

Decision No. 66424

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CAMINO WATER COMPANY
to extend service to contiguous territory,
to expand its water system, for authority
to issue stock, and request for ex parte proceeding.

Application No. 45117

ORDER DENYING REHEARING
AND MODIFYING DECISION NO. 66212

Ventura County Water Works District No. 5, having filed a petition for rehearing of Decision No. 66212, and the Commission having considered said petition and each and every allegation therein, and being of the opinion that no good cause for rehearing has been made to appear;

IT IS ORDERED that said petition for rehearing is hereby denied.

IT IS FURTHER ORDERED that the last sentence in the first paragraph on Sheet 2 of Decision No. 66212 be modified to read:

"Therefore, applicant's objection to the District's offer of such testimony was properly sustained."

Dated at San Francisco, California, this 3rd day of DECEMBER, 1963.

William G. Brund

President
John E. Hallock

Arvid O. Page

Commissioners

*I dissent.
George L. Trover*

DISSENTING OPINION OF COMMISSIONERS GROVER AND HOLOBOFF

It is apparent from today's denial of the petition for rehearing that no one has changed his mind. But because the Commission majority has chosen to change the language of the original opinion and because that change might create an erroneous impression, some additional comment is in order.

The rulings of the examiner did in fact restrict the right of the district to participate in the hearing; those rulings were not limited to matters of evidence. After the district's opening statement, the company objected to it, and the examiner sustained the objection. In one sense, it would be possible to say that the evidence proposed to be offered was held to be immaterial and that that was the reason the district was not allowed to present it. In the discussion that followed, however, the examiner made it clear that he was actually ruling on the district's right to participate. Thus, when he permitted the district to introduce Exhibits 1 and 2 (which were county planning resolutions purportedly requiring annexation of the land in question to the district), the examiner said: ". . . I will modify my ruling and permit your appearance for that limited purpose." (Reporter's Transcript, page 17, emphasis added.) Again, in connection with the issues of the company's alleged franchise and the company's water supply, the examiner conceded that other parties might participate but ruled that the district would not be permitted to do so. (Reporter's Transcript, pages 15 and 24.) Indeed, he expressly stated that the Commission staff (Reporter's Transcript, page 14) or even "a citizen" (Reporter's Transcript, page 15) or "a citizen of the county" (Reporter's Transcript, page 24) could participate, but that the district could not. These factual issues were admitted by the examiner to be material; denying the district the right to participate in the development of these issues was not a ruling on evidence but rather on the standing of the district.

On the principal issue it makes no difference whether the ruling is regarded as relating to standing or as relating to evidence. The most important question was whether the company or the district should serve the area and the examiner ruled that that issue could not be raised -- that it was immaterial whether or not the district had better or cheaper water.

Changing the characterization of the examiner's ruling has not eliminated the fallacy of the Commission's original decision -- the fallacy of ignoring the possibility that public convenience and necessity might be better satisfied by district service. We still do not know whether the district or the company would be the better choice, and the reason we do not know is that the Commission has excluded all evidence on that question.

George F. Traver

Fredrick B. Halaloff

Commissioners