

Decision No. 53339

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
John Moore Robinson and S. I.)
Robinson, doing business as LA MIRADA)
WATER CO., to change name to PUBLIC)
WATER CO., for a certificate of public)
convenience and necessity to serve)
domestic water in the Riverside area)
and for establishment of rates there-)
under.)

Application No. 37007

Eric C. Pepys and John Moore Robinson, attorneys,
for applicant.
Eastern Municipal Water District by Earl Redwine,
attorney, and Best, Best and Krieger, attorneys,
by James H. Krieger, for Highlanders Water
Company, protestants.
Charles W. Drake and Richard R. Entwistle, for the
Commission staff.

O P I N I O N

John Moore Robinson and S. I. Robinson, individuals doing business as La Mirada Water Co., by the above-entitled application, filed June 1, 1955, seek authority to do business as Public Water Co. instead of La Mirada Water Co., and also seek a certificate of public convenience and necessity to serve domestic water in three separate areas in unincorporated territory of Riverside County. The establishment of rates for such water service is also sought. Eastern Municipal Water District, by its protest, filed December 22, 1955, as amended and filed on June 15, 1956, protests the granting of the certificate applied for insofar as it relates to the so-called "Moreno" area.

An original hearing on this matter was set before Commissioner Rex Hardy and Examiner Stewart C. Warner on November 2, 1955, at Riverside, but no evidence was received nor testimony adduced on that date. Adjourned hearings were held before Examiner Warner on December 28, 1955, and before Commissioner Hardy and Examiner Warner on May 24, 1956, at Riverside.

By stipulation entered into at the hearing of November 2, 1955, between applicants and counsel for Highlanders Water Company, the application insofar as it applied to the so-called "Palmer" area, as shown on Exhibit "D" attached to the application, was withdrawn.

Counsel for Eastern Municipal Water District moved that the application, insofar as it related to the "Moreno" area, be dismissed.

General Information

By decision No. 47102, dated May 5, 1952, in Application No. 33075, applicants were granted a certificate of public convenience and necessity to operate a public utility water system in the vicinity and northwest of Buena Park in unincorporated territory, Los Angeles County. By Decision No. 49169, dated September 29, 1953, in Application No. 34580, La Mirada Water Co., a corporation, was granted a certificate of public convenience and necessity to operate a public utility water system, also in the vicinity and northwest of Buena Park in unincorporated territory, Los Angeles County. By Decision No. 52282, dated November 29, 1955, in Application No. 37143, amended, applicants were authorized to transfer their certificate as individuals doing business as La Mirada Co. to La Mirada Co., a corporation.

Applicants now propose to do business as Public Water Co., a fictitious name, in the two unincorporated areas of Riverside County shown on the maps, Exhibits "B-1" and "B-2", and Exhibit "C", attached to the application. The area, Exhibits "B-1" and "B-2", is known as the "Dickinson" area. The area, Exhibit "C", is known as Butterfield Stage Estates, Unit No. 1, or "Moreno" area.^{1/}

^{1/} As hereinbefore stated, the applicants have withdrawn the so-called "Palmer" area from their application.

"Dickinson" Area

Applicants assert that they have received a request for domestic water service from Dickinson & Son to serve property owned by them in that portion of Riverside County, known as Lots 1, 2, 7, 8, 9, 12 and 24 to 38, inclusive, of Tract No. 12, being a subdivision of Sec. 3, T3S, R4W, SBB&M, comprising approximately 410 acres. The area to which water service is proposed to be furnished immediately includes 47 lots on three of which residence structures have been constructed by a subdivider, Frank Sheldon, and in which area said Sheldon plans to construct an additional 40 houses at the rate of 10 at a time. The "Dickinson" area is located at the top of Box Springs grade just east, south, and west of the Y created by the intersection of U. S. Highway No. 60 and State Highway No. 395, near the unincorporated community of Edgemont. Temporary water service is being furnished in this area by Box Springs Mutual Water Company, a mutual water company, through service lines connected to the mutual company's facilities.

Applicants' claimed source of water supply for the "Dickinson" area is its so-called Well No. 1 which is 600 feet deep with a 12-inch casing. Applicants state they have expended \$5,865.42 to develop and equip this well which, with its presently installed pumping plant, will produce 85 gallons of water per minute, and to have had erected a 21,000-gallon bolted steel storage tank on the proposed water system properties, but no water mains have been installed in the subdivision. Applicants aver they have spent \$11,635.91 to develop another well known as Well No. 2 which collapsed when it was being pumped at a rate of 300 gallons, or more, per minute. This well is still collapsed and is useless. Well sites have been donated to applicants.

While the record shows that the "Dickinson" area is wholly within the boundaries of Western Municipal Water District, a municipal corporation which is a member of the Metropolitan Water District, Western did not protest the granting of the application and the record shows that, as of the date of the hearings, Western had no water system facilities in the area.

Applicants propose to finance the water system installations by advances from their personal funds through the sale of their assets for cash. Their financial capabilities are set forth in Exhibit No. 5 and are shown to be very substantial.

Although the witness, Robinson, testified that the subdivider, Sheldon, planned to develop the area and to construct homes therein, no contract with said subdivider for the installation of a water system was offered in evidence nor was any testimony from said subdivider nor from any of the public regarding the requirements of public convenience and necessity offered or received in the proceeding.

Conclusion and Findings re "Dickinson" Area

It is concluded, and the Commission finds, that applicants' showing is not persuasive that public convenience and necessity requires the granting of a certificate of public convenience and necessity to construct and operate a public utility water system in the "Dickinson" area. The Commission finds that the sources of water supply are inadequate for an area of the size contemplated in the application, and the prospects for economic operation of the proposed water system in the area are doubtful. The order which follows will provide for the denial without prejudice of the application with respect to the "Dickinson" area. ✓

Buttersfield Stage Estates,
Unit No. 1 or "Moreno" Area

Exhibit No. 4 is a copy of a contract, dated April 21, 1955, between La Mirada Water Co. and Moreno Land and Development Company providing for the deposit of the sum of \$41,800 with applicants by said Development Company with and to be used by applicants for the purpose of installing water mains including service stubs, or service pipe lines, fittings, gates and housings therefor, and fire hydrants, and providing for the refund to the Development Company of a sum equal to 22 per cent of the estimated annual revenues from each customer connected to the water main extension for which the cost is advanced, over a 20-year period, provided that the total amount of the refunds shall not exceed the amount of the original deposit. Exhibit No. 4-A is a copy of a supplemental agreement providing for the deposit of the \$41,800 (Exhibit No. 4) in installments of \$200 on each lot as of the date that the foundation is installed on such lot.

The property to be served under the terms of the agreements, Exhibits Nos. 4 and 4-A, is designated as Butterfield Stage Estates, Unit No. 1, Riverside County, consisting of 209 lots, and is known in these proceedings as the "Moreno" area. Its location is described in the record as south of Locust Avenue near the corner of Petit Avenue. It is about 3 miles north of the unincorporated town of Moreno. This area was described in the application but was incorrectly shown on the map, Exhibit "D", attached to the application. Applicants also seek authority to construct and operate a public utility water system in an adjacent area comprising 40 acres, designated as the S 1/2 of the N 1/2 of the NW 1/4 of Sec. 35 T2S, R3W, SBB&M, on the north side of Locust Avenue. All of the area for which a certificate is sought now lies completely

within the boundaries of Eastern Municipal Water District, a municipal corporation formed September 26, 1950, as said boundaries existed following an annexation to said District of additional territory in April, 1956.^{2/}

A witness for applicants, the subdivider Kaye, of Moreno Land and Development Company, testified that he had applied to the District for water service for his proposed subdivision, which he estimated would contain some 2,000 homes, a shopping center, and a hospital, within five years. The District submitted an estimate of the cost to be advanced by the subdivider of \$59,840. Said cost included the extension of the District's distribution pipe lines approximately one half mile from their present terminus to the subdivision, the installation of distribution pipe lines throughout the subdivision to initially serve 38 dwelling units at a cost of \$24,262, and to serve an additional 171 dwelling units at a cost of \$35,578. The District's estimate provided for the possible refund of a maximum of \$5,000, and a likely amount of \$4,000, over a five-year period due to the participation in the costs by other consumers.

The record shows that applicants have acquired, developed and equipped two wells in the proposed area; one known as Butterfield Well No. 1, at a cost of \$4,674.72, and another known as Butterfield Well No. 2, at a cost of \$7,339.10. The tested production capacities of these wells, as shown in Exhibit No. 3, were 406 gallons per minute and 17 gallons per minute, respectively. Other costs associated with the well sites were \$4,001.90.

^{2/} The record shows that 9 Improvement Districts have been formed within Eastern Municipal Water District.

Applicants have installed 4,000 feet of 2-inch pipe line, of which between 200 and 300 feet have been placed underground, the balance remaining on the surface of the ground. Applicants have installed a 21,000-gallon storage tank, a 1,500-gallon pneumatic tank, and a booster pump, and have expended a total of between \$20,000 and \$25,000 on the water system for the area now subdivided as Butterfield Stage Estates, Unit No. 1.

The record shows that Eastern Municipal Water District has bonded itself generally for \$4,300,000 to import Metropolitan Water District water into Eastern's area which comprises some 125,000 acres. The record further shows that Improvement District No. 3,—an entity of Eastern within which a portion of the area sought to be certificated is located,—has bonded itself in the amount of \$550,000 to rehabilitate the water systems of two mutual water companies, and a private water company acquired by said Improvement District No. 3, in order to deliver domestic and irrigation water throughout its area which comprises some 16,000 acres. As of May 1, 1956, Improvement District No. 3 was furnishing water service to 309 domestic customers, to 204 irrigation customers, and to 5 weir connections. Exhibits Nos. 8, 9, 10 and 11 are maps showing the boundaries of Eastern Municipal Water District and Improvement District No. 3, together with the location of the water system facilities in the areas.

The record shows indisputably that Eastern Municipal Water District is ready, willing, and able to furnish domestic water service to applicants' "Moreno" area, and that it would be adverse to the public interest to grant that portion of the application which seeks certification thereof. The record shows that while applicants have been furnishing water service to some five model homes, such homes are not occupied and no charge has been levied by applicants for such water service.

Prior to the conclusion of the hearing, the presiding Commissioner, in discussing the motion of the District for a dismissal of that portion of the application involving the "Moreno" area, stated that it was his opinion that it would be difficult, if not impossible, for applicant to establish public convenience and necessity to serve domestic water within the boundaries of the District, when the evidence received was to the effect that the District was lawfully established and its boundaries lawfully fixed, and that it was providing or was ready, able and willing to provide, service to its established area. Applicants did not produce any evidence tending to show that the District was not lawfully organized nor that its boundaries did not encompass the area sought to be certificated to applicants, nor did they show that the District was not ready, able or willing to serve the area. Applicants contended, however, that the statements of the presiding Commissioner were legally erroneous and not in keeping with previous decisions of the Commission. Applicants requested and were given permission to file a memorandum with the Commission on the subject, and the District was given permission to reply thereto.

The memoranda have been received and considered by the Commission, which is not in accord with the position of applicants. The statements of the presiding Commissioner are adopted as being a correct exposition of the law and policy on the subject. In Decisions Nos. 43857 and 48644 the Commission granted certificates over the protests of County Water Districts, which were not "Municipal Water Districts", and in each case the evidence was not persuasive that the County Water Districts were ready and able to serve the affected areas. In Decision No. 43857, the Commission held that

as to one of the areas sought to be certificated to a privately owned public utility the evidence showed the readiness and ability of the County Water District to serve its area, and as to the second area the evidence showed that the County Water District did not have facilities for supplying the water, its water pressures were inadequate, and it lacked the financing necessary to extend its mains, and for those reasons, this area was certificated to the privately owned public utility. As to the third area, the evidence demonstrated that it lay without the boundaries of the County Water District. In Decision No. 47713 a privately owned public utility was certificated to serve domestic water within the limits of a municipality which operated its own water distribution system. The municipality had protested the granting of the application but withdrew that protest at the time of the hearing. In each of the decisions cited by applicants the situation was far different than exists in the present case.

To authorize applicants to commence the operations of a public utility water system within the boundaries of the municipal water district under the circumstances shown by the record would constitute a duplication of costs to consumers for service from the privately owned public utility as well as for taxes to support the municipal water district and public convenience and necessity has not been shown.

Conclusions and Findings
re "Moreno" Area

Public convenience and necessity not having been shown, the Commission finds it to be in the public interest that the application insofar as it relates to the "Moreno" area be denied, and the order which follows will so provide. Under the circumstances it is not necessary to rule on the motion to dismiss.

Although applicants requested authority to change their fictitious name, the Commission is of the opinion that it lacks jurisdiction so to authorize and no action on said request will be taken.

O R D E R

Application as above entitled having been filed, public hearings having been held, the matter having been submitted, and based upon the evidence and findings,

IT IS HEREBY ORDERED that, insofar as the "Dickinson" area is concerned, the application be and it is denied without prejudice; and, insofar as the "Moreno" area is concerned, the application be and it is denied.

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

Dated at San Francisco, California, this 10th day of April, 1956.

[Signature]
President
[Signature]
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Commissioners