

ORIGINAL

Decision No. 83726

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of PRESTO DELIVERY SERVICE, INC.,
a California corporation, for an
extension of its Certificate of
Public Convenience and Necessity
to operate as a highway common
carrier for the transportation of
property in intrastate and inter-
state and foreign commerce.

Application No. 53360
(Filed May 30, 1972)

Murchison & Davis, by Donald Murchison,
Attorney at Law, for applicant.
Russell & Schureman, by Carl H. Fritze
and R. Y. Schureman, Attorneys at Law,
for Qwikway Trucking Co., B. W. Hodge
Transportation, Inc., G. & H. Trans-
portation, Griley Freight Lines,
Shippers - Imperial, Inc., and City
Freight Lines, protestants.

O P I N I O N

This matter comes before the Commission upon the application of Presto Delivery Service, Inc., for an extension of its certificate of public convenience and necessity to operate as a highway common carrier for transportation of general commodities within the State of California. Applicant also operates as a permitted carrier, holding radial highway common carrier and highway contract carrier permits. By this application, applicant requests an in lieu certificate of public convenience and necessity as a highway common carrier, authorizing it to transport general commodities, with the usual exceptions, between the following points and places:

- a. All points and places within the Los Angeles Territory;^{1/}

^{1/} The Los Angeles Territory and the Los Angeles Basin Territory are described in Exhibit 4. -1-

- b. The Los Angeles Territory, on the one hand, and points and places within the Los Angeles Basin Territory, on the other hand;
- c. The Los Angeles Basin Territory, on the one hand, and points and places within the San Diego Territory, on the other hand, serving all intermediate points on Interstate Highways 5, 15, or U. S. Highway 395 and off-route points within 10 miles thereof.^{2/}

Applicant proposes to register the requested authority with the Interstate Commerce Commission, as the existing authority is registered. Notice of the applicant seeking concurrent interstate and foreign commerce authority appeared in the Federal Register of June 21, 1972, under the provisions of the Interstate Commerce Act.

Applicant is presently operating as a highway common carrier pursuant to Decision No. 60749 dated September 13, 1960 in Application No. 42216, authorizing the transportation of general commodities with the usual exceptions in the territory described above. ✓

Applicant proposes to provide the service herein requested on an on-call basis Monday through Friday, with Saturday delivery upon request only, with no service on Sundays and holidays, and with all service to be overnight in character.

Applicant will apply the same scale of rates as those contained in Western Motor Tariff Bureau, Tariffs Nos. 107 and 111, to its transportation in intrastate, interstate, and foreign commerce. The same rules and regulations contained in those tariffs would continue to be utilized.

^{2/} Existing authority under the certificate includes paragraphs a and b only. Paragraph c represents the requested authority.

The application was opposed by Qwikway Trucking Company, B. W. Hodge Transportation, Inc., G & H Transportation Company, City Freight Lines, Griley Freight Lines, Shippers-Imperial, Inc., and Los Angeles City Express, Inc. The latter company subsequently withdrew its protest.

Six days of public hearings were held at Los Angeles, California, between April 10, 1973 and April 30, 1974. The matter was submitted on June 7, 1974 after the filing of concurrent letter briefs.

Applicant presented 13 shipper witnesses on the issues involved. Of the original seven protesting motor carriers, City Freight Lines, Qwikway Trucking Company, and Griley Freight Lines, Inc., introduced testimony through operating personnel. No protestants produced any shipper or public witnesses.

Applicant alleges the following reasons for the requested extension of authority:

1. Applicant has been in business for over 20 years and has experienced a substantial growth in the amount of traffic and shippers it serves.

2. There has been an increase in population and commercial activity in the territory in which it is presently serving, and which it hopes to serve. It seeks to meet the needs of the public by converting its contract operations to the wider, broader operations permitted by certificated authority.

3. Applicant will be able to provide split delivery service in the broader area proposed, thus performing a necessary service to the shipping public.

4. Applicant also seeks a finding from this Commission that public convenience and necessity warrants registration of its PUC certificate with the Interstate Commerce Commission, thereby affording to applicant's customers complete service both in intrastate commerce and interstate commerce.

5. The grant of rights, as requested, will enable applicant to render the shipping public more complete, satisfactory, and convenient service in the most economical and convenient manner.

6. Applicant has also received numerous requests for service from various shippers of general commodities to and from the proposed service area.

7. Applicant furnishes a combination warehouse-transportation service for many customers, which is not rendered in the proposed service area on a regular basis.

Applicant's Evidence

Applicant is presently certificated by this Commission to render certain intrastate service and its fitness to do so has been challenged in one respect only by the protestants to this proceeding. We shall discuss this matter elsewhere.

Applicant commenced business in 1951 as a partnership and permitted carrier. The partnership was incorporated in the State of California in 1955. Applicant operates between points and places between the Los Angeles Basin Territory and the San Diego Territory under a highway contract carrier permit. Over the years applicant's certificated operating authority was enlarged to its present status. Operations have been conducted both in intrastate and interstate commerce in these areas. Applicant has conducted operations to the territory proposed to be served under a contract carrier permit.

Applicant maintains a terminal located in Los Angeles with a truck-bed-height dock containing 15 tailgate spaces. It employs two full-time mechanics to maintain its equipment and makes use of the terminal for office purposes. A safety program has been in effect and applicant regularly engages in accident prevention activity. Applicant maintains adequate insurance coverage for its operations which covers its equipment as well as its cargo.

Applicant owns and operates fifty-four pieces of equipment, including 16 tractors, 16 bobtails, 19 trailers of van and flatbed type. It employs 22 drivers, a terminal manager, an operations manager, two salesmen, two mechanics, a billing clerk, one executive secretary, and two administrative personnel. Applicant's president, David H. Gold, was with the company while it was still a partnership.

As of December 31, 1972, applicant showed assets in the total sum of \$134,806, and liabilities in the sum of \$50,489. Applicant's Exhibit 9 reflects a steady financial growth since 1968 and through the first quarter of 1973.

Applicant's president testified that its present shippers have increased their shipments substantially to the additional points sought to be served. He also testified that there has been an increase in population and commercial activity in the Southern California area, particularly in the Los Angeles Basin Territory. Because of applicant's present restricted authority it seeks to increase its operating authority, or it will face the prospect of loss of customers to other carriers where their needs can be better fulfilled. Applicant believes that regular service on a five-day-week basis (for both short and long line deliveries) is necessary to fulfill the needs of its shippers.

Applicant operates a scheduled route service within the Los Angeles Basin Territory. At the present time it also operates one schedule daily to the San Diego Territory and intermediate points along Interstate 5, 15, and/or U. S. Highway 395, with overnight service, early morning pickups, and late evening deliveries provided for customer convenience, all with equipment appropriate for its customers' needs. The proposed operations contemplate service five days a week, with Saturday delivery service on request.

By extension of these rights applicant will provide more direct service and reduce the necessity of interlining with other carriers. This will enable applicant to provide more convenient, faster, and more economical service to its customers.

Representatives of 13 public shippers testified in support of the application. All are located in the Los Angeles area and presently use applicant's services. They ship a variety of goods including magnetic tapes, cassetts, soft goods, shoes, clothes, dry goods, dinnerware, mail advertising, toys, ceramics, novelties, auto parts, sporting goods, camping equipment, auto wheels, exhaust systems, luggage, electronics, stationery, magazines, and advertising material. Shipments range from approximately 100 to 6,000 pounds. The weekly poundage for individual shippers varies from 500 to 28,000 pounds. The frequency of shipments vary from daily service to twice a month. Traffic is almost exclusively southbound with some returns northbound. Some of the witnesses have used applicant's service exclusively for intrastate shipments for the past five to 15 years. The witnesses testified that it would be a convenience and accommodation to them to combine shipments which were in part intrastate and in part interstate or foreign commerce. The shippers extolled applicant's combined warehouse-transportation services and expressed their approval of applicant's overnight and generally excellent service. They also expressed their desire to continue to use applicant's services and to have this application approved, so as to extend applicant's services. The witnesses complained generally of difficulties with existing carriers with regard to pickups, lack of solicitation, inability to obtain proper equipment, delayed deliveries, late pickups, slow remittances of C.O.D.'s, extra charges for single shipments, and other matters.

Protestants' Evidence

Protestants' evidence in opposition to the application was presented on behalf of Griley Freight Lines, City Freight Lines, and Qwikway Trucking Company. Each is authorized to serve between the Los Angeles Basin Territory, on the one hand, and the San Diego Territory, on the other hand, via Interstate Highway 5 and U. S. Highway 395, with authority to serve within five miles laterally of both highways and to serve all intermediate points on each highway. Protestants take the position that they are providing satisfactory service in the areas sought to be served, both intrastate and interstate, and certification of applicant would divert traffic from them causing their operations to be less economical. They claim that their equipment was not operating to full capacity and that they are ready, willing, and able to furnish the services requested by applicant. However, these three protestants all admitted a steady growth in their business operations in revenues, equipment, personnel, and tonnage.

Discussion

Section 1063 of Article 4 of the Public Utilities Code provides as follows:

"No highway common carrier, cement carrier, or petroleum irregular route carrier, shall begin to operate any auto or truck, or other self-propelled vehicle, for the transportation of property for compensation on any public highway in this state without first having obtained from the Commission a certificate declaring that public convenience and necessity requires such operation."

While the Code does not define public convenience and necessity, the Commission has interpreted that concept to mean that the following factors must be considered in evaluating any such application: (1) The offer of service proffered by applicant, and its qualifications and ability to provide the same; (2) The nature and the transportation characteristics of the territory involved; (3) The prevalence of permitted carriers in the effected areas; (4) The history and the internal relationships of the carriers in the field; (5) The operations conducted by the existing carriers; (6) The extent to which applicant's proposed service would be utilized if established; (7) The adequacy of the service provided by the existing carriers; (8) The extent to which applicant's proposed service, if established, would impair the economic stability of the existing transportation facilities. (See Peninsula Motor Express, (1950) 49 CPUC 807.)

The burden to show public convenience and necessity rests with the applicant. (Bay Cities Transportation Company v E. H. Warren, et al. (1925) 26 CRC 131.)

This determination has also been put another way: In determining whether public convenience and necessity require the service proposed by applicant highway common carrier, the Commission considers the questions of experience, financial abilities, equipment, and facilities necessary to conduct the service; whether the proposed service is adequately responsive to the needs of the shippers; whether the public, in addition to the present carriers, requires the proposed service, and whether the granting of the application would adversely affect the protestants or the public interest. (Application of Encinal Terminals (1963) 61 CPUC 721.)

The extent to which there shall be intrastate competition among motor carriers is a question committed to the judgment of this Commission exercising its sound discretion. It is, of course, a general principal of utility law that competition will not be permitted among the utilities to such an extent as would defeat the purposes of the grant of the franchise and injure the public interest. At the same time, however, there is a certain latitude granted the administrative agency as to the extent of competition among franchised motor carrier utilities which will best serve the public interest.

The primary object of public utility law is and must be, not to establish a monopoly, or to guarantee the security of an investment, but to serve the interests of the public.

The testimony in this case shows that definite advantages will accrue to the shipper witnesses testifying on behalf of the applicant. These witnesses were fairly representative of the shippers which applicant is serving in the Los Angeles area and it is not unreasonable to infer that the advantages referred to by the witnesses will apply to other shippers in the areas in question.

In the present case we find the evidence fully supports the finding of public convenience and necessity for the application. This case is not unlike that of California Motor Transport, Ltd., and California Motor Express, Ltd. (1952) 51 CPUC 492, where the areas as to which applicants sought operating authority were contiguous to the territory which they presently served and which were commercially integrated, forming a unified trading area. In that case, the testimony of shipper witnesses showed that applicants had provided a satisfactory service between points in the territory, and they, the shippers, desired

to see the service extended. They also testified that in some respects the service supplied by existing carriers failed to meet their needs. We held in the California Motor Transport Co., Ltd.'s, case that the evidence clearly established the existence of a public need for service which applicants proposed to render.

We find in this case similar considerations, especially where applicant already is serving most of the territory involved by way of permit. The order of this Commission will commit applicant to give additional service within the same area to the shippers at whose doors it is actually stopping, but which it presently can only satisfy in part. By investing applicant with greater authority the shipping public is less inconvenienced in having to deal with a number of different carriers, and applicant, at little additional cost, would be able to furnish more and better service. To promote these benefits is one of the duties of the Commission.

The evidence further demonstrates that some of the protesting carriers do not offer the kind of service to the shipping public to which they are reasonably entitled, and which the applicant proposes to furnish. Since the protestants substantially admit that applicant is presently competing with them, we are persuaded that the granting of a highway common carrier certificate to applicant will not have the effect of taking traffic away from protestants. Contrariwise, it appears that there is a definite need, as well as desire, for the type and area of service proposed by applicant.

Public convenience and necessity is best served by the extension of usual and familiar utility facilities where the same are needed and upon the best terms possible for the public. (C. E. Hofer (1923) 23 CRC 414.)

The granting of the certificate of public convenience in this case will have the salutary affect of improving the service granted by the applicant, as well as improving the service rendered by others in satisfying the public need. One of the weapons in the Commission's arsenal is the right to authorize competition where it is necessary in order to compel adequate service. We find that the definite advantages which will accrue to the shipping public by granting this application more than outweigh any slight possible diversion of traffic from existing carriers, or increase in competition. It may also be noted that we have held that a shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favorite carrier is entitled to rely on this preference as a basis for extending its service. (Tesi Drayage Company (1970) 71 CPUC 24, 28.)

The fitness of applicant appears to be indisputable, notwithstanding the allegations of illegal conduct by the protestants. If applicant was already competing with protestants (as is admitted) while acting illegally, why haven't the protestants complained to this Commission for the two years this alleged conduct has been existing?

Findings

1. Applicant is presently engaged in the transportation of general commodities both as a certificated and as a permitted carrier.
2. Applicant owns and operates a warehouse in the Los Angeles Basin Territory. Its transportation services relate closely, but not exclusively, to its warehouse operations.
3. Applicant, as a certificated and permitted carrier, has been conducting operations within its authority in providing a combined warehouse and transportation service for many of its warehouse customers.

4. The proposed extension of service by applicant to its customers will enable applicant to render to its customers broader, more economical, and more convenient service, both in intrastate and interstate commerce.

5. Applicant proposes to render regular service on a five-day a week basis with delivery service on Saturday by request. This proposal will well serve the public convenience and necessity.

6. The existing carriers have provided less than adequate service in the proposed areas.

7. The grant of additional authority to applicant will not impair the ability of protestants to continue to provide service to their customers.

8. Applicant has sufficient experience, equipment, and capability to properly serve the proposed area in the proposed manner.

9. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

10. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

11. Notice of this application appeared in the Federal Register on June 21, 1972.

Conclusion

The Commission concludes that the application should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Presto Delivery Service, Inc., a California corporation, is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Presto Delivery Service, Inc., a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.
2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate, it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 60749 which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 19th day of NOVEMBER, 1974.

I dissent:

Stadler, Commissioner

William Symons President

The majority of the commission requested that the original decision be rewritten to reflect the opposite conclusion, thus granting this ~~decision~~ extension. Since I approved of the original decision I dissent on this order.

Robert E. McFarland Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceedings.

Presto Delivery Service, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. Between all points and places in the Los Angeles Territory as described in Note A.
2. Between all points and places in the Los Angeles Territory, on the one hand, and all points and places in the Los Angeles Basin Territory as described in Note B, on the other hand.
3. Between all points and places in the Los Angeles Basin Territory, on the one hand, and points and places within the San Diego Territory as described in Note C, on the other hand, serving all intermediate points on Interstate Highways 5 and 15 (U.S. Highway 395) and all points within 10 miles laterally of said highways.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.

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2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

Note A

LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard

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and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michilinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street, south on Buena Vista Street and due south on a prolongation thereof to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to point of beginning.

Note B

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly

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along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay and its prolongation to the Los Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

Note C

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running

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east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

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