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ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 CALIFORNIA WATER & TELEPHONE COMPANY  
 for approval of the terms of certain  
 main extension contracts and for an  
 interim order authorizing applicant  
 to install facilities and institute  
 service pursuant to one of said  
 contracts pending the decision on  
 this application.

Application No. 42080  
(Amended)

INTERIM OPINION

California Water & Telephone Company, by an application filed March 25, as amended April 19, 1960, seeks approval, subject to and pending final decision herein and in Application No. 41117, the latter submitted February 15, 1960 on briefs after hearing September 16 and 17, 1959 before Commissioner Matthew J. Dooley and Examiner John M. Gregory, of fourteen contracts, identified in Appendix "A" attached hereto, for installation of on-site water facilities on properties above the 165-foot contour in South Bay Irrigation District, in applicant's Sweetwater District in San Diego County.

Each of the contracts was entered into subsequent to the hearing in Application No. 41117. Each is supplementary to master agreements before the Commission in that proceeding. Each provides, as contemplated by the master agreements, for contribution of the cost of the on-site facilities by the developer, without refund. Each developer is either a party to a master agreement or successor to a party, or has acted in reliance upon such master agreements, which provide, among other things, for contributions by the landowners

to the cost of providing backup facilities required to make water available in the area when and as tracts are subdivided or otherwise developed. All but one of the contracts relate to tracts within the area of the Fringe Area Master Agreement (FAMA), which is Exhibit 8 in the record of Application No. 41117. The exception, the Nixdorff Agreement (Exhibit H herein), relates to an individually-owned 1.6-acre residential parcel in the NE $\frac{1}{2}$  of Quarter Section 57, Rancho de la Nacion, lying near but inside the northern boundary of South Bay Irrigation District and above the 165-foot contour. That agreement is supplementary to the Sweetwater Fruit Company master contract, as amended, which is part of Exhibit 25 in Application No. 41117.

Applicant alleges, with respect to the eight contracts identified in Appendix "A" as Exhibits A through H, that each of said contracts has been fully performed, that the on-site facilities called for have been installed and that water service has been instituted. Applicant further alleges that the owners of those properties, having contributed to the cost of backup facilities in accordance with the provisions of the FAMA and Sweetwater Fruit Company master contracts, have proceeded with plans for the subdivision and development of their properties and arranging of finances therefor, in reliance on the provisions of the master contracts whereby applicant agreed to install facilities and institute service upon contribution by the respective owners of the cost of the on-site facilities. Such owners would be prejudiced, applicant asserts, if the development of their properties were delayed during the period of time that would be required to submit their individual contracts to the Commission for approval and await the ultimate disposition thereof by the Commission. Applicant would also be

prejudiced, it asserts, if it should install facilities and service to properties within the master contracts on a refund basis in accordance with its filed main extension rule while Application No. 41117 is still pending and undetermined.

With respect to the six other contracts (Exhibits I through N, Appendix "A"), applicant alleges that construction of on-site facilities has not yet commenced but that plans have been prepared, or approved by proper authorities, and in some cases, street grading has already commenced. The developers in these contracts, like those in the first group, have agreed, in accordance with the respective underlying master contracts, to contribute the cost of on-site facilities without refund. Applicant requests authority to commence construction of such facilities and alleges that both it and the owners would be prejudiced by the delay involved in disposing of the individual applications by a final decision in Application No. 41117 and in this instant application, for the same reasons as those advanced in connection with the eight contracts alleged to have been fully performed.

The master contracts and supplementary agreements referred to herein stem from earlier understandings or agreements concluded between applicant and South Bay Irrigation District, the philosophy of which has been extended to include similar developments in National City. As a result of those arrangements, applicant, having contracted earlier with the cities of Chula Vista and National City-- and later with South Bay, whose boundaries include Chula Vista and contiguous unincorporated areas--for delivery of their respective entitlements to Colorado River water (made available to member agencies by the Metropolitan Water District of Southern California about 10 years ago), agreed to extend water service to lands within

South Bay's boundaries above the 165-foot contour, historically claimed by applicant and its predecessors to lie outside its dedicated service area, under the terms and conditions of its understanding with South Bay, concluded February 22, 1954, and of the various agreements with subdividers and others subsequently executed.

Prior to the decision of the Supreme Court of California in the so-called "Sawyer" case (California Water & Telephone Co. v Public Utilities Commission, 51 Cal. 2d 478, decided February 2, 1959), applicant had maintained that it was not required to seek the approval of this Commission for contracts to extend facilities and service to properties outside the limits of its dedicated service area, but was at liberty to conclude and make effective whatever arrangements, including full or partial contribution of the cost of the facilities required, it was able to negotiate with the developers of such properties.

Application No. 41117 was filed, subsequent to the cited Sawyer decision, for the purpose of securing Commission approval of the understanding with South Bay and of a number of agreements with subdividers entered into thereafter, as well as for authority to file a supplemental main extension rule to apply to individual and tract extensions above the 165-foot contour within South Bay's boundaries.

The decision in Application No. 41117, which involves consideration not only of the relief sought by applicant, but also the resolution of diverse positions assumed by applicant and the other parties, is now in preparation and should shortly be issued. The complexity of the issues, however, and the vigor with which the several parties have asserted their respective views, suggest that to regard our decision on those issues as final would, perhaps, be somewhat unrealistic and that considerable time and effort may be involved before that application is ultimately disposed of.

Meanwhile, prospects of additional Colorado River water through a second San Diego aqueduct, expected to be completed by the end of this year, and the growing demand for housing and domestic water service in the area, constitute factors which require that all possible aid be given by public agencies, including this Commission, to alleviate the problem of water supply, so vital to the continued growth of this semi-arid area.

The matters at issue in Application No. 41117, the resolution of which applicant has stipulated will control the final disposition of the instant proceeding, are primarily concerned with the treatment to be accorded to the contributed facilities in view of the entire record. There is no suggestion in that record that the service is not required by the public interest or that the engineering or other technical features involved are anything but adequate.

We find and conclude that the public interest requires the issuance, without delay, of the authority sought by Application No. 42080, as amended, subject, however, to the following conditions:

- (1) That with respect to the contracts identified in said application and in Appendix "A" herein, as Exhibits A, B, C, D, E, F, G and H, the final disposition thereof, including terms of payments set forth therein, will be deferred until a decision in Application No. 41117, now pending before the Commission has become final.
- (2) That with respect to the contracts herein identified as Exhibits I, J, K, L, M and N, although authority will here be granted to applicant to carry out the terms and provisions of said contracts and to install facilities and extend service to the balance of Judson Estates Unit No. 3 pursuant to the agreement identified as Exhibit O, attached to the amendment to the application herein filed April 19, 1960, the final disposition of said contracts, including terms of payment set forth therein, will likewise, as in the case of the contracts referred to in Condition (1) above, be deferred until a decision in Application No. 41117 has become final.

A public hearing is not necessary.

INTERIM ORDER

The Commission having considered the application herein, as amended, and basing its interim order herein on the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that:

1. California Water & Telephone Company is authorized, subject to and pending a final order herein and in Application No. 41117, to carry out the terms and provisions of the several contracts hereinabove mentioned, copies of which contracts are attached to the application herein, as amended, and identified in said application and in Appendix "A" hereof as Exhibits A through N.

2. California Water & Telephone Company is specifically authorized to install facilities and extend service in the properties described herein as "Halecrest Estates Unit A" and "FAMA portion of Judson Estates Unit No. 3", pursuant to and in accordance with the terms and provisions of the contract identified herein as Exhibit I with respect to "Halecrest Estates Unit A", and of the contract identified herein as Exhibit N with respect to "FAMA portion of Judson Estates Unit No. 3".






3. The authority hereinabove granted is issued subject to the condition that, with respect to the contracts herein authorized to be performed, the terms and provisions of each of said contracts, and of any underlying master or other contracts or written statements of policy or understanding upon which the contracts herein authorized may be based and which are presently before the Commission in Application No. 41117 of California Water & Telephone Company, shall be subject to and governed by a final disposition of the application herein, as amended, and of said Application No. 41117.

4. California Water & Telephone Company, within thirty days after execution thereof, shall file with the Commission two fully

conformed copies of each of the agreements herein authorized, as executed, together with a statement of the date on which the agreements are deemed to have become effective, which statement, however, shall contain a stipulation by applicant in accordance with the condition set forth in Paragraph 3 of this order.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 26th day of April, 1960.

  
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President  
  
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Commissioners

APPENDIX "A"  
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I. Contracts, subject to master agreements in Application No. 41117, under which on-site facilities have been installed and water service instituted, and for which approval is requested pending and subject to final decision herein and in Application No. 41117.

<u>Exhibit In</u> <u>A. 42080</u>	<u>Date of</u> <u>Contract</u>	<u>Subdivider or</u> <u>Owner</u>	<u>Subdivision</u> <u>or Property</u>	<u>Underlying Master</u> <u>or Other Contracts</u> <u>Exh. in A. 41117</u>
A	10/21/59	John B. Morgan Construction Co.	Country Club View No. 2	FAMA, Ex. 8
B	10/26/59	Casey Construc- tion Co.	Robinhood Unit No. 4	" "
C	12/ 3/59	Syracuse Develop- ment Co.	Seaview Estates Unit No. 4	" "
D	1/ 25/60	Syracuse Develop- ment Co.	Seaview Estates Unit No. 5	" "
E	2/ 8/60	John B. Morgan Construction Co.	Country Club View No. 3	" "
F	2/ 4/60	Stardust Investment Co.	Chateau Heights Unit No. 1	" "
G	2/19/60	Robinhood Homes, Inc.	Robinhood Unit No. 5	" "
H	11/10/59	Nixdorff et ux.	1.6-Acre Residence	Sweetwater Fruit Co. (May 7, 1956) and Bank of America (May 23, 1957), Ex. 25

II. Contracts, subject to master agreements in Application No. 41117, under which installation of on-site facilities has not commenced but is planned for the immediate future, and for



APPENDIX "A"  
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which interim approval and authorization to proceed is requested, pending and subject to final decision herein and in Application No. 41117.

<u>Exhibit In</u> <u>A. 42080</u>	<u>Date of</u> <u>Contract</u>	<u>Subdivider</u>	<u>Subdivision</u>	<u>Underlying Master</u> <u>or Other Contracts</u> <u>Exh. in A. 41117</u>
I	3/21/60	Halecrest Chula Vista Co.	Halecrest Estates Unit A	FAMA, Ex. 8
J	4/18/60	Mylo Construction Co.	Mylo Ocean View Estates No. 3	" "
K	4/18/60	Syracuse Development Co., Inc.	Virginia Terrace	" "
L	4/18/60	Keystone Realty Co.	Chateau Heights Unit No. 2	" "
M	4/18/60	Robinhood Homes, Inc.	Robinhood Unit No. 6	" "
N	4/18/60	Clarence E. Morris, Inc.	FAMA portion of Judson Estates Unit No. 3	FAMA, Ex. 8 B&W Construction Co. (May 26, 1958) and Clarence E. Morris, Inc. (Dec. 31, 1958), Ex. 25