

**ORIGINAL**

Decision No. 68742

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM O. WILDES,  
A. M. LANE and ROBERT  
G. LANE as individuals,  
  
Complainants,

vs.

DEL MAR UTILITIES, a Public  
Utility Corporation,  
  
Defendant.

Case No. 8078  
(Filed December 9, 1964)  
(Answered December 30, 1964)

William O. Wildes and J. H. Lane, for  
complainants.  
John Gerald Driscoll, Jr., and Ralph  
Dixon, for defendant.

O P I N I O N

Complainants are three individuals who own Lots 90, 91 and 92 of the so-called Sachs property in the City of Del Mar. Said lots and property are outside of but contiguous to the service area boundaries of defendant as such boundaries are delineated on defendant's filed tariff service area map.

Complainants allege that defendant is the only supplier of water within the City of Del Mar; defendant is limited to a maximum of 724 acre-feet of water per year from the City of San Diego which may be reduced to a maximum of 543 acre-feet in a drought year, but has not been so reduced; defendant refuses and is unable to furnish water to all properties within the City of

Del Mar and specifically refuses to furnish water to complainants' lots in the Torrey Pines Sewer District; sewer facilities have been installed to serve said lots and are being paid for by assessment and Del Mar Utilities has agreed to handle sewage to said facilities even though it refuses to furnish water to said lots; the City of Del Mar is a member of the Metropolitan Water District, and, as such, is entitled to an adequate supply of water to serve all properties within the City of Del Mar; said City is willing to negotiate a contract to furnish an adequate supply of water to defendant at cost and has requested defendant to distribute the water to which City is entitled by virtue of its MWD membership; such water can be delivered to defendant through the same facilities through which it is now supplied by the City of San Diego; defendant refuses to accept a contract with the City of Del Mar because it would be required to abrogate its existing contract with the City of San Diego by so doing; abrogation of the existing contract between Del Mar and the City of San Diego is not detrimental to defendant in that the cost of water would be passed on to the consumer; and the refusal of defendant to abrogate its existing contract with the City of San Diego for a limited supply of water and negotiate a contract with the City of Del Mar for sufficient water is contrary to the interests of the public and of complainants and others.

Complainants seek an order of the Commission to defendant that it take the necessary steps to secure the additional supply of water which can be made available by the City of Del Mar to serve the properties of complainants and others within said City.

In its answer, defendant admitted that it had refused to furnish water to complainants' properties; said properties are outside the boundaries of its service area; it is handling sewage through sewer facilities serving complainants' properties, but there is no limit to the service area of defendant's sewer system and the furnishing of sewage facilities to complainants' properties is within defendant's authorized powers; and the City of Del Mar is negotiating with defendant regarding purchase by said City of defendant's assets. As an affirmative defense defendant alleges that its refusal to serve complainants' properties has not been based upon its lack of water supply but has been based solely upon the ground that complainants' properties are outside of defendant's authorized service area.

Public hearing was held before Examiner Warner on January 26, 1965, at Del Mar.

The real issue before the Commission is whether defendant has dedicated its water service to complainants' area.

Exhibit No. 6 is a letter to defendant, dated May 26, 1964, from the City of Del Mar requesting defendant, . . . "in view of the unusual, extraordinary, and unfortunate circumstances pertaining to the nonsupply of water to the property of Mr. Davis," . . . to take appropriate steps to furnish water service to said property, which was outside defendant's service area to the south thereof. Pursuant to said request, defendant extended a 4-inch and 2-inch main to furnish such service which passes complainants' properties on the west thereof. However, Exhibit No. 6 is also a copy of a letter dated June 23, 1964, from defendant to the City advising the

latter of defendant's compliance with City's request, but requesting City not to issue any more building permits before a water supply is assured and advising City that its compliance and extension of water service to the Davis property was not to be considered a precedent.

Based on the record herein, the Commission finds that defendant has not dedicated its water service to complainants' area. It is concluded, therefore, that the complaint should be dismissed.

O R D E R

IT IS ORDERED that this complaint is dismissed.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of MARCH, 1965.

Frederick B. Halberstam  
President

W. J. Mitchell

George J. Grover

Augustus

William L. Bernard  
Commissioners