of Defense entered into on September 26, 1955. Said contract provides that defendant shall furnish approximately 18 gallons per minute of surplus water over an 8-hour period each 24 hours with a limit of 8,000 gallons per 24 hours, to be supplied at a single one-inch meter to be located at Howard Tank site. The contract is terminable on thirty days' written notice and provides for a pumping service charge of \$25 per month and an estimated water quantity service charge of \$1,150 per year. The Government takes delivery at defendant's meter located at the Howard Tank site within defendant's service area, and has installed a pumping station to boost the water through a 4-inch steel main, an elevation of approximately 800 feet, about 7,300 feet to the NIKE site. The record shows that the Government's pump has broken down on occasion and in fact was broken down on the day of the hearing, and that the army was hauling water in a truck from defendant's La Costa Tank located on Calle del Barco. The location of said tank is shown on Exhibit No. 3.

Complainant alleged that the United States Army Engineers had verbally agreed to cooperate with complainant in the use of the

Government's 4-inch main if satisfactory arrangements could be made with defendant for the furnishing of water service through such main.

Defendant alleged that it was under no obligation to furnish water service outside its dedicated service area and that it had refused to so serve because it was fearful of establishing a precedent which might "open the dyke" to many other similar requests.

Under cross-examination, defendant's president testified that defendant was furnishing water service outside its dedicated service area to 3 consumers in Winding Way Road and to a Mr. de Butts who tank trucks water to his home outside the service area. The witness testified that water service was furnished to Deerpath Mutual Water Company in 1955 on a day-to-day, 24-hour basis outside defendant's service area, but this service is not being rendered at the present time. Exhibit No. 5 is a copy of a contract dated August 31, 1955, between defendant and said Mutual setting forth the conditions of water service.

Defendant alleged that during 1953 it was installing meters at the rate of 1-1/2 meters per week; in 1954, 3 meters per week; in 1955, 4 meters per week; and in 1956, 6 meters per week. It estimated that in 1957 it would be installing meters at the rate of 7 meters per week and in 1958, 8 meters per week. As of December 31, 1955, defendant was furnishing water service to 1,265 metered consumers and was delivering an average of 632,500 gallons per day. As of the end of 1956, it estimated there would be 1,577 consumers receiving an average of 788,500 gallons per day. As of December 31, 1957, it estimated there would be 1,941 consumers, an increase of 364 over 1956, to whom an average of 970,500 gallons per day would be delivered. This number would increase to 2,357 by December 31, 1958, an increase of 416 over 1957, and deliveries would increase to

an average of 1,178,500 gallons per day. Thus, defendant estimated that in three years its number of consumers would increase by 1,092 consumers and average daily deliveries would almost double.

Defendant alleged that its peak load demands on hot summer weekends, such as the Labor Day weekend of 1955, were maximum and taxed all of defendant's pumping and storage facilities. However, defendant's president testified that it would secure and provide additional sources of water supply to meet its anticipated growth within the dedicated service area.

Complainant's witness testified that complainant would finance and install the necessary pipe lines to various members' properties if water service by defendant were made available.

Conclusion

The record indicates that complainant's members are gravely in need of water service and it is evident that they have made diligent efforts to obtain water service from all possible sources. The Commission is sympathetic with their needs; nonetheless, the Commission must heed the decisions of the Supreme Court of the State of California which are found to have been correctly stated in defendant's brief to be the law applicable herein.

The complaint will be dismissed.

O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter having been submitted and now

being ready for decision based upon the evidence and findings, it is hereby ordered that the complaint be and it is dismissed.

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

Dated at San Francisco, California, this 12th day of June, 1956.

John E. Mitchell President
Justus J. Casner
Roy L. Wilcoxon
Walter J. ...
R. Hardy Commissioners