

ORIGINAL

Decision No. 58490

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WEST PALM SPRINGS WATER CO., a corporation, for authority to issue stock and acquire and operate a public utility water system, and for a certificate of public convenience and necessity therefor.

Application No. 40491

Gibson, Dunn and Crutcher, by Richard L. Wells, for applicant.  
Best, Best and Krieger, by Richard Edsall, for All American Investment Company; Abe Bloom for self; and Paul Saito for West Palm Springs Estates No. 1; interested parties.  
A. L. Gielegem and Donald B. Steger, for the Commission staff.

O P I N I O N

By the application herein, filed with this Commission on October 2, 1958, and amended by amendments filed on February 18 and March 20, 1959, West Palm Springs Water Co., a California corporation, hereinafter referred to as applicant, seeks (1) a certificate of public convenience and necessity to acquire and operate a public utility water corporation in Riverside County, (2) authority to issue 81,266 shares of common stock of \$1.00 per share par value, (3) a deviation from the "main extension rule" (Decision No. 50580, 53 P.U.C. 490), by adding the following sentence to subparagraph C (1) thereof: "If such additional facilities are required specifically to provide pressure or storage exclusively for the service requested, the utility is under no obligation to furnish such service unless and until the Commission finds that the cost of said facilities

need not be included in the advance"; and (4) authority to deviate from the requirements of General Order 103 relative to gauge, coating, and depth cover of certain pipe heretofore installed in the service area.

Public hearings on the application were held before Examiner Kent C. Rogers in Palm Springs, California, on February 25, 1959, and in Los Angeles on March 9 and 16, 1959. Prior to the first day of hearing notice thereof was published and mailed to water users, as required by this Commission. There were no protests. There is a controversy between applicant and the owner of the major portion of the proposed service area relative to the question of whether or not the applicant or said owner should finance the original cost of back-up facilities.

#### General Information

Applicant filed its articles of incorporation with the Secretary of State of California on November 3, 1955, and filed an amendment thereto on September 17, 1958. Its officers are E. Tharalson, President, Lee W. Landrum, Vice President, A. Eric Tharalson, Vice President, L. S. Davis, Secretary-Treasurer, and C. O. Duggan, Assistant Secretary. E. Tharalson, Lee W. Landrum and L. S. Davis are the present directors. The head office of the corporation is in Los Angeles. The principal business of the applicant is operating a water company. By its articles of incorporation, as amended, it is authorized to issue 500,000 shares of \$1.00 par value stock.

#### Description of Proposed Service Area

The proposed service area is in Riverside County approximately five miles east of the City of Cabazon and straddles U. S. Highway No. 99. It consists of Sections 5, 7, 8 and a portion of Section 9, T3S, R3E, a portion of Section 32, T2S, R3E, and Section 1,

T3S, R2E, all S.B.B.&M. The complete area requested is depicted on Exhibit No. 1 herein and contains approximately 3,200 acres. The land slopes upward from the south to the north, the elevation on the lowest portion in Section 9 near U. S. Highway No. 99 being approximately 1,240 feet, and the elevation of the highest portion in Section 1 being approximately 2,600 feet.

Interests Reflected in the Record

West Palm Springs Land Co., a corporation, hereinafter called "land company", originally owned the greater portion of the service area. It has transferred most of its land to All American Investment Corp., hereinafter referred to as "All American". At present the land company owns Lot 95 of San Gorgonio Pass No. 1, Lots 98 through 111, inclusive, and Lot 116, San Gorgonio Pass No. 2. Its stockholders are E. Tharalson, Eric Tharalson, R. R. Landrum, Lee W. Landrum, L. S. Davis, and Mildred Davis. Applicant's stock is to be issued to the land company except for three shares, one to each of the applicant's present directors. All American, a Nevada corporation, acquired virtually all of Sections 5 and 8 and 80 acres in Section 32, on April 30, 1957. Samuel P. Sparks is the chairman and principal stockholder of this company. Upon acquisition, it commenced subdividing the land, and continues to do so.

The Great American Investment Company owns the east one-half of Section 7. It is a wholly owned subsidiary of All American, and Samuel P. Sparks is its chairman.

The San Jacinto Development Corporation is a separate company, but Samuel P. Sparks is the president thereof. It has purchased approximately 50 lots in Section 8. There have been

constructed thereon 19 homes (in San Gorgonio Pass No. 3) and two duplexes (in San Gorgonio Pass No. 1). Thirteen of the homes and the two duplexes had been sold at the time of the hearing herein.

All American has laid out 10 subdivisions. These include San Gorgonio Pass Nos. 1 through 8 and West Palm Springs Village Nos. 1 and 2. In said subdivisions, which comprise a total of 480 acres, there are 1,360 lots, of which 510 were sold before the termination of the hearings. Streets have been laid out and some paving has been done in San Gorgonio Pass Nos. 1, 2 and 3.

Mr. Abe Bloom and a partner own the southeast one-quarter of Section 1. Mr. Bloom appeared in support of the application but does not know when any portion of said one-quarter section will be improved. There are no improvements in Section 1, but the land company has a well (Well No. 2, hereinafter referred to) in the southwest portion of Section 7 and has extended a 5½-inch O.D. line along the western edge of Section 7, 3,616 feet to the southeast corner of Section 1 (See Exhibit No. 1).

Mr. Paul Saito represents a syndicate which is subdividing West Palm Springs Estates No. 1 located in Section 9. There will be 52 lots on 20 acres therein, and five or six houses are to be constructed in the near future.

The latter two owners in Sections 1 and 9 will accept the Commission's ruling relative to financing of back-up facilities. All American desires that applicant be required to provide such facilities without cost above the ordinary cost of main extensions.

A resume' of the interests and corporate setups of the applicant and various affiliated or interested companies is contained in Exhibit No. 13 herein.

Sources of Supply and Water System.

The predecessors of the various landowners in the service area acquired their land with water rights included, and there is nothing in the record to indicate that any of them had less than the usual right of a landowner to take all water produced from the land for use thereon. These owners, in turn, conveyed their rights to applicant (Exhibits Nos. 2, 3, 5, 7, 8 and 9), except the water underlying the subdivisions known as San Gorgonio Pass Nos. 1 and 2 (Exhibit No. 1), which was retained by E. Tharalson personally (Exhibit No. 2). Thereafter applicant and its affiliated land company entered into an agreement with All American for the purchase by the latter, with certain exceptions, of the land in Sections 5, 8, and a portion of 32, and the furnishing of water thereto, subject to the requirement that if applicant became unable to furnish water to All American it would transfer all water rights under said land to All American (Exhibit No. 10).

There was and is in Section 8 an old well which has been acquired by applicant. This well has been placed in use as applicant's Well No. 1 (Exhibit No. 22). This well was drilled in 1931, and in 1936 it produced 720 gallons of water per minute during a 42-hour test period. In 1956 applicant installed a 40-horsepower pumping unit and tested the well at 351 gallons per minute. At the present time the production is approximately 200 gallons per minute. It is connected to a 5,000-gallon pressure tank.

Well No. 2 (in the southwestern portion of Section 7) was developed in 1958. It is equipped with a 35-horsepower pump which is set to produce 200 gallons of water per minute. There is no connection between Well No. 2, Well No. 1, and the presently subdivided

territory, and the two wells are over one mile apart (Exhibit No. 1).

The system in San Gorgonio Pass Nos. 1 and 2 was installed by the land company prior to July 1, 1956, the effective date of General Order 103; and the facilities thereon are therefor not specifically subject to the terms of said order. The system in San Gorgonio Pass Nos. 3 and 4 and the existing storage tank were installed subsequent to the said effective date and are therefore subject to the requirements of said order. Nothing said herein is to be construed as a finding that in the absence of General Order 103 this Commission is powerless to require reasonably adequate water systems.

The systems in San Gorgonio Pass Nos. 3 and 4 were installed by All American, supposedly under the supervision of the applicant's engineer.

There is in the process of construction a 60,000-gallon storage tank in the southeast portion of Section 5, which is at an elevation of 1,600 feet. This is connected to the system by a six-inch line (Exhibit No. 22).

Fire hydrants are being installed, there being seven in San Gorgonio Pass Nos. 1 and 2 and the same number in San Gorgonio Pass No. 3.

The grid systems and facilities in place are depicted on Exhibit No. 22 herein.

The existing facilities are designed to serve all lots below the 1,500-foot level, approximately, or including San Gorgonio Pass No. 4. Additional tanks and pumps are contemplated to provide water to higher elevations (see Exhibit No. 1).

Substandard Installations after July 1, 1956

The pipe and facilities in San Gorgonio Pass No. 3 and the transmission main around San Gorgonio Pass No. 4 were installed by the subdivider after the plans were approved by applicant's engineer. All pipe is steel. The new 60,000-gallon water tank was installed by applicant, together with a six-inch main.

In San Gorgonio Pass No. 3 the cover over the mains averages only 20 inches, in violation of General Order 103, IV 3. a, which requires not less than 30 inches of cover under the conditions here involved.

In both San Gorgonio Pass Nos. 3 and 4 the pipe in some instances is substandard in that it is of lighter gauge than required [G. O. 103, III 5. d, (4)], and is in violation of G. O. 103, III 5. d, in that it is unwrapped. Additionally, large sections of the installations are of reconditioned tubing and there is no evidence which indicates that it meets the requirements of General Order No. 103. We are not impressed with the unsupported testimony offered relative to the suitability of reconditioned tubing, of light gauge pipe, and of unwrapped pipe. The record is clear that reasonable diligence was not exercised in the selection of materials and supervision of installations by the utility.

There would appear to be no excuse for the substandard installations. Applicant's engineer has owned and operated several systems in the desert area in the past and knows that the Commission checks installations and requires certain standards of construction as contained in G. O. 103. One of applicant's officers is a practicing attorney and knew, or should have known, that the requirements of the Commission have the force and effect of law. Prior to the completion of the system in Tract 4, the Commission's engineers advised both the applicant and the subdivider that the construction was substandard (Exhibits Nos. 20 and 21).

The deviations are substantial and material, and some of the substandard installations, at least, were placed in the ground after special notice from this Commission concerning their substandard nature.

In cases where there would be undue hardship and where there has been excusable lack of knowledge of our requirements, we have, on occasions, permitted deviations from our rules of construction. Here no justification has been shown and no deviation will be permitted. Applicant will be required to correct the installations in all subdivisions, except San Gorgonio Pass Nos. 1 and 2 and Well No. 1, the pressure tank and line therefrom, to comply with the requirements of General Order 103. This construction shall include the correction of the six-inch line from the existing 60,000-gallon reservoir.

Proposed Rates

Applicant's proposed general rates are as follows:

GENERAL METERED RATES

Quantity Rates:	<u>Per Meter Per Month</u>
First 1,000 cu. ft. or less .....	\$ 3.50
Next 4,000 cu. ft., per 100 cu. ft. ....	.25
Next 5,000 cu. ft., per 100 cu. ft. ....	.20
Over 10,000 cu. ft., per 100 cu. ft. ....	.15

Minimum Charge:

For 5/8 x 3/4-inch meter .....	3.50
For 3/4-inch meter .....	4.00
For 1-inch meter .....	6.00
For 1½-inch meter .....	9.00
For 2-inch meter .....	15.00
For 2½-inch meter .....	25.00

FLAT RATES

For 3/4-inch service .....	4.00
For 1-inch service .....	6.00
For 1½-inch service .....	9.00
For 2-inch service .....	15.00
For 2½-inch service .....	25.00



A schedule of rates for construction service is also proposed. In addition, applicant proposes to charge 25 cents per month for each service connection to pay for fire hydrant service for which applicant will receive no compensation from the County. This authority will be denied as it is not in conformity with general practice and no good reason appears therefor.

Both the applicant and the staff estimate that for several years the applicant will lose money at the proposed rates. Inasmuch as this is a semi-resort area and all parties agree that the rate of construction will be slow, it may be several years before profits are realized. The staff objected to the inclusion of nonmetered rates.

With the exception of schedules for fire hydrant service and flat rate service, and the addition of a minimum charge for contractors' service, the proposed rates will be authorized.

Financing Present Back-up Facilities and the  
Facilities in San Gorgonio Pass Nos. 1 and 2

Applicant proposes to pay the costs of back-up facilities, including Wells Nos. 1 and 2, the pumps thereat, the pressure tank, the reservoir and the installations in San Gorgonio Pass Nos. 1 and 2, and the costs of approximately 3,600 feet of 5½-inch O.D. line extending northerly from Well No. 2 and approximately 760 feet of 6-inch line connecting the distribution system to Reservoir No. 1, with funds obtained from stock issued to the land company. It also proposes to have the subdivider pay the cost of all facilities other than those listed, including future back-up facilities, and for that purpose is seeking authority to change its main extension rule as set out above.

Applicant proposes to issue stock to the land company to reimburse the latter for facilities installed by it in the service area at a cost of \$64,821, and to issue one share of stock to each of the three incorporators of the applicant. This amount includes

\$12,336 for Well No. 1, \$3,488 paid on the cost of drilling Well No. 2, and \$565 paid on the cost of the pump on Well No. 2. Applicant also desires \$5,000 in working cash and proposes to secure this sum by issuing 5,000 shares of stock to the land company. The balance of the cost of drilling Well No. 2 is \$5,000, payable in two equal installments, on April 25 and October 25, 1959, plus interest at six per cent. The balance of the cost of the pump on Well No. 2 is \$5,493. Title to this pump remains in the seller and the obligation is payable in 22 monthly installments of \$282.77, including interest. The interest on the last two obligations will total \$953 and applicant proposes to issue a total of 11,446 shares of stock to the land company to reimburse it for paying these items when due.

As stated above, included in the \$64,821 is the cost of Well No. 1, the reproduction cost new of which was estimated by applicant to be \$12,336. The well was completed in 1931 and its life was estimated at 50 years (Exhibit No. 17). Applicant allowed no depreciation on this item. Inasmuch as the well is estimated to be 56 per cent depreciated, we will allow 44 per cent of its appraised value and the issuance of stock in the amount of \$5,428.

Also included in the applicant's intangible plant are power bills totaling \$1,458.62 and franchise taxes at \$25 per year for three years. These items, totaling \$1,533.62, are not proper items for inclusion in applicant's intangible plant.

Interest on the indebtedness for Well No. 2 and on the contract for the pump therein, in the total amount of \$953, will not be allowed as a basis for stock issue as such items are reasonably chargeable to operating expenses or to income. (Section 818, P.U.C.)

Applicant desires to issue stock to the land company in reimbursement for payments to be made by the land company in the future in payment for the drilling of Well No. 2 and the pump thereon. The

total of these two items is \$10,493 (Exhibit No. 16); and applicant will be authorized to issue stock to the land company in payment of the amounts paid by the land company on these items, such stock to be issued as payments are actually made and for not to exceed the total amount of \$10,493.

The applicant also desires to issue one share of stock in exchange for the water rights which it originally valued at \$230,809. The predecessors in interest of the land company and the water company acquired the water along with the land at no extra cost, and there was no showing of value for the water rights other than a highly speculative calculation. In conformance with prior decisions of this Commission (see Decision No. 58159), applicant will not be authorized to place any value on the water rights.

Financing Main Extensions

The applicant seeks authority to deviate from the main extension rule to permit the applicant to refuse to provide back-up facilities unless the Commission finds that the cost of such facilities need not be included in the advances by the subdivider. The adoption of such a rule would obviously be directly opposed to the existing main extension rules filed by all utilities. Since the All American has received a proposed agreement from applicant which would be in accordance with such rule and permit the applicant to require All American to pay the entire costs of future subdivisions (Exhibit No. 18 herein), authority to file and make effective such rule will be denied.

A certificate will be granted for San Gorgonio Pass Nos. 1, 2, 3, and 4 only, and applicant will be restricted from further extending its facilities without a further showing and prior authorization from this Commission.

Further certification would require much more definite proposals respecting the financing of facilities and a sound engineering study covering construction and operation of source of supply, pumping, storage, transmission, and distribution facilities. It would also necessitate further clarification of the need and economic feasibilities of such service, the rates of growth anticipated, and a showing that reasonable service can and will be provided.

The order which follows will authorize the applicant to issue not to exceed 61,378 shares of its \$1.00 par value capital stock, of an aggregate amount of \$61,378, for the acquisition of the items discussed and allowed herein, and for working cash, and one share to each of applicant's incorporators, excluding property covered by refund contracts or advances for construction, provided that stock may be issued by applicant to the land company to pay any portion of the balance on the cost of drilling Well No. 2 and the balance on the cost of the pump on said well in the aggregate amount of \$10,493, as and when any portion of said sums is paid by the land company for the benefit of the applicant. Such funds shall include nothing for the cost of water rights.

The staff studied the application and made several recommendations (Exhibit No. 19). All of said recommendations are reasonable and will be included in the order herein, except recommendation "F" relative to an inventory and cost appraisal.

The Commission has considered the above-entitled application and all evidence presented at the hearings thereon. Based upon said evidence, the Commission is of the opinion and finds that public convenience and necessity require that applicant be granted a certificate of public convenience and necessity to acquire, construct and operate a public utility water system in San Geronimo Pass Nos. 1, 2, 3, and 4, Riverside County, California, only, and that the balance of the application should be denied, and it will be so ordered. This authority will be subject to the restriction that applicant shall not extend from the certificated area without further order of this Commission.

The certificate of public convenience and necessity herein granted is subject to the following provision of law:

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 for the issuance of such certificate or right.

We further find that the money, property or labor to be procured or paid for by the issuance of the securities herein authorized is reasonably required for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

In issuing our order herein we place applicant and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares, nor the dividends paid as measuring the return applicant should be allowed to earn on its investment in plant, and that the approval herein given is not to be construed as a finding of value of applicant's stock or properties, nor is indicative of amounts to be included in future rate base for

the determination of just and reasonable rates.

Applicant will be authorized to file its proposed rates, except that it will not be permitted to file rates showing stand-by charges for fire hydrant use or rates for flat rate service.

The request to issue stock will be granted as set out in the order herein.

Authority to deviate from any provisions of the main extension rule will be denied.

O R D E R

An application having been filed, public hearings having been held thereon, the Commission having made the foregoing findings, and based upon said findings,

IT IS HEREBY ORDERED as follows:

(1) (a) That West Palm Springs Water Company, a corporation, be, and it is, granted a certificate of public convenience and necessity to acquire, construct and operate a domestic public utility water system in those portions of Sections 5 and 8, Township 3 South, Range 3 East, S.B.B.&M., known as San Gorgonio Pass Nos. 1, 2, 3, and 4, Riverside County, California, as depicted in Exhibit No. 1 herein.

(b) That applicant shall not extend its water system from said certificated area without further order of this Commission.

(2) That applicant be and it is authorized and directed to file, within thirty days after the effective date of this order, the rates set forth in Appendix A attached to this order, together with rules and tariff service area map acceptable to this Commission and in accordance with the requirements of General Order 96. Such rates, rules and tariff service area map shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

(3) That applicant shall forthwith proceed to correct the pipe line installations in all subdivisions, except San Gorgonio Pass Nos. 1 and 2 and the line from Well No. 1, to comply with the requirements of General Order No. 103. Applicant shall advise the Commission in writing, within thirty days after the effective date of this order, of the details of its progress in making such installations, and every thirty days thereafter until the program has been completed, such program to be completed in all respects by not later than December 31, 1959.

(4) That applicant shall, within ninety days after the effective date of this order, file four copies of a comprehensive map drawn to an indicated scale not smaller than 400 feet to the inch, delineating by appropriate markings the various tracts of land and territory served; the principal water production, storage and distribution facilities; and the location of various water system properties of applicant.

(5) That applicant shall base the accruals for depreciation upon spreading the original cost of the plant, less estimated net salvage and depreciation reserve, over the estimated remaining life of the property. Applicant shall review the accruals as of January 1 of the year following the date service is first rendered to the public and thereafter when major changes in plant composition occur and at intervals of not more than five years. Results of these reviews shall be submitted to the Commission.

(6) That meters shall be installed to measure output of all wells and production records kept as required by General Order 103.

(7) That applicant shall install, maintain and operate all facilities used to provide water service in strict conformity with at least the minimum standards for design and construction as set forth in General Order 103.

(8) That applicant is authorized to issue to the parties and entities heretofore herein stated not to exceed 71,874 shares of its \$1.00 par value stock for a total of \$71,874 for the purposes herein specified. Of this total, 61,381 shares may be issued forthwith, and the balance of 10,493 shares shall be issued at the rate of one share for each dollar paid by the land company on the well and pump indebtedness specified herein.

(9) That applicant shall file with the Commission a report or reports as required by the Commission's General Order 24-A, which order, insofar as applicable, is made a part of this order.

(10) That in all other respects the application is denied.

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

Dated at San Francisco, California, this 22nd day of May, 1959.

[Signature]  
President

[Signature]

[Signature]

Theodore H. Gerner

[Signature]  
Commissioners



APPENDIX A  
Page 1 of 2

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The unincorporated subdivision known as San Geronio Pass Units 1, 2, 3, and 4, in the community of West Palm Springs, approximately five miles easterly of the City of Cabazon, Riverside County.

RATES

Quantity Rates:	<u>Per Meter</u> <u>Per Month</u>
First 1,000 cu. ft. or less .....	\$ 3.50
Next 4,000 cu. ft., per 100 cu. ft. ....	.25
Next 5,000 cu. ft., per 100 cu. ft. ....	.20
Over 10,000 cu. ft., per 100 cu. ft. ....	.15
 Minimum Charge:	
For 5/8 x 3/4-inch meter .....	3.50
For 3/4-inch meter .....	4.00
For 1-inch meter .....	6.00
For 1 1/2-inch meter .....	9.00
For 2-inch meter .....	15.00
For 2 1/2-inch meter .....	25.00

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rates.

Schedule No. 9C

CONSTRUCTION SERVICE

APPLICABILITY

Applicable to construction water service from fire hydrants or other suitable and available sources.

TERRITORY

The unincorporated subdivision known as San Geronimo Pass Units 1, 2, 3, and 4, in the community of West Palm Springs, approximately five miles easterly of the City of Cabazon, Riverside County.

RATES

Unit Rates For:

Sidewalks, per 100 sq. ft. ....	\$ .20
Curbs, per 100 linear ft .....	.40
Concrete gutters, per 100 sq. ft. ....	.40
Concrete streets, per 100 sq. ft. ....	.40
Graded streets or sub-grade compaction, per 100 sq. ft. ....	.05
Backfilling, trenches, 16 sq. ft. cross- section area or less, per linear ft. ....	.01
Over 16 sq. ft. cross-section area, the rate increases in direct proportion to cross- sectional area.	

Minimum Charge:

For any service under this schedule .....	\$1.00
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