

**ORIGINAL**

Decision No. 72960

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of LESSER WATER COMPANY for  
authority to extend its water  
service to Dos Vientos Ranch in  
the vicinity of Newbury Park,  
Ventura County, California, and  
for authority to issue stock.

Application No. 48823  
(Filed September 27, 1966)

Gibson, Dunn & Crutcher, by  
Max Eddy Utt, for applicant.  
Royal M. Sorensen and Simon Perliter,  
for Ventura County Water Works  
District No. 6; and Glen Kendall,  
for Ventura County Water Works  
District No. 6 and City of Thousand  
Oaks; protestants.  
Charles L. Stuart, for Southern  
California Water Company,  
interested party.  
Jerry J. Levander and E. C. Crawford,  
for the Commission staff.

O P I N I O N

Lesser Water Company requests authority to extend its water facilities and service to an area known as Dos Vientos Ranch (Dos Vientos) comprising 4,861 acres of unincorporated territory, near the community of Newbury Park, in Ventura County. Dos Vientos adjoins the westerly boundary of applicant's present tariff service area. Authority to issue common stock to finance backup facilities and authority to apply presently-filed rates are also sought.

Ventura County Water District No. 6 (District), now a subsidiary district of the City of Thousand Oaks, opposes the application, since it seeks to become the water purveyor to developable portions of Dos Vientos instead of applicant. The District's objective in this matter is part of a much larger concept held by the City Council of the City of Thousand Oaks which envisions the Conejo Valley as the future City of Thousand Oaks with the District serving the entire area.<sup>1</sup> The closest present boundary of the District lies 1½ miles east of Dos Vientos.<sup>2</sup>

Public hearings were held before Examiner Main on February 27 and 28, 1967 at Camarillo and on March 6 and 7, 1967 at Los Angeles and the matter was thereupon submitted.

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This concept met substantial opposition in an election held March 21, 1967, in which the proposed "Newbury Park-Ven-tu Park annexation" to the City of Thousand Oaks was not successful; the vote reportedly was 1,565 against the proposed annexation to 505 in favor of it.

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On March 22, 1967 an application for an uninhabited annexation of approximately 1,050 acres of land to the City of Thousand Oaks was filed with the Local Agency Formation Commission of the County of Ventura. The westerly boundary of the proposed annexation extends to within about one-half mile of Dos Vientos Ranch and touches the northeasterly corner of the service area herein proposed by the District.

The record in this proceeding, including the evidence adduced through witnesses for the applicant, District and staff, was developed in light of the entire Dos Vientos Ranch being under the ownership and control of Louis Lesser Enterprises, Inc. (Lesser Enterprises). A change in this ownership was brought to the Commission's attention recently. It appears that on or about May 31, 1967 Lesser Enterprises was divested of its ownership of about 4,300 acres of this land through a foreclosure by trust deed sale. It further appears that Lesser Enterprises has retained the ownership and control of 550 acres, which is represented as a level portion of Dos Vientos programmed for first-phase development.

Applicant is a California public utility water corporation which in 1960 commenced operations in and near the community of Newbury Park where it now serves more than 1,200 customers. All of its outstanding capital stock is presently held by Lesser Enterprises, the primary developer of the areas in which applicant has certificate authority to construct and operate its water system. The officers and directors of applicant are also officers and directors of the parent corporation.

District was formed on August 5, 1947 to provide water service for residents in the then-unincorporated community of Thousand Oaks comprising approximately 1,200 acres. Subsequent annexations have increased its size to approximately 6,000 acres, of which about 26 percent is outside the Thousand Oaks city limits.

Water service is rendered presently to 5,400 customers. Upon becoming a subsidiary district of the City of Thousand Oaks on or about July 1, 1966, District retained all of its powers and functions. Its ability to make non-contiguous annexations appears significant, especially in view of the requirement that the City of Thousand Oaks annex contiguously.

Applicant's present tariff service area consists of approximately 1,500 acres. Thus far its middle or central portion comprising about 500 acres has been developed. The eastern portion, which includes Running Springs Ranch<sup>3</sup> and Tract 1821, and the western portion remain undeveloped. The latter portion consisting of the Borchard et al and Talley et al properties, which are not owned by Lesser Enterprises, is contiguous to Dos Vientos. It was added to the tariff service area by Advice Letter No. 11 filed January 21, 1965.

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By Decision No. 66230 dated October 29, 1963 in Application No. 44989, Lesser Water Company was granted a certificate to construct a water system to serve Running Springs Ranch comprising 283 acres. Tract construction, then expected to be under way during 1964, presently depends upon financing which thus far has been unavailable. In addition, the proposed annexation mentioned in Footnote 2 includes Running Springs Ranch; its outcome therefore may bear upon determining the future water purveyor.

Applicant has projected the development of its present tariff service area and the development of the Dos Vientos area through year 1970 in terms of acreage expected to be in service and in terms of the equivalent residential units for water service on such acreage. These projections, together with applicant's estimates of utility plant additions required to meet such development, are set forth in the following tabulation:

	<u>1966/68</u>	<u>1969/70</u>	<u>5 years Total</u>
<u>Present Tariff Area</u>			
Acreage in Service - Cumulative	906	1236	1236
Equiv. Resid. Units-	3565	4883	4883
Back-up Plant Added	M\$ 290.1	60.0	350.1
In-tract Fac. Added	M\$ 477.2	321.8	799.0
<u>Dos Vientos Area</u>			
Acreage in Service - Cumulative	194	564	564
Equiv. Resid. Units-	724	2104	2104
Back-up Plant	M\$ 167.4	229.5	396.9
In-tract	M\$ 192.4	401.5	593.9
Total Back-up Fac. Added	M\$ 457.5(a)	289.5(b)	747.0

Notes: Includes Meters: (a) M\$ 96.7 and (b) M\$ 121.0

These projections are based on data developed by real estate planning consultants retained by Louis Lesser Enterprises, Inc. and reflect an expected market for new homes and potential commercial and industrial activity. Financing thus far unavailable is a controlling factor in these projections, especially with respect to the scheduling of initial projects.

The record indicates that plans for the Dos Vientos area are not sufficiently definitive to fix the location of the 564-acre development projected through year 1970; that the terrain at Dos Vientos, which ranges in elevation from approximately 100 feet to 1,800 feet above sea level, appears to limit developable land to about 2,700 of 4,861 acres; and that an overall master zoning plan for about 1,800 acres has been adopted by the Ventura County Board of Supervisors (Exhibit 6). The development provided for by this zoning includes single and multiple unit dwellings, schools and commercial areas. The indications are that land parcels C-7 (80 acres) or A-10 (40 acres) of the zoning plan would be developed initially. Thereafter development would probably proceed along proposed extensions of Kimberly Drive or Borchard Road. However, as a consequence of the previously referred to reduction in acreage owned and controlled by Lesser Enterprises, the master zoning plan may undergo substantial revision and the location of the projected development through year 1970 may have become more definitive.

The developable portion of Dos Vientos represented by the approximate 1,800 acres within the master zoning plan is essentially the area which the District contends that it should serve instead of applicant. In comparing the proposals of

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The boundaries of the service area which the District proposes to annex are delineated on maps in Exhibits 19 and 20 and include the portion of Dos Vientos within the Conejo Valley.

applicant and District we note some fundamental similarities: Both have proposed the same source of water supply, a connection to the Calleguas Municipal Water District feeder near the intersection of Reino and Borchard Roads; both have used preliminary water system designs and based cost estimates thereon; both have the experience and abilities needed to serve the area; and both have recently come under criticism, the District for poor fiscal management and applicant for lapses in regulatory requirements.

With regard to differences, applicant's tariff service area adjoins, and its existing water system extends to within one mile of, Dos Vientos; District's nearest territory lies about 1½ miles to the east of Dos Vientos across intervening tariff service areas of applicant and Village Water Company and its existing water system facilities are situated about three miles from Dos Vientos. Applicant has been requested by Lesser Enterprises to provide water service to Dos Vientos, whereas the District, it would appear, would only be so requested, if at all, upon denial of the instant application. With respect to the annexation proposed by the District, the annexation cannot be consummated if opposed by the owners of one-half or more of the lands to be annexed. Lesser Enterprises now appears to own substantially less than one-half of such lands.

The District's exemption from taxes and its practice of requiring the contribution of the full cost of in-tract facilities from developers tend to reduce its cost of service. However, the level of other elements in the cost of service may be offsetting or even substantially more than offsetting, and the propriety

of considering in an adverse manner taxes, which are a legitimate operating expense of privately-owned utilities and which to the extent displaced by tax-exempt public systems represent in effect a shift in the tax burden, is in itself questionable.

A comparison with probative value of the eventual cost for water service in the Dos Vientos area has not been developed in this record. What is needed, estimates of future rates for water service by applicant and of future rates for water service together with related ad valorem taxes by District which are sufficiently reliable for comparative purposes, is perhaps not feasible. Such estimates depend upon future development and operating costs, not only at Dos Vientos but throughout the respective total service areas of applicant and District. In addition, District's past fiscal practices and its potential adoption of procedures under which reserves for depreciation and contingencies would be accrued appear to represent substantial costs which have not been quantified.

To support adequately under these circumstances the District's proposal, it appears necessary to assume either that the long-range plans of the City of Thousand Oaks for the Conejo Valley will be accomplished or that public ownership of public utility water facilities is intrinsically preferred. Neither assumption appears warranted. The outcome of the City of Thousand Oaks' long-range plans is speculative since local government within presently-unincorporated areas of Conejo Valley will presumably, except for uninhabited annexations, be determined in



the future by the residents of such areas. The Commission attaches no weight to arguments that either private or public ownership of water utility facilities is intrinsically preferred. Significantly, either of the foregoing assumptions militates against logical expansions into new areas within the Conejo Valley by existing water distributing utilities other than the District.

We turn now to the financing of the estimated cost of backup facilities and meters proposed to be installed by applicant under its growth projections for the five-year period 1966 through 1970 in the amount of \$396,900 for the Dos Vientos area and \$350,100 for the present tariff service area, or, in the aggregate, \$747,000. For this purpose applicant seeks authority to issue \$300,000 of its common stock and, in addition, plans to issue a remaining \$350,000 in secured notes to Pacific Mutual Life Insurance Company and \$222,800<sup>5</sup> in common stock presently unissued but previously authorized to be issued by Decision No. 66230 dated October 29, 1963. In-tract facilities other than meters are proposed to be financed pursuant to applicant's Rule 15, Main Extensions.

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As of September 30, 1966 the actual number of common shares authorized by Decision No. 66230 to be issued but unissued was 2,675, constituting an aggregate par value of \$267,500.

With respect to the arrangement for loans by Pacific Mutual Life Insurance Company, applicant's existing long-term debt in the amount of \$300,000 consists of a note secured by mortgage on its water system properties dated August 15, 1965 and due December 1, 1990. The note bears interest at the rate of 5½ percent per annum and is payable to Pacific Mutual Life Insurance Company. The borrower had a commitment from the lender to the extent of \$650,000 and was obligated to pay three-fourths of 1 percent per annum interest on the unused loan monies, running from March 1, 1965 to the date of takedown. The commitment expired December 31, 1966 without applicant's borrowing the additional \$350,000.

Authority to enter these loan arrangements with Pacific Mutual Life Insurance Company was granted by Decision No. 69182 dated June 8, 1965, in Application No. 47265, and on or about January 3, 1966, \$260,000 of the mortgage loan monies was loaned to Lesser Development Corporation at 7 percent interest per annum. Such reloaning was not authorized in Decision No. 69182 and authority so to do was not sought from the Commission subsequent to that decision, and is in violation of Public Utilities Code Section 823.

The large-scale land development proposed at Dos Vientos appears to require a method of financing by which the construction of backup facilities may be accomplished with minimum financial risk to the utility and its consumers. If the developers advance the cost of such facilities through the risk period, which essentially would be until the development begins to "pay its way" by producing water sales revenues to cover at least the operating and maintenance costs, depreciation expense and some return on the

utility plant investment, the likelihood of imposing an undue burden on the utility's other customers would be minimized.

The Commission finds that:

1. The record in this proceeding was developed in light of the entire Dos Vientos Ranch being under the ownership and control of Lesser Enterprises. A substantial change in such ownership and control appears to have taken place recently and therefore the following determinations, among others, cannot be made from the record: (a) The specific area or areas for which applicant holds valid requests for water service; (b) the design and estimated cost of the water system to serve such areas; (c) the availability and acquisition cost of sites for storage tanks and of easements for transmission mains to be located outside the land holdings of Lesser Enterprises.

2. Since changes in ownership at Dos Vientos appear to have come about through foreclosure by trust deed sale, the ability of Lesser Enterprises to finance backup plant requirements should be shown on a current basis.

3. Current economic conditions, including tight money and light home-building activity, make any scheduling of initial development at Dos Vientos problematical. The experience of Lesser Enterprises at Running Springs Ranch indicates that suitable financing has not been available for several years. Until such time as financing becomes available for the development at Dos Vientos, it would be premature to determine whether or not applicant should be authorized to serve Dos Vientos or portions thereof, especially since the public interest could be better served by evaluating competing proposals on the part of applicant and the District on a current basis at that time.

4. The Borchard et al and Talley et al properties, the former being contiguous to Dos Vientos, were added to applicant's tariff service area by Advice Letter No. 11 filed January 21, 1965. No determination has been made that the public convenience and necessity require an extension of applicant's water system to serve this additional area. In this proceeding there is no evidence concerning the future plans of the owners of these properties, or, for that matter, concerning whether applicant can readily obtain an easement over the Borchard et al properties necessary for the transmission main proposed to be constructed from a Calleguas tap to Dos Vientos.

5. To protect applicant and its customers, the risk attendant to any substantial investment in backup facilities required to serve Dos Vientos should be borne by the developers. A suitable adaptation of Sections C1b and C2c of applicant's Rule No. 15, Main Extensions, could accomplish the desired shift in risk. When refunds of advances for backup facilities become due Lesser Enterprises, applicant might issue its common stock to meet the refund obligation.

6. Without obtaining authority from the Commission and in violation of Section 823 of the Public Utilities Code applicant remitted on or about January 3, 1966 approximately \$260,000 of its mortgage loan monies obtained from the Pacific Mutual Life Insurance Company by authority of Decision No. 69182 dated June 8, 1965 to its affiliate, Lesser Development Corporation, in exchange for a note receivable bearing interest at the rate of 7 percent per annum. In this situation the utility's financial health was at stake in the event of default by its affiliate. As of February 28, 1967, about \$72,000 of the \$260,000 had not been reimbursed to applicant.

7. The evidence fails to establish that public convenience and necessity require certification of applicant, at this time.

The Commission is concerned that the relationship between applicant and its parent and associated companies can result, as indicated by Findings 5 and 6 above, in proposals or actions which place undue risks upon the utility and thus could affect adversely its customers.

In view of Finding 1 above, the Commission concludes that the application should be dismissed without prejudice. The Commission further concludes that the staff recommendations concerning the unauthorized disposition of the mortgage loan monies and concerning certain accounting practices should be adopted. The other findings and matters discussed in the foregoing opinion should serve as a guide for use in connection with a new application seeking authority to serve the Dos Vientos Ranch or portions thereof.

O R D E R

IT IS ORDERED that applicant's request for a certificate of public convenience and necessity to operate as a water corporation is denied.

IT IS FURTHER ORDERED that:

1. Applicant, through its parent, shall cause the immediate return of the utility's mortgage loan monies illegally held by an affiliated company.

2. Applicant shall reimburse forthwith mortgage loan monies in the amount of \$860.29 disbursed for interest expense.

3. Applicant shall restore its general ledger accounting to a calendar year basis and effect appropriate correcting entries in its Account 271, Earned Surplus, so as to reflect the net profit transferred to surplus for the calendar years 1963, 1964, 1965, and 1966.

4. Applicant shall cause to be posted in its detailed plant ledger and originating entry records, appropriate references to certificated areas as these have been identified by Commission decisions.

5. Applicant shall promptly execute main extension contracts and effect their formal recordation as originally estimated. When exact costs of construction have been determined, applicant shall adjust its recorded figures accordingly.

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

Dated at San Francisco, California, this 27th day of AUGUST, 1967.

[Signature]  
President

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Commissioners