

**ORIGINAL**

Decision No. 63827

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)

In the Matter of the Application of )  
CALIFORNIA WATER & TELEPHONE COMPANY )  
for approval of and authorization to )  
carry out the terms of certain main )  
extension contracts and for an inter- )  
im order authorizing applicant to )  
install facilities and institute )  
service pursuant to said contracts )  
pending the decision on this )  
application. )

Application No. 43471  
(Amended)

O P I N I O N

The Commission granted applicant interim authority to construct in-tract water facilities in 19 developments in the Sweetwater District of its San Diego Bay Division pending final determination of an underlying issue in Decision No. 61283, issued December 28, 1960, in Application No. 41117 (58 Cal. P.U.C. 435 - review denied by Supreme Court of California, July 12, 1961 - S.F. No. 20673).<sup>1/</sup>

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<sup>1/</sup> Decision No. 60016, April 26, 1960, as amended by Decision No. 60144, May 24, 1960, Application No. 42080; Decision No. 62440, August 22, 1961, Application No. 43471. These decisions, and Decision No. 61283, review the history of the Sweetwater District developments out of which these proceedings have arisen.

The 19 contracts, principally with subdividers and all but one relating to lands located entirely above the 165-foot contour (claimed by applicant to mark the upper limit of its Sweetwater District service area except as extended by specific agreements), provide for contribution by the developers, without refund, of the cost of constructing in-tract facilities and, in the one case, the cost of booster equipment required to serve portions of a subdivision which lie above the 165-foot contour.

The utility's water main extension rule (Rule 19) requires that estimated costs of construction of in-tract facilities be advanced by applicants for extensions, subject, after ascertainment of actual costs, to refund under one of the optional methods provided by the rule. The contracts here involved, like those considered in Application No. 41117, to the extent that they provide for construction of facilities under conditions at variance with applicant's rule, are ineffective unless specifically authorized by the Commission (Public Util. Code, Sec. 532, General Order No. 96-A, Sec. X.A.; Calif. Water & Telephone Co. v. P.U.C. (1959), 51 C.2d 478).

Since the underlying issue--that related to the propriety of the requested rule deviations--is common to all agreements encompassed by the two instant applications, and since there appears to be no necessity for a public hearing in either matter, the two applications will be consolidated for decision. All the contracts have their source in either the understandings with South Bay Irrigation District or in the master agreements described in Application No. 41117.

The Commission, in Decision No. 61283, after reviewing the arrangements concluded in 1948 and 1952 and thereafter pursuant to which Colorado River water, made available since 1947 to the City of National City and South Bay Irrigation District (the latter as successor to the City of Chula Vista), would be distributed by California Water & Telephone Company, as agent for the cities and district, to lands within and without the utility's acknowledged service area entitled to such water, authorized the utility to carry out the terms, including contribution of costs, of the various understandings and agreements "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." (The Commission's order was not stayed. It became effective on January 17, 1961.)

The Commission, in that proceeding, denied the company's request to file a supplemental main extension rule the effect of which would have been to authorize future installations above the 165-foot contour on a contributed cost basis without prior Commission authorization. As to such extensions, the Commission stated, in its opinion, that they "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 that connection the Commission, after noting that the Sweetwater project set up under the initial agreements and understandings appeared to be in accordance with good waterworks practice and that the various parties had concluded that the best interests of all would be served within the context of the plan "thus far carried out", observed that "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."

Provision of utility water service to elevations above the 165-foot contour involves substantially greater costs, primarily for pumping and storage but also for mains, services, meters, hydrants and tanks, than for lower--and older--portions of the Sweetwater District system. Construction of extensions in these higher elevations on a contributed cost basis thus appears to provide a measure of protection against higher rates for service, since the contributed assets are not capitalized for rate making purposes.

We find that the public interest will not be adversely affected by granting final authority to carry out all terms and provisions of the agreements submitted with the two instant applications, as amended. Accordingly, the applications should and will be granted.

Applicant is placed on notice that the granting of specific authority herein to carry out the terms and provisions of certain contracts which deviate from its main extension rule shall not be construed to relieve applicant from compliance with its rule in all cases where applicable, unless prior authority to deviate from the rule has first been sought and secured.

O R D E R

The Commission having considered the applications herein, as amended, and now being informed in the premises,

IT IS ORDERED that:

1. California Water & Telephone Company be and it hereby is authorized to carry out the terms and conditions of each of the contracts referred to in the foregoing opinion and described below:

| <u>Date of Contract</u>               | <u>Developer</u>                                       | <u>Development</u>                                     | <u>Exhibit No.</u> |
|---------------------------------------|--|--|--------------------|
| <u>Application No. 42080, Amended</u> |  |  |                    |
| 10/21/59                              | John B. Morgan Constr.Co.                              | Country Club View No. 2                                | A                  |
| 10/26/59                              | Casey Constr. Co.                                      | Robinhood Unit No. 4                                   | B                  |
| 12/ 3/59                              | Syracuse Devel. Co.                                    | Seaview Estates Unit No. 4                             | C                  |
| 1/25/60                               | Syracuse Devel. Co.                                    | Seaview Estates Unit No. 5                             | D                  |
| 2/ 8/60                               | John B. Morgan Constr.Co.                              | Country Club View No. 3                                | E                  |
| 2/ 4/60                               | Stardust Inv. Co., et al.                              | Chateau Heights Unit No. 1                             | F                  |
| 2/19/60                               | Robinhood Homes, Inc.                                  | Robinhood Unit No. 5                                   | G                  |
| 11/10/59                              | Nixdorff   | 1.6 Ac. in NE½ of Quarter Sec. 57, Rancho de la Nacion | H                  |
| 3/21/60                               | Halecrest Chula Vista Co.                              | Halecrest Estates Unit A                               | I                  |
| 4/18/60                               | Mylo Construction Co.                                  | Mylo Ocean View Estates No. 3                          | J                  |
| 4/18/60                               | Syracuse Devel. Co., Inc.                              | Virginia Terrace                                       | K                  |
| 4/18/60                               | Keystone Realty Co.                                    | Chateau Heights Unit No. 2                             | L                  |
| 4/18/60                               | Robinhood Homes, Inc.                                  | Robinhood Unit No. 6                                   | M                  |
| 4/18/60                               | Clarence E. Morris, Inc.                               | FAMA portion of Judson Estates Unit No. 3              | N                  |
| 5/26/58                               | B & W Constr.Co. (Clarence E. Morris, Inc., Successor) | Balance of Judson Estates Unit No. 3                   | O                  |
| <u>Application No. 43471, Amended</u> |  |  |                    |
| 4/26/61                               | Margo Builders, Inc.                                   | Hilltop Estates  | A                  |
| Undated                               | Robinhood Homes, Inc.                                  | Robinhood Unit No. 7                                   | B                  |
| Undated                               | Robinhood Homes, Inc.                                  | Robinhood Unit No. 8                                   | C                  |
| 5/15/61                               | H & S Constr. Co., Inc.                                | Bonita Golf Highlands                                  | D                  |
| 6/19/61                               | Whittington & Ramm                                     | View Hill Map No. 4775                                 | E                  |

2. California Water & Telephone Company, within one hundred twenty days after the effective date of this order, shall file with the Commission a statement, verified by one of its officials, setting forth with respect to each of the contracts herein authorized the adjusted actual costs of construction, the amounts accounted for as contributions in aid of such construction and the amounts accounted for as the utility's investment in plant, with appropriate references to the Uniform System of Accounts for Water Utilities.

3. California Water & Telephone Company shall file with this Commission, within thirty days after the effective date of this order, two certified copies of each contract as executed, together with a statement of the date on which each contract is deemed to have become effective.

4. California Water & Telephone Company shall file, within ninety days after the effective date of this order and in conformity with General Order No. 96-A, the summary required by that general order, listing all contracts and deviations, including the contracts herein authorized. Such list shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of JUNE, 1962.

Gerald W. [Signature]  
President  
[Signature]  
Fredrick B. [Signature]