ORIGINAL

Decision No. 61283

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA WATER & TELEPHONE COMPANY for approval of and authorization to carry out the terms of certain contracts and for authority to supplement its Main Extension Rule.	Application No. 41117 Amended

Bacigalupi, Elkus & Salinger, by Claude N. Rosenberg, and Higgs, Fletcher & Mack, by DeWitt Higgs, for California Water & Telephone Company.
Jennings, Engstrand & Henrickson, by Paul D. Engstrand, Jr., with Myron B. Holburt, for South Bay Irrigation District.
Millyer, Crake & Irvin, by Richard S. L. Roddis, for Syracuse Development Co. and Hixon Construction Co.
Robert O. Curran, City Attorney, with Myron B. Holburt, for City of National City.
Manuel L. Kugler, City Attorney, for City of Chula Vista
Hector Anninos, for the Commission staff.

O P I N I O N

California Water & Telephone Company seeks authority to carry out the terms of a number of agreements for extension of water service to properties above the 165-foot contour in its Sweetwater District. That district includes the greater part of the cities of National City and Chula Vista, as well as certain contiguous unincorporated areas in San Diego County. The agreements require specific authorization by the Commission (Public Utilities Code, Section 532; General Order No. 96, Paragraph X), since they provide for contribution of the cost of the facilities by the property owners (primarily subdividers) and thus constitute deviations from the company's filed rules and regulations relating to extensions of service, promulgated on September 28, 1954 by the Commission for all

privately-owned public utility water companies in California (Decision No. 50580, Case No. 5501 54 Cal. P.U.C. 490).

Authority is also sought to implement the terms of a "Joint Statement of Policy and Understanding," entered into between applicant and South Bay Irrigation District on February 22, 1954, in which the parties have set forth their mutual understandings concerning extensions of applicant's facilities and service to properties within the district above the 165-foot contour, historically claimed by applicant to mark the upper limit of the "dedicated service area" of its Sweetwater District system. The Joint Statement was negotiated after South Bay, in December, 1953, had filed a formal complaint with the Commission seeking to have its lands above the 165-foot contour included within applicant's "dedicated service area" and supplied with public utility water service under the utility's filed rules and regulations. The complaint was dismissed at South Bay's request following execution of the Joint Statement (Decision No. 49862, March 30, 1954, Case No. 5515). The company, however, did not then request authority to implement the terms of the Joint Statement.

The agreements relating to high-level extensions within South Bay's original and annexed boundaries make reference to the Joint Statement. Similar agreements in the National City area, located generally north of South Bay's northern boundary, do not. Applicant, however, has stated on the record that extensions above the 165-foot contour in the National City area would be treated like those in the South Bay area, even though it had not entered into a Joint Statement of Policy and Understanding with the City of National City.

Applicant also requests authority to supplement its main extension rule so as to enable it to conclude similar agreements in the future for service with individuals and tract developers above

the 165-foot contour in the Sweetwater District in accordance with the provisions of the Joint Statement, without the necessity of applying for Commission authority, in each instance, to deviate from its filed water main extension rule.

The application was submitted on briefs, the last of which were filed February 15, 1960, following public hearings held, after due notice, on September 16 and 17, 1959 at San Diego before Commissioner Matthew J. Dooley and Examiner John M. Gregory.

On March 25, 1960 the utility filed another application, amended April 19, 1960 (Application No. 42080), in which it requested authority, pending and subject to final determination of the instant proceeding, to install in-tract distribution facilities in certain developments within South Bay Irrigation District above the 165-foot contour, in accordance with the terms of a number of contracts, executed subsequent to the hearing herein, which refer to and stem from the Joint Statement of Policy, master agreements, or other contracts here under consideration. Interim authority for such installations was granted by Decision No. 60016, April 26, 1960, as amended by Decision No. 60144, May 24, 1960.

The basic issue to be determined is whether a case has been made for exercise of the Commission's discretionary power to grant the requested rule-deviation authority. A subsidiary issue, raised by South Bay and the City of Chula Vista, concerns the propriety of restricting any such authority, the granting of which they do not oppose, by means of any of a number of suggested conditions designed to avoid the possibility of reimbursement to the company of the value of the contributed assets in the event of acquisition of the Sweetwater District system by a public agency, a contingency for which preliminary plans have already been drawn. The City of National City has taken the position that the contracts, having been

executed without regard to the provisions of applicant's main extension rule, are illegal and void from the beginning; that the Commission is thus without power to breathe life into them, and that the only question to be decided is "how to handle a situation wherein a public utility has flagrantly violated the law." National City urges that, in the absence of intervention by property owners in this case, the Commission should now declare that --

> ". . . in effect such property owners have made a contribution which should be dedicated to the public and that in any proceeding in which this Commission exercises jurisdiction" [presumably a petition to fix just compensation for public acquisition of the company's properties pursuant to Public Utilities Code, Sections 1401-1421] "the properties which applicant has acquired from the funds so contributed should not for any purpose be treated as the private property of applicant but, on the contrary, applicant should be determined to possess the mere naked legal title in trust for the public with reference to any such facility." (National City, Reply Brief, p. 7)

The Commission's staff counsel flatly urges denial of all of applicant's requests. He contends that to authorize any of the contracts solely because of the consideration of elevation will set a pattern and precedent for the future, even if the proposed supplemental main extension rule is not authorized. Counsel points out (Opening Brief, p. 6) that applicant has not considered using zone rates in its Sweetwater District to provide for higher costs associated with greater elevations, such as are presently in effect in the company's Monterey Peninsula Division where similar terrain difficulties exist.

Perusal of the various "solutions" advanced by the parties suggests that while general agreement appears to exist concerning the fact -- amply demonstrated by the record -- that the Joint Statement and the various agreements contemplate installations and

service under conditions at variance with applicant's effective tariff rules, either the necessity for compliance with such rules in the first instance or the function of the Commission in an application, such as this one, for permission to make effective that which otherwise would be void, is not too clearly perceived.

Since applicant and the other parties have addressed themselves primarily to the "equities" of the case, as they have respectively conceived them to be, we think that a review of the facts, as to which there is no dispute, may serve as a foundation upon which to determine the underlying issue presented by this record, which is: Should a public utility water company which has voluntarily and without prior Commission authorization extended its facilities and service to lands outside its "dedicated service area" under arrangements at variance with its filed and effective tariff rules, nevertheless be authorized by the Commission to carry out the terms of such arrangements? Or should the Commission flatly declare all such transactions to be void and leave the parties to extricate themselves from their respective positions as best they can.

The record discloses that applicant and its predecessors have rendered public utility water service in the general area of the Sweetwater District since 1869. The present company was incorporated under California law on December 27, 1926 as The Sweetwater Water Corporation. On August 20, 1935 the name was changed to California Water & Telephone Company.

The Sweetwater District is located in a semi-arid region south of the City of San Diego. It includes the Cities of Chula Vista and National City as well as contiguous unincorporated areas extending eastward through the Sweetwater River Valley at elevations ranging from sea level to about 385 feet. Until Colorado River

water became available in the area, about 12 years ago, the company's principal source of supply under normal climatic conditions was the impounded runoff of Sweetwater River, stored behind Sweetwater Dam (constructed by predecessors in 1888 about 10 miles southeasterly from San Diego) and Loveland Dam, some 18 miles farther upstream. The two reservoirs have a combined capacity of about 53,000 acre-feet of water. Long transmission mains carry this water to the place of use. These storage and transmission facilities now comprise about 40% of the company's total investment in operating properties in the Sweetwater District. 1/

The company, since 1948, has been purchasing a yearly average of about 8,000 acre-feet of Colorado River water at a total cost, in standby and quantity charges paid to local member agencies of the Metropolitan Water District of Southern California, of $2,345,913 to the end of 1958. These charges form part of the company's operating costs and are paid for in the rates charged to the Sweetwater District customers. At the present time about 20% of the total water delivered by the company in the Sweetwater District comes from local sources; the balance comprises deliveries of Colorado River water entitlements of South Bay Irrigation District, as successor to the City of Chula Vista, and of the City of National City, under contracts with those members of the San Diego County Water Authority -- which became annexed to the Metropolitan Water District in 1946 -- executed in 1952 to replace agreements with the

1/ The following recorded data indicates generally the growth of the Sweetwater District operations from the end of 1954 to May 31, 1959.

Date	No. of Active Customers	Total Fixed Capital	Contributions	Consumers' Advances
12-31-54	15,468	$ 8,845,000	$ 338,000	$428,000
5-31-59	20,023	11,284,000	1,465,000	542,000

two cities, entered into in 1948, whereby the company was constituted the agent of the cities for the purpose of delivering their respective entitlements. The purchased Colorado River water is spilled into Sweetwater Reservoir at the terminal of the San Diego County Water Authority aqueduct and is mingled and treated with other impounded waters for transmission and distribution throughout the entire Sweetwater District system. Construction of a second San Diego aqueduct, scheduled for completion in December, 1960, is expected to make additional Colorado River water available at Sweetwater Dam.[2/] The utility also secures supplementary water from two deep wells in National City.

The significance of the 165-foot contour line in this proceeding is that it appears to have been the upper operating limit for gravity service from the utility's transmission mains. Although water released from Sweetwater Dam is now boosted through main line pumps to an elevation such that the hydraulic gradient for the system ranges between elevations 200 to 240, the company and its predecessors have consistently claimed to have restricted their dedication, or offering, of public utility water service to include only lands below the 165-foot contour unless additional charges, not provided for in their filed tariffs, were paid.[3/]

2/ Evaluation of the possible effect of a final decision in the so-called "Colorado River Case" on availability of future water supplies in this area has not been considered necessary for a determination of this proceeding.

3/ See Turnbull Co. v. Sweetwater Water Co. (1915) 7 CRC 738 (Lee Study); Melville et al. v. Sweetwater Water Corp. (1921) 20 CRC 562 (Feude and Monett Studies). Since 1921, the forms of application for water service maintained by the company and its predecessors have contained a provision to the effect that the 165-foot contour is the limit to which service would be supplied. By letter dated December 4, 1958, the Commission rejected an attempted filing of this application form by the company, noting that the form contained a requirement (that applicant for service provide utility plant facilities under certain conditions) that was more restrictive than the company's filed and effective tariff rules.

At the time the 1952 agency agreements were entered into it was realized that there were lands within the boundaries of the respective contracting agencies that were above the 165-foot contour but which, nevertheless, were subject to District or City taxes and entitled to a proportionate share of the total entitlements of Colorado River water. To meet this circumstance a clause was contained in the agreement with South Bay as follows:

> "...nothing herein contained shall be understood or construed to obligate Company at any time to serve water in any portion of the area embraced by South Bay in which Company would not otherwise be obligated to render service, provided, however, the Company agrees that if water service is at any time applied for on any premises in South Bay which are outside the Company's established service area, the Company will make available to such premises the amount of water that said premises are entitled to by reason of being within the corporate area of South Bay. Such water shall be made available at the Company's main closest to the premises but all costs of connecting to the Company's main and of transporting the water therefrom to the said premises, including the cost of labor, pipe or other materials or facilities incident thereto, shall be borne entirely either by the owner or occupant of said premises or by South Bay and the Company shall be under no obligation therefor." (Ex. 24).

A similar provision was contained in the agency agreement with National City (Ex. 23).

Following execution of these agreements and consistent with its historic practice, applicant refused to extend water service above the 165-foot contour except in a few instances where, by special agreement and in accordance with the provisions of the agency agreements, the owner was required to provide the necessary facilities without the refund provided by the company's extension rule of the sums so advanced. The company, in its answer to South Bay's complaint in 1953 (Case No. 5515, supra), denied any obligation to render public utility water service above the 165-foot contour and pleaded

the provisions of the agency agreements quoted above.

The Joint Statement of Policy and Understanding recites that both District and Company are vitally interested in development of the areas in question and, as pertinent here, sets forth the mutual understandings of the parties substantially as follows (Ex. 2):

1. All lands within District's boundaries above the 165-foot contour, other than those receiving service pursuant to the special contracts just mentioned, are outside Company's dedicated service area, and all lands within District and below the 165-foot contour (with a single immaterial exception) are within the dedicated area.

2. Company will take within its service area from time to time and render service to those lands within District's boundaries above the 165-foot contour upon application by the owners thereof, on condition that such owners pay the cost of constructing and installing all facilities, including storage and pumping equipment to serve such area, without refund, contingent only upon the availability of water.

3. It is expressly acknowledged that nothing contained in the document is intended or to be construed to bring within the dedicated area any land above the 165-foot contour, and that such dedication will occur only when and as facilities are constructed and service is extended pursuant to the Joint Statement.

Following execution of the 1952 agency agreements and of the Joint Statement applicant entered into a number of contracts, including four so-called "master plan" contracts, providing for extension of its facilities and service, as a public utility, above the 165-foot contour in its Sweetwater District. Common to all agreements is the requirement that the owner contribute, without refund, all or part of the cost of the facilities necessitated by the extension, including "backup" facilities; i.e., offsite storage,

pumping and transmission facilities. With only three exceptions, the agreements involve properties within South Bay's boundaries. Except for several agreements providing for service to schools and one for service to a church they all involve extensions of service to subdivisions.

The "master" agreements cover situations where, prior to development in a certain area and in contemplation thereof, the company and the various owners of properties in the area have collaborated in laying out a master plan of all backup facilities required to make water available in the area when and as tracts are subdivided or otherwise developed. Under the general format of the master agreements the respective owners in the area agree to contribute the cost of these facilities (including, in some cases, contributions of land), without refund, which cost is apportioned between them in a manner mutually determined to be equitable. For lands below the 165-foot contour and within the area included in the master agreement, the utility has undertaken to pay for backup costs associated with such lands. As each tract (in some cases individual residential lots or parcels) in the area is developed a separate agreement is entered into with the developer or owner which ties in with the master agreement and provides for contribution of the cost of the on-site facilities required for the particular tract or parcel. Unquestionably, provision of backup facilities pursuant to such overall plans is more economical and consistent with good waterworks practice than would be the case if each development were separately engineered.

The agreements with individual developers provide either for contribution of the on-site costs and associated backup costs,

without refund, or, in areas both above and below the 165-foot contour, for refund of a percentage of the total deposit, computed from certain designated lots upon actual revenues from customers receiving service on such lots. In some of the agreements the backup facilities have been designed for the particular development; in others, the developer has been charged a portion of the cost of the backup facilities contained in master plan agreements.[4/]

Special mention may be made here of the Fringe Area Master Agreement (sometimes referred to in the record as "FAMA" - Exhibit D attached to the original application and Exhibit 8 in evidence). This master plan agreement, dated April 7, 1959, refers to an area of approximately 787 acres located immediately east of the City of Chula Vista and an easterly boundary line of South Bay Irrigation District as it existed in February, 1954. Most of the land lies above the 165-foot contour. The area, formerly comprising a portion of the Otay Municipal Water District (which had no facilities for water service), was annexed to South Bay early in 1959 pursuant to the terms of a Joint Statement of Policy and Understanding between South Bay and the Otay District, dated February 3, 1959 (Exhibit 6). By a previous resolution of its Board of Directors (Resolution No. 116, adopted December 2, 1958 Exhibit 7), South Bay for itself and as representative of the owners of all lands within its then present and future boundaries, requested applicant, "though not obligated to do so", to render water service, upon annexation of this "fringe" area, upon the same conditions as service to lands above the 165-foot contour within South Bay's

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4/ Of the 48 agreements in the record (including the Joint Statement entered into between February 22, 1954 and September 10, 1959 six were filed with the original application. The Joint Statement was filed with the original application and approval of its terms was sought in the first amendment; one came in with a second amendment, six were separately introduced at the hearing (including one that was not yet signed by the parties), and 34 were received at the hearing as a composite exhibit (Exhibit 25).

original boundaries; i.e., pursuant to the terms of agreements between South Bay and applicant dated February 20, 1952, April 8, 1952 and August 3, 1954 and the Joint Policy Statement of February 22, 1954.

Many of the contracts involved in this proceeding, incidentally, have resulted from annexations to South Bay for the express purpose of obtaining water service pursuant to the 1954 Joint Statement between applicant and South Bay.

The "FAMA" agreement allocates the total estimated cost of $386,750 associated with installing a 2,000,000-gallon storage tank, two booster pumping plants and approximately 19,000 feet of 12-inch, 16-inch and 18-inch transmission mains to 51 separate parcels of land comprising the 787-acre area. The utility agrees to pay the sum of $6,494 toward the estimated cost of a portion of the transmission facilities. That amount represents the pro rata share for approximately 81 acres of land below the 165-foot contour.

The following tabulation indicates the undeveloped land above the 165-foot contour and within the boundaries of South Bay as of September, 1959.[5/] It can readily be seen from this tabulation that a potential exists for considerable growth under the terms and conditions of the supplemental extension rule proposed by applicant, to which reference has been made above.

Area	Total Acreage
Existing Boundaries of District[a]	3,390 acres
Lands Presently Receiving Water Service	550 acres
Total Undeveloped Land Available for Future Growth	2,840 acres
Lands within Fringe Area Master Agreement	700 acres
Other Undeveloped Lands	2,140 acres

a. Excluding Sweetwater Reservoir Lands

5/ By comparison, lands in National City above the 165-foot contour comprise only a small area near the city's northeastern limits.

Enough, we think, has been said to indicate the extent and nature of the general plan conceived by applicant and other interested agencies and persons for providing water service to these higher lands, the development of which, almost certainly, would not have been considered feasible prior to the advent of a supply of imported water. The company, by its proposed supplemental main extension rule, seeks to perpetuate that plan.

We now turn to a consideration of the statutory and regulatory framework within which the foregoing events have occurred. At the outset, it is recognized by all parties -- and we here find -- that the several agreements and understandings before us concerning water service to the areas in question provide for such service under terms and conditions at variance with applicant's filed and published tariff rules. In such circumstances, we are of the opinion that the law contemplates and, indeed, requires prior Commission sanction to make effective contracts involving tariff deviations (Public Utilities Code, Sec. 532; General Order No. 96, Paragraph X).

Applicant, prior to filing the instant application, did not seek or secure authority from this Commission to make effective the several agreements here under consideration. The record, moreover, is persuasive that the Commission's authorization would have continued to go unsought had not the Supreme Court of California, on February 2, 1959, declared the doctrine, previously applied by the Commission in other similar situations, that although a water utility may not be compelled to extend outside its dedicated service area, when it elects to do so voluntarily it must abide by its rules or secure prior authority from the Commission to deviate therefrom. 6/

6/ California Water & Telephone Co. vs Public Utilities Commission, 51 Cal. 2d. 478; rehearing denied, March 4, 1959 -- sometimes referred to as the "Sawyer" case, which arose in the company's Monterey Peninsula Division on a subdivider's contribution contract essentially like those in the instant proceeding.

Applicant, at all times pertinent to this discussion, has had available to it, pursuant to Section 1001 of the Public Utilities Code, the right to extend its facilities into areas contiguous to its existing system without having to procure from the Commission a certificate of public convenience and necessity. The contention here, that despite the clear language of Section 532 of the code and of paragraph X of the general order -- the legal effect of which was perfectly plain to the entire Court in the Sawyer matter -- the utility, nevertheless, in giving effect to the "pre-Sawyer" contracts, was entitled to rely on its own interpretation of the effect of certain decisions rendered outside the context of the regulatory scheme in this state, is one with which we are unable to agree.

It may be noted, in passing, that Section 702 of the Code also requires that a utility comply with its rules and that it do everything necessary to secure such compliance by its personnel. Presumably, since the company took the position it did with respect to its status when extending service to un-dedicated areas it likewise considered Section 702 to be inapplicable to such activities.

With regard to the contracts executed since the date, March 4, 1959, on which the Sawyer decision became final, including those for which interim authority was granted in Application No. 42080, as amended, pending a final decision in the instant case, we are confronted with somewhat of a dilemma. The company, in deference to the Court's conception of its duties as a regulated public utility, is seeking authorization not only for the "post-Sawyer" deviation agreements but for all deviation arrangements and understandings concluded for extensions in its Sweetwater District since 1954. With one exception, which relates to an agreement, dated April 28, 1959,

to extend both above and below the 165-foot contour in a 27-acre development in National City (Exhibit G attached to the original application), the terms and conditions of these agreements have their source in the Joint Statement with South Bay executed in February, 1954. Aside from certain special provisions, the agreement in the National City area contains other terms and conditions at variance with the main extension rule which are similar to those, mentioned earlier, that provide for both contributions and advances by the developer.

What applicant is urging here is that the Commission accept the totality of what has been -- and is being -- accomplished in the Sweetwater District, and, by authorizing the proposed supplemental extension rule, to give advance approval to the continuation of such activities, subject only to the power of the Commission to initiate investigations on its own motion in specific cases. It is claimed that consumers and developers have benefited from these arrangements as well as the utility and the public agencies for which it delivers water entitlements; that all parties have complied with their contractual obligations and that the development of the area has advanced to such an extent that, as applicant has put it, "it is unthinkable that applicant would refuse to proceed, regardless of what consequences might ensue to it in the event of the Commission's refusal to approve". (Applicant's Reply Brief, p. 6.). Further, and in connection with the request, urged by South Bay and others, that the Commission grant the requested authority but attach a condition to its order, applicant concludes:

> "5. That the application should be granted unconditionally, so that the arrangement that has operated with such mutual satisfaction in the past will not be rendered unavailable for the future by imposition of conditions that Applicant could not, in good conscience, accept." (Reply Brief, p. 21).

The evidence here indicates that the cost of providing service above the 165-foot contour generally exceeds the cost to serve below said elevation primarily because of the additional pumping or booster facilities required, and because of higher unit costs for storage due to the predominance of smaller tanks at higher elevations. With respect to distribution facilities within a subdivision, or to an individual parcel, there appear to be no major cost differences between higher and lower levels.

The company takes the position that it is for the best interests of consumers on the whole system to require contributions of the cost of providing service above the 165-foot contour. No depreciation expense is allowed on such assets and their cost is deducted from the utility's fixed capital in estimating the "rate base" on which the company is allowed to earn a return, in accordance with long-standing rate-making policies of this Commission. To that extent, the plan followed by applicant here and as proposed in its supplemental main extension rule would appear to provide a measure of protection against higher water rates. An offsetting factor, however, is that the utility is responsible for operating, maintaining and replacing the contributed facilities and for paying taxes on them. Items of expense are, of course, proper deductions from revenue and are ultimately reflected in the rate level. Although no detailed studies on the subject were placed in the record, a company official estimated that it presently costs about five cents per hundred cubic feet to boost water above the 165-foot contour. Also, this same official indicated that for developments at higher levels in the very near future, the mains, services, meters, hydrants and tanks to be installed would cost

about $475 per customer as compared with the company's present investment at lower levels of about $316 per customer. There is nothing in the record, however, to indicate how much, if any, of this difference in cost is due to elevation.

We are of the opinion that applicant has pursued its course in the Sweetwater development under a mistaken view of the law and not from lack of good faith. When the Supreme Court of California, for the first time in a case like this, declared the law to be what the Commission -- at least in its more recent decisions -- had considered it to be, applicant hastened to present the full story of the Sweetwater District controversy to the Commission, at first through informal advice by its officials and shortly after by the filing of this application.

The Commission, acting within the limitations of its constitutional and statutory power, has considerable discretion in its dealings with the utilities it regulates. The application before us is addressed to that discretion. Other applications for authority to deviate from the main extension rule, in cases involving elevation problems and the sharing of costs of both backup and in-tract facilities by the utility and the land developer or subdivider, have been considered by the Commission and granted in light of the special circumstances shown. In those cases, unlike that here, the cost of the required facilities advanced by the subdivider or developer has been subject to refund under various methods provided by agreements between the parties, and the requests for approval of such agreements have usually been submitted to the Commission in advance of construction. 7/

7/ See, for example: California Water & Telephone Co., (1955), Decision No. 52026, Application No. 36954; Salicov Water Co., (1960), Decision No. 60004, Application No. 40545, etc.

In the present case we are faced with the completed or progressing construction of backup facilities and in-tract installations for water service to roughly one-half the total number of acres planned for ultimate development in lands of South Bay Irrigation District and the City of National City, chiefly at elevations above the 165-foot contour. The design and agreements for payment of the costs of a major portion of those facilities, not to mention their construction and installation, were either completed or well advanced long before formal authorization for the rule deviations involved was sought. Some 5,000 active water consumers have been added to the Sweetwater system since the developments flowing from the master plans and understandings, initiated by the Joint Statement with South Bay, were undertaken. Our discretion in these circumstances should, we think, be exercised with due regard to the consequences which, as we view the record, may be considered as probable in the event of either a grant or a denial of the requested authority.

If the application were to be denied, and the utility directed to revise its agreements strictly in accordance with the provisions of its main extension rule, it would appear that, as a preliminary accounting operation, the company would have to set up on its books, by transfers from contributions, certain liabilities in the form of refund contracts totalling approximately one and one-half million dollars, and would undoubtedly be faced with the requirement of making retroactive refunds on such contracts, for years prior to 1961, in an undisclosed amount of dollars. Further, to the extent that such refunds are made, both retroactively and in the future, the utility's rate base would be increased and, in

addition, the utility would claim, as an operating expense, added depreciation on about one and one-half million dollars of property. This increase would be offset, in some small degree, by minor adjustments in income taxes. The end result, if the application were denied, would be that the consumers would be asked to share the increased burden in the form of higher rates for service. As we see it, the only benefit flowing from denial of the application would be that accruing to the developers and subdividers through cash refunds resulting from conversion of contributions to advances in aid of construction.

If, on the other hand, the application -- at least to the extent of authorizing existing contracts -- were to be granted, it is difficult to see who would be injured or in what way the public interest would be adversely affected. Certainly, the consumers, whether on the main system or at the higher elevations, would not be called upon for revenue increases that would otherwise be necessary for retirement of refund obligations.

We have concluded, after thoughtful consideration of the record and of the equitable factors imbedded in it, that our discretion should be exercised in the direction of stabilizing, to the extent we deem practicable, that which has been thus far accomplished, but that future construction or installation of facilities, whether off-site or on-site, should be in strict accordance with the provisions of the utility's main extension rule in effect at the time, unless prior authority to deviate therefrom has first been secured by the utility.

In reaching this conclusion we have been persuaded -- and we find -- that, under the special facts and circumstances of

this case, the public interest generally and the interests of the utility's ratepayers specifically would be better served by granting authority to carry out agreements that have either been fully executed or under which actual construction or installation of facilities has commenced as of the effective date of this decision. Among the circumstances considered, to which reference has already been made, are those which indicate that the general plan, set up under the initial agreements, for the design and construction of the necessary facilities appears to be in accord with good waterworks practice, and that developers, subdividers, community representatives and the utility have concluded that the best interests of all concerned would be served within the context of the plan thus far carried out.

We see no reason, however, for granting to the utility the continuing privilege, not possessed by any other utility in the state, so far as we know, of proceeding in the future as it has in the past through the unique device of a special main extension rule which removes from the scrutiny of the Commission all arrangements for providing water service above the 165-foot contour that are not in accord with the basic main extension rule required to be filed by water utilities. Certainly, if feasible plans were to be developed for water service in areas in the Sweetwater District not yet included in the system, and the public interest were to be served by such projects, the Commission would be inclined to grant whatever authority might be appropriate, despite the strict requirements of any uniform rule which might otherwise govern such transactions. The request to file a supplemental water main extension rule should and will be denied.

Further carrying out the intent of our disposition of this proceeding, we conclude that the terms of the Joint Statement of Policy and Understanding entered into between the utility and South Bay Irrigation District on February 22, 1954, should be effective and should run concurrently only with respect to the agreements for construction and installation of facilities which have been fully executed or under which actual construction or installation has commenced as of the effective date of this decision. Aside from such conditional and limited validity we hold said Joint Statement to be void with respect to water service to be rendered after the effective date of this decision in lands above the 165-foot contour within the boundaries of the District, as now constituted or thereafter modified by annexations.

The disposition we make of this proceeding does not require an extended discussion of the various contentions of South Bay, Chula Vista and National City concerning the diverse methods proposed by those parties for alienating from the company's assets the sums represented by the cost of contributed facilities.

In the first place -- and as stated above -- the cost of the contributed facilities is deducted from the company's fixed capital in a rate case. But that is not what is involved in the proposals of the District and the Cities. Both South Bay and Chula Vista, joining with applicant in requesting authorization for the agreements and the supplemental extension rule, propose that any such authorization be conditioned in a manner similar to the statutory condition (Public Utilities Code, Section 820) which declares that the Commission shall have no power to authorize capitalization of certain intangible rights, exclusive of any tax

or annual charge connected therewith. No specific statutory, authority has been granted to the Commission to attach the conditions requested and we are not disposed to assume such authority in this case.

The City of National City has urged that the contracts be held to be void from the beginning, but proposes, nevertheless, that the Commission now declare the contributed assets to be dedicated to the public and held by the utility in trust for the public whenever a case arises in which the value of such assets may be before the Commission for determination. What we have just said on this issue disposes of this request.

O R D E R

Public hearing having been held herein, the application, as amended, having been submitted for decision, the Commission having considered the evidence and argument and now being fully advised, and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that:

(1) Applicant is authorized to carry out the terms and conditions of the following agreements, including the Joint Statement of Policy and Understanding with South Bay Irrigation District (Exhibit 2 herein) and similar understandings concerning provision of water service to lands above the 165-foot contour within the

boundaries of said district and of the City of National City, to the extent only that said agreements have been fully completed, or that actual construction or installation of facilities may have commenced, prior to the effective date of this order:

Exhibit No.	Party
C (annexed to original application herein)	Clarence E. Morris, Inc.
8	Max F. Stewart, et al.
9	Syracuse Development Co.
10	Myron J. and Betty M. Dalseth
11	William A. Buford
12	Casey Construction Co., Inc.
13	Eixon Construction Co., Inc.
14	Security Title Insurance Co.
15	Southern California Baptist Convention
16	Mylo Construction Co.
17	Chula Vista School District
18	Wilco Development Co.
25	Clarence E. Morris, Inc., and all agreements listed in Tables 4A, 4B and 4C of Exhibit 19.

(2) The request of South Bay Irrigation District for reconsideration of the ruling made at the hearing with respect to the offer in evidence of Exhibits Nos. 26 and 27, relating to plans for public ownership and operation of applicant's Sweetwater District system, is denied.

(3) Except as granted in paragraph (1) of this order, the application, as amended, in other respects is denied.

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

Dated at San Francisco, California, this 28th day of DECEMBER, 1960.

President

Commissioners