

**ORIGINAL**Decision No. 63327

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Shadow Mountain Golf Estates, a  
Partnership, composed of Mon C.  
Wallgren, Jean Damerel, Herbert H.  
Shaw, and Bernard A. Sponberg,

Complainant,

vs.

Palm Desert Water Company,

Defendant.

Case No. 7182

Knapp, Gill, Hibbert & Stevens, by Karl K. Roos,  
for complainant.

Best, Best & Krieger, by Arthur E. Littleworth,  
for defendant.

Jerry Levander, for the Commission staff.

INTERIM OPINION

Complainant seeks an order directing the utility to connect a 45-lot subdivision in its certificated service area in Palm Desert, Riverside County, to the system's low pressure zone, instead of to the high pressure zone as proposed by the utility in a plan incorporated in a revenue type refund main extension agreement executed by the parties on May 31, 1961. The utility opposes any low pressure zone connection because of alleged impairment of service to existing consumers.

The complaint, filed August 31, 1961, was heard at Los Angeles before Examiner John M. Gregory on November 6 and 7, 1961, and was submitted, with the filing of certain exhibits, on November 13, 1961.

The only issue concerns the location and size of pipe for the requested extension, in view of the subdivider's insistence that a 6-inch connection to the low pressure zone is adequate, coupled with an obstruction in the proposed route of the company-designed 8-inch connection, west of the tract, resulting from inability to secure an easement--except under conditions unacceptable to the subdivider--across a 2-acre undeveloped parcel of land adjoining the southwest corner of the tract.

The main extension agreement, the utility asserts, requires the subdivider to obtain all necessary easements for the extension; nevertheless, though both parties have cooperated in attempts to negotiate a satisfactory arrangement with the landowner, their efforts, thus far, have been unsuccessful. Neither appears to be willing to initiate eminent domain proceedings to condemn a right-of-way. We observe that eminent domain procedures are open to either party, though apparently without the remedy of immediate possession of the desired easement.

The posture of the case at the hearing, including the easement problem--which seems to have developed shortly after execution of the extension agreement--leaves no alternative to determining, from the available evidence, which of several proposals considered or advanced for supplying water to the tract is the more feasible and reasonable, and of issuing an appropriate order.

There is no question concerning the obligation of the utility to extend service in accordance with its tariff rules. The utility's acknowledgement of that obligation, contained in a document, dated April 7, 1961, supplied to the subdivider for the purpose of obtaining a Final Subdivision Public Report of the

Division of Real Estate, is, however, conditioned on water being delivered to the tract only through such facilities as are "in accordance with the plans and specifications prepared by the engineer of Palm Desert Water Company".

We now turn to a consideration of certain features of the area in question which have a bearing on the various proposals advanced for supplying water to the tract, and to the proposals themselves.

The Palm Desert resort area lies along State Highway 111 between Cathedral City and Indio. Developed by Clifford W. Henderson and his associates about 1947, with a recreational club, riding stables and polo field surrounded by estate-type parcels and subdivisions and more recently including an 18-hole golf course, in which complainant's tract is situated, the pioneer resort corporation supplied free water to portions of the area until, in 1951, the present utility acquired the waterworks. It then commenced to serve water, eventually through two pressure zones, for domestic use in an area certificated by the Commission, which was later extended, after a controversy with the nearby Silver Spur Ranch Water Company, by an additional certificate (Decision No. 45721, May 15, 1951, Application No. 32201; Decision No. 59489, January 12, 1960, Applications Nos. 37784, 41271).

The service area slopes upward in a southwesterly direction from Highway 111 between the 220- and 640-foot contour lines. The 280-foot contour, which traverses some of the northernmost lots of the tract just south of the resort club properties, marks the division between the system's low pressure zone (static pressure 56 psi) to the north and the high pressure zone (static pressure 115 psi) to the south and west, although a few consumers

in the eastern and western portions of the area, immediately south of the 280-foot contour, are served through facilities of the low pressure system.

The community is developing rapidly, with construction--or plans for construction--of tracts, co-operative apartments, motels and other facilities. The record indicates that the central portion of the system, surrounding the recreational facilities of the resort and golf club, is, roughly speaking, about 50 percent developed. There appears, on this record, to be no serious question concerning the adequacy, in general, of the company's water production, storage, booster or distribution facilities within the respective pressure zones, or the quality of service to consumers.

When the utility acquired the resort water system, in 1951, there were several 4-inch pipelines in the golf course area. Most of these have since been removed. There is also a 6-inch pipeline in Portola Avenue, the eastern boundary of the golf course along which face Lots 12 to 20 of the subdivision. A segment of this pipe, between Paintbrush Street (now Fairway Drive) and Shadow Lane, the southern boundary of Lots 1 through 11 of the tract, was cut and sealed off at both ends on July 31, 1955, by an employee of the Macco Company, a contracting firm occasionally employed by Henderson. The record shows that the work was billed to the resort club. No water service has been rendered through the severed line since 1955, though it was formerly used to supply water to the riding stables and, later, to a lessee of the stables, prior to dismantling and removal in 1955. The severed line, in bad condition and laid at substandard depths, although shown as an operative facility of the utility, as late as 1960, on a map filed with the Commission in compliance with Decision No. 59489, supra, has been deleted from subsequent system maps.

The subdivider's principal plan (complaint, Appendix B) involves reactivation of the severed portion of the 6-inch pipe, at the utility's expense, and connecting it with the operative Portola Avenue 6-inch line now terminating at Fairway Drive, in the low pressure zone. The 6-inch line would be extended, at its southern end, along Shadow Lane to its western end at Lot 1. Service to lots on Whitestone Lane and Flagstone Lane, both cul-de-sacs entering, respectively, Shadow Lane and Portola Avenue, would be by 6-inch lines connected to the mains in the latter two streets. The total cost to the subdivider of the foregoing installation, including mains, valves, fittings, hydrants and services, plus 10 percent for overheads, is estimated at \$14,551. No off-site easements are required for this plan.

By way of comparison, the utility's plan provides for an 8-inch pipeline laid from an existing 8-inch main in Grapevine Street, located in the high pressure zone west of the tract and golf course and on a prolongation westward of the line of Shadow Lane; thence easterly through the Henderson 2-acre parcel (for which the easement in question is necessary) and along Shadow Lane to Portola. Six-inch mains would run north on Portola to Lot 20 (near Old Prospector Drive) and through the two cul-de-sacs. This plan would utilize the high pressure zone backup system, which is also used to supply the low pressure system through a connection at Well No. 4 and its associated 126,000-gallon reservoir and booster plant, located at about the 410-foot contour southwest of the subdivision, at a lower level than the system's major storage facilities. The cost of mains, hydrants and appurtenant items for

the utility's plan is estimated at \$22,832, which sum has been advanced by the subdivider.<sup>1/</sup>

Three other proposals for connection of the tract to the utility's water system were advanced by the subdivider at the hearing. Two involve relatively inexpensive connections from existing 6-inch or 4-inch mains in Portola used to serve consumers east of that street in the low pressure system on both sides of the 280-foot contour line. The evidence indicates that although such connections would provide an adequate flow of water under average demand conditions for the on-site distribution system, peak demand conditions in the low pressure zone would cause pressure reductions in the tract below the minimum standards of General Order No. 103, under operating conditions assumed by the utility's engineer. The subdivider's engineer, who based his conclusions on tests of static pressures in the Portola Avenue area, was not able to state whether the water system, as presently constructed and operated would meet normal operating pressure standards for the tract from its low pressure system. No off-site easements would be required for the Portola area connections.

The other proposal by the subdivider, on which it laid considerable stress as a substitute for the plan requiring reactivation of the severed 6-inch line in Portola Avenue and the utility's plan for an 8-inch connection from Grapevine Street--the latter impeded, as we have seen, both by the disputed size of the connection and by the present lack of an easement over

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<sup>1/</sup> The utility would pay for the difference in cost between 8-inch and 6-inch pipe between Whitestone and Portola, on the theory that future demand east of Portola requires the larger size pipe.

Henderson's land--involves a connection between Lot 45 (the westernmost lot in the Whitestone Lane cul-de-sac) with an existing 6-inch, high pressure main in the golf course west of the subdivision. There is some uncertainty with respect to ownership of this main, which was installed by Henderson, in 1957, from a connection with a utility 6-inch high pressure main in Ironwood Street (a north boundary of the golf course), to supply water to one Gokey, who had built a house on an acre purchased from Henderson, located just north of his 2-acre parcel and between the pipeline and the western boundary of Lot 45 of complainant's subdivision. The utility supplies water from this line to Gokey's successor, Filmer, through a 1½-inch meter at the Filmer residence, and bills Filmer for the service. A reading, between noon and 2 p.m. August 6, 1961, at the Filmer residence and made while the meter was registering, showed pressure in the line in excess of 110 psi.

The utility has also supplied water from the 6-inch Gokey line to the golf club on two recent occasions when the club's well pump failed. The evidence shows that the utility, some time prior to the second pump failure, installed a 6-inch, rebuilt compound meter on the line near the Filmer residence and about 25 yards from the club's well and pump and metered the water then supplied to the club through that facility.

Although the record indicates that certain residential developments in the golf course area north of Henderson's property and along the Gokey pipeline may eventually require removal of that line, it is unquestionably a fact that the line is presently being operated by the utility as part of its high pressure zone facilities to supply water to a domestic consumer, Filmer, despite the fact that, like the severed segment of the 6-inch pipe in Portola Avenue,

its delineation on earlier maps filed by the utility with the Commission has subsequently been deleted.

Summary and Findings

It has been represented by the subdivider, and the record establishes, that a water supply for the tract is a matter of considerable urgency. The utility's concern for providing adequate facilities for this development, as well as for future developments in its certificated area, is likewise understandable, especially since, as the record shows, much of the future development is expected to occur in the low pressure zone.

If it were not for the obstacle to the utility's plan for the connection presented by Henderson's refusal to grant an easement, except under certain conditions, and a further obstacle in the present inability of the subdivider to obtain a substitute easement from owners of the Haystack Ranch, which adjoins Henderson's land on the south and is within the utility's certificated area, the utility's plan, incorporated in the agreement of May 31, 1961, would appear to be the one most likely to provide an adequate water supply, at proper working pressures, not only for the subdivider's tract but also for present and future developments in the golf course area and in the area east of Portola Avenue now served by low pressure facilities.

The record, as we view it, does not support the utility's claim that a connection to the high pressure zone with 8-inch pipe is required for the service requested by the subdivider. It is clear, however, that connection of the tract, which slopes upward from the 280-foot contour, to the low pressure zone facilities, in view of what the record shows are the operating conditions and potential developments in that zone, would intensify the already



apparent problem of maintaining adequate working pressures in the tract, especially during periods of peak demand.

The utility's rule governing water main extensions provides, with respect to the location and size of a main extension to serve a subdivision, in part as follows:

"An applicant for a main extension to serve a new subdivision...shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains, from the nearest existing main at least equal in size to the main required to serve such development, including necessary service stubs or service pipelines, fittings, gates and housings therefor, and including fire hydrants when requested by the applicant or required by public authority, exclusive of meters..." (See Rule, Decision No. 50580, September 28, 1954, Case No. 5501, 53 Cal. P.U.C. 490, Par. C.1.)

The record, as noted above, shows that the utility has engineered its plan for the extension on the assumption that the "nearest existing main" of the required size is the 8-inch high pressure main terminating at the eastern end of Grapevine Street.

In its original plan, submitted to the subdivider prior to execution of the May 31, 1961 extension agreement, the utility had proposed using 8-inch pipe from the Grapevine Street connection through Shadow Lane to Portola, thence north on Portola to Flagstone Lane, at which point a 6-inch connection would take off through that cul-de-sac. An 8-inch main was also proposed for the Whitestone Lane cul-de-sac, connecting with the 8-inch line in Shadow Lane between Lots 9 and 10, about 300 feet west of Portola. As a result of an informal complaint to the Commission by the subdivider, and after discussions in April and early in May with the Commission staff, the utility amended its plan by reducing the diameter of the segments of pipe on Portola, between Shadow and Flagstone, and from Shadow through Whitestone, from eight to six inches. The utility

also agreed to assume the difference in cost between an 8-inch and 6-inch pipe for the segment between Whitestone Lane and Portola, for the reason that it considered an 8-inch line all the way to the intersection of Shadow Lane and Portola to be necessary to supply future developments in the low pressure zone east of Portola, as well as, possibly, other developments in the golf course area west of complainant's tract.<sup>2/</sup>

We construe the utility's main extension rule to mean that an extension to a subdivision "...from the nearest existing main at least equal in size to the main required to serve such development,..." contemplates connection to an existing operative main in a pressure zone designed to provide adequate flows of water to the elevations involved at pressures not less than those prescribed by paragraph II.3.a. of General Order No. 103. If special booster or storage facilities are required exclusively for the service requested--a contingency as to which there is no issue on this record--the main extension rule (par. C.1.) makes provision for the inclusion of the cost thereof in the subdivider's advance, upon approval by the Commission.

We find from the evidence that:

1. Shadow Mountain Golf Estates Unit No. 1 is a subdivision within the presently certificated boundaries of the service area of Palm Desert Water Company in Riverside County, California.
2. The utility supplies water to consumers on its system through two pressure zones, divided generally by the 280-foot contour.

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<sup>2/</sup> The utility's engineering plan, shown on Appendix A attached to the complaint, indicates a 10-foot easement at the western and southern sides of Lot 45, in Whitestone Lane, and an area, indicated as "Future Subdivision" (west and north of the Henderson 2-acre parcel), in which the Schwilck development is now taking place.

3. Said subdivision lies principally within the utility's high pressure zone, in which are located at least two water mains, owned or operated by the utility and used in supplying water to consumers in said zone, either of which is at least equal in size to the main required to serve said subdivision. Under system operating conditions disclosed by this record, a main not in excess of six inches inside diameter is required to serve said subdivision, provided that such main is connected to the system's high pressure facilities, and that connection of such a main to the system's low pressure facilities will not, under present operating conditions in said low pressure zone, reasonably assure an adequate supply of water at proper working pressures for said subdivision. The two existing water mains hereinabove referred to are: (1) the 8-inch main terminating at Grapevine Street and Hearth Stone Lane and (2) the 6-inch, so-called "Gokey", main extending southerly from Ironwood Street and terminating in the vicinity of a 2-acre parcel of land owned by Clifford W. Henderson west of Lot 1 of said subdivision.

4. Routing of an extension from the 8-inch main in Grapevine Street easterly to and along Shadow Lane to Portola Avenue is not presently feasible because of inability to obtain an easement, without proceedings in eminent domain, for a right-of-way for said extension.

5. An extension from the 6-inch "Gokey line" to Lot 45 of complainant's subdivision offers a feasible method for supplying said subdivision with sufficient water at adequate pressures, under the circumstances disclosed by this record, provided that an easement for said connection, between the pipeline and Lot 45, can be secured from intervening landowners without undue delay.

6. Complainant is entitled, under the provisions of the utility's water main extension rule, to have the utility extend its facilities and service to Shadow Mountain Golf Estates Unit No. 1, but the utility is not entitled to require an advance from complainant of the estimated reasonable cost of installation of mains, whether for an off-site connection to an existing utility main or for on-site distribution, in excess of the cost of mains of six inches inside diameter.

Since the record indicates that the utility and the subdivider are primarily interested, in their respective situations, in obtaining and providing adequate water service, and since an extension from the Gokey line may not be one that the utility may desire to include as a permanent facility of its water system, provided other means are available to it to supply adequate flows and pressures to the subdivision, we find that an interim order should issue herein, directing the utility to extend service to the subdivision by a connection of the Gokey line to Lot 45, or by such other connection to high pressure facilities as may be agreed to by the parties, to be followed by whatever further proceedings may be necessary, including public hearings, to determine the feasibility and adequacy of that connection as a permanent utility installation, or to consider whether the utility's system is adequate for responding to future demands indicated as probable by this record.

INTERIM ORDER

A public hearing having been held herein, the Commission having considered the evidence and arguments and having concluded that the case should be kept open for further proceedings, as stated

in the foregoing interim opinion, and basing this interim order on the findings set forth above,

IT IS HEREBY ORDERED that:

1. Palm Desert Water Company, within thirty days after the effective date of this decision, shall install a connection between its high pressure zone system and Shadow Mountain Golf Estates Unit No. 1, between the six-inch main presently extending south from the utility's six-inch high pressure main in Ironwood Street, in Palm Desert, and Lot 45 of said subdivision, or between such other points on the utility's high pressure zone system and said subdivision as may be agreed upon by the parties, together with such on-site distribution facilities as may be required to serve said subdivision, and thereafter, until further order of the Commission, shall serve customers in said subdivision in accordance with the utility's presently effective rates, rules and regulations.

2. The installation of said connection and said distribution facilities shall be made in accordance with a contract executed in compliance with the utility's rule governing main extensions; provided, however, that with respect to the cost of mains the utility shall not require an advance by the subdivider in excess of the estimated cost of mains of six inches inside diameter.

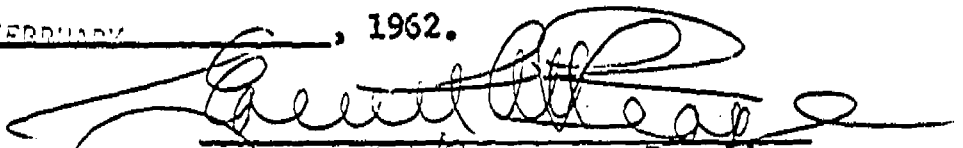
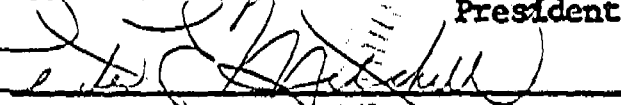
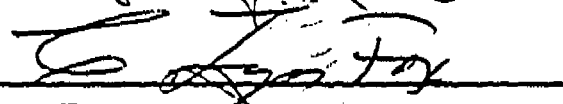
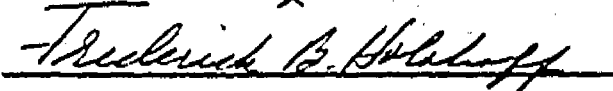
3. The utility is directed to refund to the subdivider herein, within thirty days after ascertainment of the reasonable actual cost of said extension, the difference, if any, between the sum of \$22,832, heretofore advanced by the subdivider as the estimated reasonable cost of a proposed extension by the utility in accordance with a plan incorporated in an agreement between the parties dated May 31, 1961, and the reasonable actual cost of the extension herein ordered, without interest.

4. The utility, within ten days after execution thereof, shall file with the Commission, in accordance with General Order No. 96-A, four fully conformed copies of the main extension agreement to be executed with the subdivider herein, as directed by paragraph 2 above, with a showing of necessity in the form of an advice letter, to deviate from the provisions of its main extension rule to the extent that the contract may involve such deviations.

5. This interim order shall be and become effective upon personal service thereof on said Palm Desert Water Company, a corporation, and shall remain in effect until further order of the Commission. If necessary, appropriate proceedings will be taken to ascertain whatever facts may be required for the exercise of the Commission's final determination of the case.

6. Except as granted by this interim order, the relief requested in the complaint is denied, without prejudice, however, to reconsideration of such denial in any further order to be issued herein.

Dated at San Francisco, California, this  
26<sup>th</sup> day of FEBRUARY, 1962.

  
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President  
  
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Commissioners