

ORIGINAL

Decision No. 63642

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the COUNTY WATER  
COMPANY, a Corporation, for Authority  
to extend its water system into  
additional areas to operate such  
extended system in Public Utility  
Water Company Service, and to exercise  
rights under County Franchise.

Application No. 43764

COUNTY WATER COMPANY, a corporation

Complainant,

vs.

Case No. 7196

SOUTHERN CALIFORNIA WATER COMPANY,  
a corporation

Defendant.

John A. Erickson for applicant and complainant.  
O'Melveny & Myers by Donn B. Miller for defendant,  
and for Southern California Water Company,  
protestant in Applicant No. 43764.  
C. O. Newman for the Commission staff.

INTERIM OPINION

County Water Company, a corporation, by the above-entitled application, filed September 18, 1961, seeks authority to extend its water system into and to serve Tract No. 25764 in the City of Artesia, Los Angeles County, and to exercise rights under a Los Angeles County franchise. The location of said Tract is shown on the map Exhibit A attached to the complaint.

The above-entitled complaint was filed by County Water Company on September 29, 1961, against Southern California Water Company, a corporation, and seeks a cease and desist order against

the defendant from providing water service to Tract No. 25764, and a permanent injunction against the defendant from providing such service. The defendant filed a Motion to Dismiss and Supporting Documents on October 10, 1961, and answered the complaint on November 13, 1961.

A public hearing on the matters on a consolidated record was held before Examiner Stewart C. Warner on December 12, 1961, at Los Angeles. The matters were submitted on said date and are now ready for decision.

Complaint of County Water Company and  
Affirmative Showing on the Application.

The complainant, among other things, alleged that Tract No. 25764 in the City of Artesia was immediately contiguous to its service area on the south thereof with 166th Street as the northern boundary of the Tract; that by Decision No. 60754, dated September 13, 1960, in Application No. 42107, the complainant herein was denied authority to extend its water service to said Tract; that the complainant had been granted certificates of public convenience and necessity to operate a public utility water system pursuant to Decision No. 53568, dated August 7, 1956, and Decision No. 60754; that the applicant had drilled an additional well in compliance with Paragraph (5) of the Order in Decision No. 60754; that the subdivider of Tract No. 25764 had shown a preference for the complainant's service to said Tract; that complainant had been furnishing construction water to the subdivider for the grading, foundation construction, and sewer testing in Tract No. 25764 since June 15, 1961; that the nearest area served by the defendant was approximately one-half mile south of said Tract; that the complainant's bid to

serve the tract amounted to \$14,800, whereas the cost estimated by the defendant was \$22,000; that defendant was placing its water lines north of Artesia Boulevard on the west side of Pioneer Boulevard in the City of Artesia and into Tract No. 25764; that as far as the complainant knew no application had ever been filed by the defendant to serve the Tract; that the complainant had complied with all the provisions of Decision No. 60754; that the service to Tract No. 25764 was necessary to the economic operation of the complainant's new well and to the efficient operation of its maintenance crews and office staff, and to the over-all utilization of its existing overhead; that the complainant had approximately 2,100 active accounts, and the 117 new users in Tract No. 25764 would mean a more efficient and economical use of its present field and office workers; and that complainant was ready, willing and able to serve said Tract.

The defendant in its Motion to Dismiss and Supporting Documents and in its Answer denied the allegations of the complainant, particularly that the subdivider of Tract No. 25764 had shown a preference for the complainant's water service to said Tract, and denied for want of information or belief the allegations contained in paragraphs 2, 4, 6, 7, 8 and 9 of the complaint, except that it, the defendant, was rendering water service in Tract No. 25764, and that it had executed a refund agreement with the subdivider in the sum of \$23,257.

The defendant based its motion upon its assertion that the extension to serve Tract No. 25764 was made pursuant to the provisions

of Section 1001 of the Public Utilities Code, particularly that paragraph of said Section which does not require the defendant to secure a certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations.

Evidence

The record shows that the defendant, in September 1961, by the installation of an 8-inch main, extended its water system from the corner of Artesia and Pioneer Boulevards in the City of Artesia northerly a distance of 1,840 feet to 168th Street, thence westerly approximately 240 feet to serve Tract No. 25764, and northerly 63 feet in Pioneer from 168th Street; that the City of Artesia was incorporated in 1959; and that the entire area involved in the complaint lies within the boundaries of said City. ✓

The record further shows that although the complainant has drilled a new well pursuant to Ordering Paragraph (5) of Decision No. 60754, it has not equipped such well and has not connected its well to its water distribution system in compliance with the provisions of such paragraph which required such drilling, equipping, and connection within nine months after the effective date of said decision, which was dated September 13, 1960, and became effective twenty days thereafter. Said Ordering Paragraph (5) provided that no future requests for extension of County Water Company's certificated area would be considered by the Commission until the conditions of Paragraph (5) had been satisfied. Said decision in Ordering Paragraph (14) thereof also prohibited the complainant and applicant herein from extending its water system outside its certificated area without further order of the Commission.

Section 1001 of Public Utilities Code

Southern California Water Company relies upon the second paragraph of Section 1001 to justify its noncontiguous extension. Literally read, the provision authorizes such noncontiguous extensions, and in a different context might not warrant further comment. In the posture of these matters, however, Southern California's reliance thereon hampers, to say the least, the Commission's ability to decide, on any comprehensive basis, which of two competing utilities should be authorized to serve the area in question.

The record shows that Southern California's noncontiguous extension was effected almost concurrently with the filing by County of its application herein to serve Tract No. 25764. It also shows that Southern California made the extension with the knowledge that County was theretofore attempting to furnish water service to said tract. It should be noted in passing that County's efforts to serve and expand its area have been before the Commission since approximately 1956. Under these circumstances, if unqualified effect were to be given to the language of Section 1001, Southern California's decision not to seek specific Commission authority to serve the area in dispute could wrest from the Commission its prerogative of weighing County's ability to serve the tract against that of Southern California's. Giving such effect would preclude the Commission from considering County's application on its merits.

It is our view that the Commission cannot be made so impotent unless the record shows that Southern California's assertion of its right to extend pursuant to Section 1001 is free from taint. This the record does not do. The record in fact shows that Southern California's right is imperfect because of the possibility, or even the probability, that it failed to comply with its own main extension

rule in making this extension. The issue of whether defendant complied with its main extension rule was not pleaded by complainant and its injection at the hearing was specifically excluded. Nevertheless, the record shows that the 8-inch main by which defendant connected its system to the distribution facilities in Tract No. 25764 was installed without requiring or receiving an advance for the reasonable cost of construction thereof from the subdivider of said tract. In not requiring such an advance defendant may be in violation of its filed main extension rule.<sup>1</sup> If this is true, defendant enabled itself to extend service under conditions more favorable to the subdivider, who otherwise may well have found it more to his advantage to seek service from complainant. Accordingly, concurrently herewith the Commission has instituted an investigation on its own motion for the purpose of ascertaining whether such a violation in fact exists.

The order herein will provide that Southern California may serve Tract No. 25764 on an interim basis, but that no final disposition of the issues raised by the complaint and application will be made until after a decision is rendered upon the questions presented by the Order Instituting Investigation issued concurrently herewith.

#### Findings and Conclusions

Based on the record before us, the following findings and conclusions are made:

1. That the applicant and complainant County Water Company is a public utility water corporation, and that the defendant Southern California Water Company likewise is a public utility water

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<sup>1</sup> Official notice is taken of defendant's filed Rule No. 15, Main Extensions, which provides in Section C.1. that:

"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 ..." (Emphasis added)

corporation, as such corporation is defined in the Public Utilities Code of the State of California.

2. That the defendant Southern California Water Company was lawfully operating a public utility water corporation within the boundaries of the City of Artesia when it extended its water system within the boundaries of said City in September 1961, to serve Tract No. 25764.

3. That Southern California Water Company did not require or receive an advance for the reasonable cost of construction of the 8-inch main by which it connected its water system to the distribution facilities in Tract No. 25764.

4. That Southern California Water Company should be authorized to serve Tract No. 25764 with water on an interim basis.

5. That disposition of the issues raised by County Water Company's complaint and application, not otherwise disposed of herein, should be held in abeyance until further order of the Commission.

INTERIM ORDER

Application and complaint as above entitled having been filed, a public hearing on a consolidated record having been held, the matters having been submitted and now being ready for decision based on the findings and conclusions hereinbefore made,

IT IS HEREBY ORDERED that:

1. Southern California Water Company is hereby authorized to serve Tract No. 25764 with water on an interim basis and to charge applicable tariff rates therefor.

2. All issues raised by County Water Company's complaint and application, not otherwise disposed of herein, shall be further considered and disposed of after a decision is rendered upon the issues presented by the Order Instituting Investigation issued concurrently herewith.

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

Dated at San Francisco, California, this 1st  
day of May, 1962.

Ernest R. Brey  
President

D. J. Foster

Frederick B. Hobbieff

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Commissioners