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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BUD B. BOLLINGER, Complainant, vs. LINTON E. FORRESTER, ELEANOR FORRESTER, PAUL C. ROBEY, AUDREY ROBEY, DIANE ROBEY and HILLVIEW WATER COMPANY, Defendants.	Case 10867 (Filed May 23, 1980)

Robert K. Johnson, Attorney at Law, for Bud B. Bollinger, complainant.
Richard L. McMechan, Attorney at Law, for Linton E. Forrester and Hillview Water Company, defendants.
Ray Amrhein, Attorney at Law, for Paul C. Robey, Audrey Robey, and Diane Robey, interested parties.
Lynn T. Carew, Attorney at Law, and James Barnes, for the Commission staff.

O P I N I O N

Statement of Facts

This matter arises out of the litigation of Byrne et al. v Forrester et al., Case No. 56855, before the Honorable Harry F. Brauer, judge of Superior Court in Santa Cruz County.

In Byrne, three plaintiffs including Bud B. Bollinger, a developer, sued several defendants including Linton E. Forrester (Forrester) and Eleanor Forrester (the Forresters), Paul C. Robey,

Audrey Robey, and Diane Robey (the Robeys), and Hillview Water Company (Hillview), over a disputed 1971 land sale contract involving 22.5 acres of land located adjacent to the Sunnydale Subdivision in the service territory of Hillview.

In that action Bollinger claimed damages derived from his asserted inability to obtain county permits to develop the property as a mobile home park, a consequence of Hillview's alleged inability to provide water. After making a finding that a clause in the 1971 real estate sale contract (which clause stated that water was to be supplied by Hillview) was binding upon defendants as a covenant, Judge Brauer had ruled that defendants were in breach of contract, and the matter was set for continued trial on February 8, 1978. But that date found Judge Brauer preoccupied on a law and motion calendar. Accordingly, Judge Brauer temporarily referred the parties to Judge Hall to see whether the remaining issues could be resolved. After three hours of conference the parties returned to Judge Brauer and offered a stipulation to entry of judgment, waiving findings of fact and conclusions of law. Without further consideration the judge accepted their stipulation and entered a judgment which was filed as of March 9, 1978.

Inter alia, that judgment ordered and directed defendants to deliver and continue to deliver to the property of plaintiffs "water in a volume sufficient to meet all present Madera County requirements for a 100-unit mobile home park for a minimum of two (2) hours at a minimum pressure of thirty (30) pounds per square inch at the highest elevation point on plaintiffs' said property." In addition, in the event that water was not made available at that volume and pressure within 180 days from February 8, 1978, plaintiffs were to recover the sum of $1,700 per month for each and every month thereafter until such water service was provided. Plaintiffs would be

required to pay the rates applicable for such water service as authorized by the Public Utilities Commission (PUC), commencing upon the first date the required volume and pressure was made available. The Court reserved jurisdiction to enforce the judgment.

Subsequently, further hearing was calendared before Judge Brauer for June 22, 1979 to determine whether defendants had complied with the terms of the judgment. Issues had surfaced whether Forrester's water system complied with PUC requirements, whether water had been made available in the required quantity and at the directed pressure by August 8, 1978, and what, if any, payments should be due the water company. In discussions in chambers June 22, 1979 before hearing, there was a recommendation that the entire controversy was really one which ought to be referred to the administrative processes of this Commission. During the hearing which followed, Barnes, an engineer in the Hydraulic Branch staff, testified as a witness for plaintiffs, purporting to present the Commission's view. After extensive but inconclusive testimony, the suggestion of referral to the Commission again was raised. The Court observed that it was unable to say what its previous judgment on the subject had really been, that it had been based upon the submitted stipulation, a stipulation which apparently had not contemplated all the issues involved. The Court then concluded that the administrative procedures of the PUC should be used to resolve various of the underlying issues, and ordered that a petition be filed before the Commission to determine the following items:

"a. Whether the Hillview Water Company has, at any time, provided sufficient fire flow and domestic water in accordance with all rules and regulations of the

Public Utilities Commission to plaintiff's property sufficient to provide service for a one hundred (100)-unit mobile home park.

"b. If such water has been provided, the date on which it was provided.

"c. The applicable PUC rates to be charged in the event such water has been provided."

The Court further ordered that following a final determination from this Commission it would conduct a hearing to determine the respective rights and liabilities of the plaintiff and defendants in light of our determination.

In obedience to the Court's order Bollinger filed the instant complaint with the Commission. A duly noticed public hearing was held in Oakhurst before Administrative Law Judge (ALJ) John B. Weiss on March 26 and 27, 1981.

At the outset of the hearing the ALJ addressed an issue raised by the Robeys in their answer to the complaint. That issue was one of jurisdiction. In that none of the parties could present any evidence that the Robeys at any time had acquired any control or interest whatsoever in Hillview, the ALJ ruled that the Robeys were clothed with no public utility status. Accordingly, under Public Utilities (PU) Code § 2701,[1/] they were not under the

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1/ PU Code § 2701. "Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter."

Commission's jurisdiction as defendants, and as to this proceeding were dismissed. However, they elected to participate as an interested party.

At the hearing Bollinger presented evidence through Noel L. Hildebrand, a licensed civil engineer employed by the Fred N. Rabe Engineering, Inc. firm, and Joseph C. Gasperetti, a local Oakhurst attorney.

The thrust of Hildebrand's evidence was that the Hillview system (which as a Rabe Engineering employee he had designed back in the late 1960s) is short 145,000 gallons of storage capacity, because of other system commitments, to meet today's Commission standards under General Order (GO) 103, as he interprets them, to serve a 100-unit mobile home park on the Bollinger property. Hildebrand testified that in calculating minimum fire flow requirements, as he interpreted them, he applied the 2,000 gpm minimum flow set forth for Land Use No. 6 in GO 103 to the entire Hillview system (including the 38 residential, 24 apartment, and 100 mobile home units), and that under that application Hillview cannot meet the fire flow requirements. Hildebrand further testified that Hillview could not meet the fire and domestic flow requirements of Madera County's Ordinance 383 either. Finally Hildebrand contended that the system had but one source of water supply, the well, whereas under GO 103 two sources are required.

Gasperetti's testimony was that at another recent hearing Forrester had testified that as a consequence of contamination problems with the well formerly serving the nearby Royal Oaks-Hidden Oaks district of Hillview, that well had been disconnected and the Sunnydale district well was now also providing water to the 130-unit Royal Oaks-Hidden Oak's district, a companion district in the Hillview system to Sunnydale.

The Forresters and Hillview presented evidence at the hearing through Forrester, Joseph Smyth, a licensed civil and general engineering contractor, and Ray E. Gallardo, former Westinghouse mechanical engineer and presently owner of a local hardware store.

The thrust of Forrester's evidence was to the point that since 1971 his Hillview Sunnydale system has been authorized and able to provide water service to the proposed mobile home park on Bollinger's property, and further, that from September 1978 through the present in particular, service has been available.

Forrester testified that in 1970-71, the PUC, after determining that his system's water supply and distribution facilities were adequate to meet then existing GO requirements, had authorized his system to serve the entire 45-acre Hillview Sunnydale service territory, a territory specifically embracing and including service to 38 single-family residential units, a church, a fraternal lodge building, a hospital, and a 100-unit mobile home park.

Forrester went on to testify that about 1973, after an application had been filed with the county to proceed with the mobile home park, Madera County decided that the 30,000-gallon water storage tank in the system would have to be relocated, and a second tank, of 40,000 gallons, would have to be added if the system were to meet fire flow requirements for the subdivision homes, lodge, church, and mobile home park. The county made the arrangements and the required improvements were added. However, for reasons not on this record the mobile home park did not materialize, and in 1978 plans changed so that a hospital originally planned for inside the utility's service territory was built elsewhere, outside and independent of the Sunnydale system for

water. Accordingly, Forrester testified, 24 apartment units weresubstituted for erection on the hospital land area. The county then wanted addition of two more water storage tanks, each of 25,500 gallons, to provide fire flow storage for the apartments. These tanks were added.

The thrust of Smyth's testimony was to note that GO 103 makes no reference whatsoever to fire flow minimums for mobile home parks, and urged that it would be both wrong and grossly extravagant to impose GO 103 standards for single-family residential units on such parks, considering their entirely different characteristics, particularly where, as here, the county which is more involved and which must issue the building permits, has comprehensively considered the conditions applicable to its area and has issued its own detailed fire flow requirements graduated specifically to various sized mobile home parks. In the instant situation Smyth argues that the correct and appropriate approach would be to apply average domestic demand, plus the fire flow requirements for a mobile home park of like size, etc. from Madera County Ordinance 383.

Smyth testified that in compliance with the Madera County standards, tests performed at the point of delivery to Bollinger's property, at Acorn Drive, show the availability of more than 390 gpm (90 gpm domestic + 300 gpm fire flow), confirming that the system can provide the requisite flow and that such has been the case from September 1978 to the present time. Smyth stated that his analysis indicates that you can get 1,090 gpm with a pressure of 36 psi at the property line. Smyth stated that the PUC's authority always ends at the point of service, that beyond that it is up to the local authorities to specify standards applicable

to a customer's installation, as for example for hotels, department stores, grocery stores, etc. and that a mobile home is just another such type of customer.

Smyth also testified that the purpose of elevated water storage is to have at hand an alternate source of water to supply sufficient water for fire use, and at the same time continue domestic service in the event of failure of the primary source (well and pump). Therefore, in systems with but one well, elevated storage is routinely required to provide a second source of supply to meet fire protection standards.

Gallardo testified that approximately three weeks before the hearing he had observed a pressure recording gauge located at the highest point of the Bollinger property and that the gauge was at that time recording a constant static pressure of 78-80 psi.[2/] In addition, Gallardo testified that two days before he had observed a test being conducted by the State Division of Forestry at the hydrant at Redbud and Acorn Drives. In that test the static pressure was 100 psi at the hydrant, and the outlet pressure on the hydrant, as measured by Pitot gauge, was 34, evidencing a flow of 1,180 gpm. The residual pressure shown by a gauge at a house outlet 10 feet away was 48 psi.

The Hydraulic Branch of the Utilities Division staff presented its evidence through witness Barnes and his March 17, 1981 report. Having premised his investigation and report upon

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2/ In general corroboration of this testimony, Forrester introduced six Bristol recording gauge disks which were recorded at the high point on the Bollinger property during the period March 4 through March 9, 1981. Each disk recorded 24 hours of meter readings. The disks show average readings of 64 psi with fluctuations between 36 and 68 psi (the fluctuations being explained as attributable to the kicking off and on of the pump in its normal course of operation). According to Forrester the recording instrument was loaned to him by the State Health Department.

the assumption that service to the Bollinger property would be by means of a 6-inch main extension through the proposed mobile home park, Barnes testified that it was his opinion that Land Use No. 4 of Section VIII of GO 103 was the standard which should be applied to the nascent mobile home park to determine fire flow requirements. In that opinion he had determined that the total flow which would be required within the entire Sunnydale service area to meet both domestic and fire flow minimums would be 1,195 gpm.[3/] He had further determined that the park itself would require a total flow of 1,090 gpm into it to meet GO 103 standards. However, assuming arguendo that Madera County standards were to be applied, Barnes also calculated that the total system minimum flow for both domestic and fire protection purposes would have to be 660 gpm, and that the mobile home park itself would require a flow of 450 gpm.

The thrust of Barnes' evidence which followed was that, as he interpreted GO standards, Hillview could not supply sufficient water at a residual pressure of 20 psi to any part of the 100-unit mobile home park proposed for the Bollinger property. In addition, Barnes concluded that were Madera County standards to be applied, Hillview would be unable to supply sufficient water at a residual pressure of 20 psi to any part of the proposed park which was above the 2,276-foot elevation area.

3/ Later Barnes amended this requirement to adopt Hildebrand's calculations which based the total flow requirement upon a fire flow of 2,000 gpm (derived from GO 103, Section VIII, Land Use No. 6 "Multiple Residential") as applicable to the apartment units.

Finally, Barnes testified that GO 103, as he interpreted it, meant that a source of water was where the water was initially generated from, and that, therefore, as constituted, the Hillview system inherently could not conform to GO 103, Section VIII, standards in that the system had only one independent source of usable water supply, a well, whereas the GO required that there be not less than two sources.

Upon submission of concurrent briefs on July 1, 1981, the matter was submitted.

Discussion

Jurisdiction over the Sunnydale System

In 1960, by Decision (D.)52092 in Application (A.) 41345, the Forresters sought and obtained Commission authorization to provide public utility water service to a rural subdivision (known as Hillview Estates) they were developing on lands they owned between Highway 49 and the Fresno River, approximately 3.2 miles west of Oakhurst in Madera County. That decision was the genesis of Hillview as a certificated public utility, and forerunner of our jurisdiction in the instant matter.[4/]

Then in 1970, by A.52239, the Forresters sought approval to extend Hillview's service to a noncontiguous 45-acre parcel also located between Highway 49 and the Fresno River, but further to the east and only a half mile west of Oakhurst. This 45-acre parcel,

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4/ Over the past quarter century the Forresters, owners of small tracts of undeveloped land in unincorporated areas of Madera County, have put together or purchased various small public utility water systems. Operating under the fictitious name of what has come to be known currently as "Hillview", they have organized these small districts into one overall utility serving six individual subdivision areas in the county. The six are: Sunnydale, Royal Oaks-Hidden Oaks, Raymond, Hillview-Goldside, Sierra Lakes, and Coarsegold-Highlands.

which included the 21-acre mobile home park area here at issue, was part of a 180-acre area owned jointly by the Forresters and the Robeys. Looking to the future, it was contemplated that eventually the new 45-acre Sunnydale service area could be expanded to embrace all 180 acres. As part of the system envisioned eventually to serve the full 180 acres, it was projected that a large water storage facility (the initial Rabe Engineering drawing projected a 160,000-gallon tank; later this was changed to a 500,000-gallon tank), would at some undefined future time be sited to the south across the Fresno River on a hillside, thereby providing a gravity flow capability for the entire 180-acre service territory ultimately to be served. It was thought that at such future time this large storage facility would be connected to the initially installed pressure tank system by means of a 10-inch pipeline. As matters turned out, these future expansion plans have not materialized, and the proposed large storage facility across the river never was constructed.

After amending their application, the Forresters were granted a certificate of public convenience and necessity authorizing extension of Hillview at Sunnydale to serve the noncontiguous 45-acre territory (D.78170 dated January 23, 1971). This 45-acre service territory, in rolling hillside land, included 15 acres allocated for 38 individual home sites (to be known as the Sunnydale Subdivision), 21 acres allocated for a 100-unit mobile home park (the Bollinger property), and land reserved for a planned hospital, a church, and a fraternal lodge building. From this certification of the Hillview Sunnydale service territory, we obtain our present jurisdiction over the utility (see Appendix A map).

Water Public Utilities Duties
And Responsibilities

Before addressing the specific issues raised by the instant proceeding, we will clarify what appear to be misconceptions regarding the basic duties and responsibilities of water public utilities. Fundamentally, a public utility in the nature of a water company is obligated by law to maintain and extend an adequate water service to all users in its dedicated service territory (PU Code § 451; Cal. Water & Tel. Co. v Public Util. Comm. (1959) 51 C 2d 478). But it must provide service without granting preferences or advantages (PU Code § 453), and do so only on the terms and conditions provided in its filed tariff (PU Code § 532). Deviations from the filed tariff require prior Commission authorization, and unless approved by the Commission are of no force or effect (Shaeffer v Avila Wtr. Co. (1956) 55 CPUC 262).5/ Contracts involving extensions, to the extent that they provide for construction of facilities under conditions at variance with the utility's main extension rule, are ineffective unless specifically authorized by the Commission. (California Water & Tel. Co. (1962) 59 CPUC 735.)

5/ We take notice that the Commission's Tariff File for this utility contains no variance relative to the subject property. Accordingly, as property which is located within the utility's authorized service territory, the mobile home park site under any owner (whether it would be the Forresters, Robeys, Bollinger, or anyone else) would have been entitled to receive water service, but only under the terms of the utility's filed tariff. Any agreement by Hillview to provide or deliver water under other terms and conditions is void, and cannot be enforced as a covenant upon the utility. However, any promises or inducements which may have been made by the Forresters or Robeys, beyond the fact that this specific property was entitled to receive water service, would be beyond the jurisdiction of this Commission to interpret or enforce.

In providing service it long has been recognized that it is the duty of a water public utility to make delivery to the customer at or near the customer's property line (Dooley v Peoples Water Co. (1913) 3 CRC 948). The point of service is the service connection, usually a convenient place at or near that property line. The rules and minimum standards for design and construction applicable to the facilities owned and operated by water utilities under the jurisdiction of this Commission are set forth in GO 103.

At times relevant here before 1975, a public utility was required to maintain a normal operating pressure at the service connection of not less than 25 psi, and there was no requirement that a utility need provide its customers anything more than a volume of water adequate for domestic purposes. No reserve capacity above the domestic minimum was mandatory to meet the needs of public fire protection.

By D.84334 dated April 15, 1975 in Case (C.) 9263,[6/] that situation changed. Section VIII, Fire Protection Standards, was added to the GO. Besides requiring a minimum operating pressure of not less than 40 psi at the service connection, in essence the new section added design requirements prospectively for public fire protection proportionate to the land use to be served. It was intended that existing facilities would continue in use until their

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6/ As a consequence of the passage in the 1971 regular session of the Legislature of Assembly Concurrent Resolution No. 146, the Commission opened an investigation (C.9263) to determine the feasibility of amending or revising GO 103 to include provisions for public fire protection as an inherent part of water system design. D.84334 was the result. It established minimum statewide standards for design and construction, but was not intended to preclude any local governmental agency from setting higher standards for its jurisdiction.

economic utilization expired, or until modification would become necessary in order to serve a new customer, or a change in land use by an old customer required their replacement. In the latter events, the cost of replacing the outmoded facility to meet GO 103 requirements would be advanced by the applicant to the utility in the manner provided under the utility's filed tariff.

Finally, by D.82-04-089 dated April 21, 1982 in Order Instituting Rulemaking (OIR) 7, GO 103 was again amended, this time (as relevant here) to clarify that the minimum fire flow standards set forth were statewide averages, and that in view of widely varied conditions in California, local standards, whether higher or lower, were acceptable to the Commission in lieu of the statewide averages. In addition, mobile home parks were added to the Land Use list for designation of minimum fire flow.

Mobile Home Parks

In Commission consideration of service issues involving privately owned and operated mobile home parks such as that planned for the Bollinger property, it must always be borne in mind that these parks are and remain a purely commercial enterprise, a private capital venture operated for profit. Service to such a customer constitutes a "Business Service."[7/] These mobile home parks are not real estate subdivisions, housing projects, industrial developments, or organized commercial districts. With one possible

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7/ Rule 1, Definitions of Hillview's filed tariff defines "Business Service," as: "Provision of water for use in connection with commercial premises devoted primarily to operations for profit including offices, stores, markets, apartments, hotels, motels, automobile trailer parks or courts, service stations and the like."

exception,[8] the participants in this proceeding, in their apparent bitterness and zeal to have at each other and to contest each point, have glided over or missed this very pivotal point. And the staff is not an exception. All the parties have treated extension of service to Bollinger's prospective mobile home park as though it were to be an extension of public utility water service into a new real estate subdivision where streets are designed to be and will be dedicated and accepted by the local government as public streets, and the water services would be individual to each lot in the subdivision, with each lot purchaser destined to become an individual customer of the utility. In real estate subdivisions the water mains in the public streets and the public fire hydrants are destined to become the property and maintenance responsibility of the utility. The cost of their initial installation is advanced or contributed by the developer under the terms and conditions of the Uniform Main Extension Rule prescribed by the Commission for all water utilities, and subsequent refunds are based upon and determined by actual revenues received from the facilities for which the advance

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8/ Smyth skirted the distinction, testifying that he, as an engineer involved with the Commission, had never known the PUC to get involved in the flow requirements for a mobile home park, that his experience has been that PUC authority ceases at the customer's service, whether it is a mobile home park, a house, a hotel, or whatever, and that what goes on past that service point is the responsibility of other authorities and the customer. Smyth stated "the PUC's concerned with the purveyor of that water. And that mobile home park is a customer, the same as a single-family home is a customer. It's one customer."

was made.[9/] Where real estate subdivisions are involved, the utility is indeed obligated to extend its water mains, service pipes, and meters throughout the public streets serving the subdivision area being developed (assuming the subdivision is in the service area), and to provide public fire protection service including hydrants on these public streets. Further, the utility must deliver water to every service connection in the subdivision, including the highest areas served, in sufficient volume and under sufficient pressure to meet our GO standards. But these installations are made only after the developer has made formal application, signed the appropriate main extension contract provided for in the tariff, and has advanced the costs, including those required for additional lift zones, booster pumps, storage tanks, and even additional wells where such are needed to serve the new subdivision or to meet the new fire flow requirements where applicable. (Mountain Power Co. (1920) 18 CRC 377, and see In re Cal. Water Service Company and Alisal Water Corporation, D.91857 dated June 3, 1980 in A.59225 and A.59320.)

But such is not the situation here. No subdivision is proposed. There is no division of unimproved tracts of land into separate lots for sale to individuals. This tract of land will remain one entity, owned and operated by Bollinger as a private

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9/ The essential function of a water main extension rule in the field of large scale land developments such as residential subdivisions is to provide a method by which construction of the necessary distribution facilities may be accomplished with minimum financial risk to the utility and its consumers from potentially uneconomic or speculative developments. In re Revision of Water Main Extension Rules (1962) 60 CPUC 318.

business venture. The park will remain undivided by dedicated thoroughfares. The interior roads and other vehicular passageways will remain, together with all the parking pads, part of a single business enterprise, the private property of the park operator. They will not become public streets.[10/] The park operator will be responsible for their maintenance and repair, and he will determine and establish rules for their use. Similarly, the individual mobile home unit spaces which the park operator will rent or lease to transients or longer-term occupants will constitute a privately operated multiple dwelling rental entity. The tenants of such a private venture necessarily must look to the park operator for their utility service. There will be no group of new customers providing new revenues to the utility from which refunds may be made against the advanced cost of facilities from the developer. The only new customer will be the park operator-developer himself.

In the Bollinger situation, Hillview would provide water, probably on a metered basis,[11/] to the mobile home park at the park's service connection. The utility's customer would

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10/ Exhibit 12 in this proceeding is a copy of the mobile home park layout proposed by Bollinger and submitted to Forrester. Styled "River Oaks Mobile Estates", and dated May 1972, it indicates Bud B. Bollinger as co-owner and builder. The plan shows the park's interior roadways to be either 25 or 30 feet in width. The minimum width acceptable to Madera County for dedication as a public street is 60 feet. Thus the roads shown are intended as private thoroughfares within the mobile home park and cannot qualify as subdivision streets.

11/ Although Hillview's filed tariffs include both metered and flat rate schedules, it has been the company's policy to meter, and its flat rate schedules are limited to services not larger than 3/4 inch. A mobile home park, a "Commercial Service", would require a substantially larger service, and would therefore be metered.

be Bollinger, not the tenants of the park. Bollinger would purchase the water at the metered service connection, and from that point on it would be his responsibility to transport that water through his own private distribution system to each tenant, and to meet all their water requirements, including delivery of water to any private fire protection system hydrants the local authorities may require to be located within his park. Just as this Commission defers to local authorities responsibility to determine requirements to be applicable to sprinkler and other internal fire protection systems, so too we have deferred to local authorities standards for private water distribution and fire protection systems when these are situated entirely on private property including non-dedicated private streets within the boundaries of private commercial mobile home parks. It will also be Bollinger's responsibility to maintain such private distribution and fire protection facilities. In addition, just as though it were a high-rise, it is his responsibility to install and at his expense maintain any accessorial facilities such as sumps, booster pumps, private pressure tanks, elevated storage tanks, etc. as may be required to make available volumes of water or to meet required pressures at various elevations within the boundaries of his park, when these elevations are above that of his point of service to the utility (Larsen et al. v San Jose Water Works (1980) 4 CPUC 2d 238). The use of a single large land parcel containing privately owned nondedicated streets for private rental purposes contemplates that the owner of that private enterprise will install and maintain any part of the water distribution and private fire protection system which is located on or under his property beyond the utility's point of service to the parcel. The investment of a

public utility on the private property of a customer should be kept to the barest minimum consistent with furnishing adequate and nondiscriminatory service to that customer. And it would be unreasonable and discriminatory to require a public water utility or its customers to install and maintain mains, connecting pipes, private fire hydrants, and other special accessorial facilities on a tract of private property such as a commercial mobile home park operated for the profit of private individuals.

Having disposed of these prefatory matters of a background nature we proceed next to disposition of the specific issues referred to us by the Superior Court through these participating parties.

Did the Hillview Sunnydale System between January 23, 1971 and April 15, 1975 Meet Commission Requirements to Serve a Mobile Home Park of 100 Units on the Bollinger Property?

The water system at Sunnydale, when approved to serve the 45-acre service territory set forth in our decision, had already been installed by the Forresters (starting with the well in 1966). As approved, the system consisted of the radial well, a 10-hp pump, a 2,000-gallon pressure tank, a 30,000-gallon water storage tank near the well, and approximately 3,935 feet of 6-inch PVC water distribution mains. These mains were installed in the public streets of the Sunnydale real estate subdivision. Three fire hydrants to provide public fire protection service had also been included at appropriate locations on the public streets of the subdivision. The distribution system included a 6-inch main which had been extended northwestward to the end of Acorn Drive where that drive intersected with the eastern property line of the proposed mobile home park. There at the park property line, at

an elevation of 2,246 feet above sea level, the main had been capped off and a blow-off valve had been installed. (It is here that service connection to the park was intended.)

Earlier, in January 1971, after a field investigation, the Hydraulic Branch of the Commission staff had submitted its report on Forrester's application. That report had concluded that once the 30,000-gallon water storage tank was connected to the system, the then existing water supply and distribution facilities not only would conform to the requirements of GO 103 as it then existed, but also would be adequate to serve the domestic water requirements of up to 150 individual residential customers, or 120 individual residential customers, the proposed 100-unit mobile home park, and the requirements of the hospital, church, and lodge proposed for the service territory.

In substantial reliance upon that staff report, the Commission concluded ex parte that the existing Hillview Sunnydale system and water supply were of adequate quality and quantity to serve the 45-acre service territory proposed, and granted the authority.

Therefore, as of January 23, 1971, when this Commission was concerned with the ability of a public water system to meet only the domestic water requirements of its customers, and from then until April 15, 1975, the Sunnydale system fully met this Commission's GO 103 requirements to provide public utility water service to Bollinger's property sufficient for a 100-unit mobile home park.

Furthermore, in 1973, after the existing 30,000-gallon water storage tank adjacent to the pump area was relocated up to the 2,386-foot elevation, and a companion tank of 40,000-gallon

capacity was added at the same level, the system obviously exceeded Commission requirements insofar as domestic service to the existing subdivision, the proposed mobile home park, the hospital, lodge, and church were concerned.

Did the Hillview Sunnydale System during This Period also Meet Madera County Standards to Serve a Mobile Home Park Of 100 Units on Bollinger's Property?

On conflicting evidence, we conclude that the system did meet county standards. It was Forrester's testimony that about 1973, as the consequence of the filing of a request for a permit for construction of a mobile home park, the county had determined that the utility would have to add additional water storage capacity to accommodate it. Forrester testified that the county made all the arrangements, that Rabe Engineering had been engaged to design the addition, and that the result had been the relocation of his existing 30,000-gallon tank to a higher elevation and the addition of a second tank of 40,000 gallons, also installed at the higher elevation.

On the other hand, Hildebrand, Bollinger's expert witness, testified that as an employee of Rabe Engineering who had participated years earlier in the original design of the system, he had been called back "sometime after 1970", to do design work relative to the storage tanks. His recollection (unfortunately disturbingly vague as to dates) was that after some of the subdivision homes had been built, the subdivision had changed hands, and that when the new owner started building, he had encountered problems getting permits because of the water supply. Hildebrand recalled that as a condition to granting occupancy permits, the county, as a temporary solution, had required the utility to add

storage capacity to that already supplied by the existing 30,000-gallon tank at the well site. Hildebrand further recollected that it was either the forestry service or the local fire authorities who required the storage tanks to be relocated at a higher elevation to provide gravity flow capability, and that this was consequently accomplished. Hildebrand, however, insisted that there was no consideration of a mobile home park involved then; that "The 100-unit mobile home park was never brought into the picture, as far as I knew about it [emphasis added], until I got a call from Mr. Wycoff, oh, several years after that" (to be Bollinger's expert witness in the law suit). At the time, however, Hildebrand's participation was apparently limited to design of these tanks. After the tanks had been erected at the higher elevation, they fell over (a sore point still between Forrester and Hildebrand). Hildebrand disclaimed responsibility, contending he had nothing to do with the incident and that the reason was that "they didn't compact the material under it" (referring to the gravel sub-structure under the relocated tanks. Who "they" were, was never clarified).

But then Smyth, a local expert in design and operation of rural subdivision water systems who testified for Forrester, told that during the late 60s and early 70s, Madera County began requiring that each local water utility provide from elevated storage a gravity fire flow capability of 250 gpm for two hours duration for each system. However, then it developed that many utilities were providing elevated storage for just the 250 gpm, no more, and in the event of failure of the primary source (electric failure at the wellhead pump), there would be nothing extra available from elevated storage for residual domestic

purposes. Consequently, in the early 70s the county determined that these utilities must increase their elevated storage capability to provide something extra for emergency domestic needs as well.

Smyth pointed out that the original 30,000-gallon tank installed as part of the system, after relocation up on the hill, would have just met the county's initial 250 gpm system fire flow requirement (250 gpm x 120 minutes = 30,000 gallons). But there was nothing extra in elevated storage for emergency domestic flow (normal domestic flow was adequately provided by the wellhead pump and pressure system). By addition of the second tank of 40,000 gallons capacity, the system then could provide 70,000 gallons. As Smyth observed, obviously this offered more than enough elevated capacity to meet both the county-mandated fire flow and the newly set domestic emergency flow, the latter sufficient not only for the existing subdivision when built out, but also for the proposed 100-unit mobile home park[12/] when filled.

Hildebrand's position was that as far as he knew about it, he was unaware of any consideration for a mobile home park in the 1973 period. But admittedly Hildebrand's participation in

12/ Confirmation of Smyth's conclusion can be drawn from the fact that in its report staff had determined that the combined total domestic flow requirement for a built-out 38-lot residential subdivision, a 100-unit mobile home park, and the 24 apartments would be 195 gpm. Adding this 195 gpm system domestic flow to the 250 gpm system fire flow requirement at that time results in a total flow requirement of 445 gpm. A two-hour flow would require 53,400 gallons of elevated storage (445 gpm x 120 minutes = 53,400 gallons). After addition of the second elevated tank Hillview had 70,000 gallons of elevated storage (30,000 + 40,000 = 70,000 gallons), allowing ample latitude for storage fluctuation.

the affairs of this utility by that time was limited. Certainly the owner-operator, Forrester, would be more knowledgeable of any mobile home park permit in the works at that time, and of potential ramifications pertaining to his utility's ultimately having to provide service. In addition, the May 1972 date on Bollinger's detailed "River Oaks Mobile Estates" plan (our Exhibit 12), and the completeness of that plan,[13/] lend credence to Forrester's assertion that an application for a mobile home park permit had been filed about 1973, and that as a consequence the county wanted additional elevated storage capacity, not only relative to the small subdivision (then with only a dozen or so of the 38 lots built upon), but also to accommodate a pending mobile home park. That Forrester left the details to the county seems only natural, given the disparity of bargaining positions. Symth's testimony corroborates Forrester by furnishing the reason behind the requirement for increased water storage capacity up on the hillside. The corresponding total capacity of the two storage tanks then up on the hillside provided elevated storage to more than meet the county's combined flow requirements, lending further credibility to Forrester's assertion that the proposed mobile home park was under consideration.

13/ The to-scale drawing of the proposed mobile home park showed the location of each of the 97 parking spaces, providing for both single and double units. The water distribution system shows a water connection to each parking space. A detailed schematic insert of the typical water service portrays a 3/4-inch connection (leading to a double headed 3/4-inch threaded hose bib faucet fitting) rising one foot above a ground level concrete utility pad. These plans further state that the developers anticipated there would be a 300 gpm flow at 80 psi at the park service connection at Acorn Drive. (Also see footnote 10.)

Indeed, why else would the county require the additional elevated storage capability of this very small rural utility to exceed so substantially the required county fire and domestic flow standards but to accommodate an anticipated addition of a mobile home park? As stated initially, we find that the Hillview system which resulted also met Madera County requirements to serve a 100-unit mobile home park on Bollinger's property.[14/]

1975 Changes to GO 103

As a consequence of the issuance by the Commission April 15, 1975 of D.84334 dealing with fire protection design standards, new elements entered for consideration. D.84334 added Section VIII to GO 103, providing prospectively that in the initial construction, extension, or modification of any water system, when required to serve a new applicant or a change in land use, the water facility constructed, extended, or modified had to be designed to provide, beyond existing domestic flow requirements, for a minimum fire flow allowance which would be based upon the land use to be served. The new section established seven general land use classifications, each with a designated minimum fire flow to be required. Also established was a requirement that each separately operated water system have not less than two independent sources of supply.

14/ And it should be noted that Madera County's requirement for elevated storage was more stringent than the requirement of GO 103 for mere adequate source capability. It is recognized that a gravity system is advantageous from a fire protection standpoint because of its reliability (Insurance Services Office, Grading Schedule for Municipal Fire Protection, 1973).

The primary question presented by this change was which of the seven listed general land uses, if any, would be appropriate to apply in the use situation here under discussion.

What Minimum Fire Flow Standard Should Apply?

Primarily the problem arises because of the very broad and generalized definitions adopted for the classifications. As issued in 1975, nowhere did Section VIII of GO 103 even mention mobile home parks. As then constituted, not one of the seven definitions reasonably included a rural mobile home park in its purview. In our situation the proposed mobile home park has few attributes of an urban situation. Rather it would be sited on 21 acres in the service territory of a very small Class D water utility,[15] and located on a hilly, lightly wooded, cattle and lumbering countryside one-half mile west of the tiny rural community of Oakhurst (population 1,959) in the Sierra Nevada foothills 50 miles from Yosemite. But only one of the seven land uses even mentioned a "rural" application.[16] It relates to rural residential

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15/ As of August 1978, the Sunnydale system, apart from the church and lodge, served only 18 single-family residences in the subdivision (after 7 years, 20 of the 38 lots had not yet been built upon). When completed in 1979, another 24 service connections to the duplex complex were added (replacing the not-to-be built hospital).

16/ This solitary "rural" classification had been proposed by the small utility participants in C.9263 late in the proceedings as an addendum to an overall industry proposal, which in its own stead had been a counter proposal to staff's proposal (the latter substantially based not so much on land use as upon the total number of customers a utility would be serving). The industry proposal (prepared by the Fire Standards and Service Committee of the California Section of the American Water Works Association in conjunction with four utilities) with the addendum was adopted by the Commission.

use with a lot density of two or less per acre, primarily for recreational or retirement purposes, and has a minimum fire flow requirement of 250 gpm. Our proposed mobile home park involves five units to an acre and undoubtedly would include numerous retired occupants. But the use adopted by our staff witness as the appropriate application, and the use included in the staff report, was Land Use No. 4 calling for a minimum fire flow of 1,000 gpm. Land Use No. 4 states: "Lot density of three or more single family residential units per acre..." Contrasting to this, Madera County standards directly applicable to and specifically naming mobile home parks required a minimum fire flow of 300 gpm where the parks provide between 75 and 150 units.

We are convinced that mobile home parks were overlooked when Section VIII was added to GO 103 in 1975. A close review of the 894 pages of testimony and the 26 exhibits entered in C.9263 (the 1975 investigatory vehicle which led to adoption of the fire protection standards) readily discloses that there was no mention whatsoever of mobile homes. Usually temporary, movable, or impermanent type dwellings are singled out and are commonly designated by special names of generic nature such as "mobile homes", "house trailers", or "recreational vehicles" when included in building and zoning codes. But here the evidence in C.9263 supports the conclusion that the participants in that proceeding contemplated only the typical single-family residential unit, a fixed in-place urban home, a sizable permanent human habitation intended for the private occupancy of an average family including parents and children. On the other hand, mobile homes typically are structured less substantially and are smaller than conventional in-place permanent homes. The utilities of mobile homes are not

permanently connected, landscaping is minimal, and they require substantially less water. As stated above, after reviewing the record and our decision in C.9263, we conclude that it was through inadvertent omission that mobile home parks were neither considered nor included in the 1979 list of land use classifications we adopted in D.84334.

However, our 1975 oversight in inadvertently omitting mobile home parks from the GO 103 list (our first attempt to adopt average statewide standards) was remedied in our recent revision of the GO (see D.82-04-089). We added "mobile home parks" to Land Use Classification No. 4, but in full recognition "that there are widely varying conditions bearing on fire protection throughout the urban, suburban, and rural areas of California," we went on to state that while we were retaining statewide use standards on an average basis, we recognized local standards and local control. We then provided that the standards set up by local fire protection agencies or other prevailing local governmental agencies will govern, whether they be greater or lesser than the average statewide standards set forth in our GO 103.

In the instant situation it is clear that for years Madera County has in its own fire protection standards recognized the distinctions between the typical single-family residential unit and the mobile home, as well as the distinctions between urban and rural land uses. By its Ordinance 383 (fire flow requirements),[17/] it has been providing a substantially more definitive schedule of land use classifications appropriate to Madera County than those contained in our necessarily more

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17/ Most recently amended, as relevant here, by the County Board of Supervisors on December 5, 1978.

generalized GO 103, at least as they apply to mobile home parks. Normally we would not be inclined to retroactively substitute a local standard for our own statewide standard, it being well settled that local legislation in conflict with general law is void, particularly where a local ordinance would enter an area already fully occupied by general law (Cal. Water & Tel. Co. v Los Angeles (1967) 253 CA 2d 16). But such is not the circumstance here. Where the general law does not even mention the specific generic class, and review of the rulemaking history reveals that a distinctive usage was not even considered when the general rule was being formulated, it cannot be said that the general law has totally occupied the field.

Consequently, where as here we deal with a rural hill country land use, it cannot be said that the use is so substantially identical with an average statewide usage taken from our 1975 GO that it precludes our retroactive adoption of the far more comprehensive and definitive county local standard. To do otherwise would be to force fit our statewide standards (primarily and necessarily drawn from the experience of much larger urban and suburban water utilities in their service territories). As witness Smyth appropriately observed during the hearing: "neither General Order 103 or Madera County Ordinance 383 was meant to preclude the application of sound engineering principles to any situation, including this one we have right now."

Therefore, we will find that Madera County's local fire prevention standards, as contained in Table B of Ordinance 383, with reference to a mobile home park of between 75 and 150 spaces, and calling for a minimum fire flow of 300 gpm for two hours, should have been and is applicable to the Bollinger property's proposed use for a 100-unit mobile home park.

Did the Hillview Sunnydale System After April 15, 1975 Meet Commission Requirements to Serve a Mobile Home Park Facility of 100-units as Proposed for the Bollinger Property At Sunnydale?

Again, consonant with our foregoing determination that the appropriate fire flow standard to be applied is the Madera County standard, and bearing in mind that here we are concerned only whether the Sunnydale system was and is capable of providing sufficient water to the Bollinger property to provide service in accord with this Commission's requirements for a 100-unit mobile home park in this location, we find the answer to be "yes".

A required fire flow is the rate of flow needed for fire fighting purposes to confine a major fire to the buildings within a block or other group complex. A required fire flow is determined for separate appropriate blocks or group complexes in each system's service territory. While conceivably local conditions might indicate that consideration must be given to simultaneous fires in each such block or complex, there has been absolutely no indication in this proceeding that such is the fact here. Consequently, the mobile home park is the block or complex we consider here.

To meet Commission requirements with respect to water service to this specific customer, Hillview must be capable of providing a flow at the park service connection sufficient to meet two hours of the average daily domestic demand of the Sunnydale system, and in addition, be able to provide to this specific customer's service connection for a sustained period of at least two hours, a minimum flow for fire protection appropriate to the land use being made of Bollinger's property. Under normal

conditions, the utility must maintain operating pressures of not less than 40 psi nor more than 125 psi at the service connection, with allowances so that during periods of maximum and minimum demand the pressure is not less than 30 psi nor more than 150 psi, respectively. In addition, the system must be capable of maintaining a 20 psi residual pressure under flowing conditions.

Staff has calculated the average daily domestic flow requirement for the Sunnydale system to be 195 gpm.[18/] (This 195 gpm flow would include the requirements for a fully built-out 38-lot single-family residential subdivision, a fully occupied 24-unit duplex complex (Freedom Homes), and a fully occupied 100-unit mobile home park). The minimum fire flow applicable to the mobile home park complex under the Madera County standard accepted as applicable here would be 300 gpm. Therefore, to conform to Commission requirements applicable to the park, the utility would have to make available for delivery a total system water flow of 495 gpm (300 gpm + 195 gpm = 495 gpm) for a period of two hours. Of this, the flow which would have to be made available at the

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18/ Staff calculated that of this total, 90 gpm would be attributable to the mobile home park. Smyth disagrees, asserting that mobile home unit domestic requirements are substantially less than those for conventional single-family residential units. Accordingly, Smyth calculates the total system average daily requirement to be 168 gpm. (Interestingly enough, Smyth's conclusions are supported by staff's 1971 report which roughly equated mobile home domestic usage to conventional residence usage on a ratio of 1 to 3.) Hildebrand determined total system domestic requirements to be 200 gpm. To avoid the necessity of recalculation in numerous applications, we have here used staff's 195 gpm.

point of service to the mobile home park would have to be 390 gpm. This means that the system would have to be able to produce 59,400 gallons (495 gpm x 120 minutes = 59,400 gallons) over a given two-hour period from its resources. From 1975 to 1978 it had 70,000 gallons available in elevated storage. In addition the pump at the well was able to produce and inject into the distribution system additional amounts.

In mid-1978, 4 buildings with 6 apartments each were constructed on 2 of the 10 acres originally allocated for a hospital. Commission GO 103 standards were not used, instead Madera County standards were followed. Class G of Ordinance 383 ("Residential-multiple family units (apartments) when total area developed does not exceed 20 acres") requires a minimum fire flow for 2 hours of 750 gpm. Under county practice, this 750 gpm fire flow, plus the systemwide domestic flow requirement of 195 gpm (the requirement for a fully built-out subdivision and fully occupied apartments and 100 mobile home units), called for a total flow of 945 gpm, meaning that the county required an availability from elevated storage of approximately 113,400 gallons (750 gpm + 195 gpm = 945 gpm x 120 minutes = 113,400 gallons), an amount in excess of the 70,000 gallons then available from existing storage. Accordingly, as Forrester testified, the county required additional elevated storage, and Forrester added the final two tanks bringing the elevated storage capacity to approximately 114,000 gallons.

Our conclusion is not changed by the argument that had a Land Use Standard from GO 103 been used with regard to the duplexes instead of Madera County standards, there would not have been sufficient water storage available and the existing mains would have been inadequate to provide the flow called for under the standard.

But strict ritualistic adherence to GO 103 standards, given the circumstance of this small rural duplex complex on 10 acres, and this almost new 6-inch system, would have been unrealistic, unnecessary, and prohibitively expensive. The county standard, Class E, was adequate and reasonable for the locale and scale of the duplex complex. Had a deviation from GO 103 been sought, considering all the factors involved, it would have been granted. At the time our staff was well aware of all the considerations at play,[19] and no deviation was required. Instead, the county

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19/ In mid-1978 Hillview applied for a California Safe Drinking Water Bond Act (SDWBA) loan. The necessity to make certain improvements of interest here had been forced upon the utility largely as the consequence of imperilment to both its Sunnydale and Royal Oaks systems' existing water sources resulting out of bacterial contamination from surface runoff into the Fresno River, both from the Oakhurst Sewage Treatment Plant (a hazard that the Central Valley Regional Water Quality Control Board had been trying to head off by speeding up enforcement proceedings with the county) and from unsewered portions of Oakhurst upstream. Contamination had resulted in a water contamination notice and an informal boil water order to consumers in March 1978. Temporary emergency chlorination was instituted. While new wells away from the Fresno River would be preferable, drilling other wells had produced only small quantities of undrinkable or otherwise marginal water and it developed that the only local source for Sunnydale was near the river. As relative here, the SDWBA loan was to provide an intertie to the Royal Oaks system 5,000 feet nearer Oakhurst, install full-fledged water disinfection treatment facilities at both the Sunnydale and Royal Oaks wells, add substantial new water storage facilities to the Royal Oaks system, and both lease an existing well northeast of the Royal Oaks subdivision and construct another in the same area in the Royal Oaks system. Hillview ultimately obtained an SDWBA loan, although on a reduced scale and with some changes in objectives (see D.91560 dated April 15, 1980), and subsequently the water treatment facilities for Sunnydale and a Royal Oaks intertie were accomplished (see D.82-01-104 dated January 21, 1982). The staff participated in these negotiations and developments.

standard was tacitly accepted. Land Use 6 from GO 103 ("Multiple residential, one and two stories; light commercial or light industrial") would have imposed a 2,000-gpm fire flow minimum. This, when combined with the 195 gpm minimum system domestic flow required by the county, would have meant a total flow of 2,195 gpm. Flows of that volume could never have been passed through the existing 6-inch mains of the Sunnydale system.[20/] In addition, it would have required elevated storage of 263,400 gallons. As we have since recognized and stated in D.82-04-089, such substantial flow volumes need not be mandatory under all situations and circumstances. At the option of local authorities, local standards may be substituted.

Such was the situation here. There were four small apartment buildings, sited about 10 feet apart, and stretched out in a row end on end. One consists of six single-story apartments, literally a row building. The other three buildings each are in part two-story, having four apartment units on the first floor, side by side, with another two apartment units being superimposed as a second story over the two central units.

Had the higher GO 103 requirements been imposed in 1978, it would

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20/ The Sunnydale distribution system consists of 6-inch PVC pipe (not 6-inch asbestos cement pipe as stated in the staff report). As Smyth testified: "And there's a lot of reasons why you don't want to have more than eight or ten feet per second in these pipelines. You put a lot of force on them. And that's why the text books and Johns-Manville or whoever usually stop their analysis at about a ten foot per second flow." Smyth testified that a 6-inch PVC line would not safely carry 1,100 gpm through the mobile home park. (Exhibit 19, the Johns-Manville Head Loss Table for PVC pipe, cuts off its analysis at a velocity of 10.38 feet per second, showing passage of 950 gpm. It would take a velocity of 12.7 feet per second to push 1,100 gpm through 100 feet of 6-inch PVC pipe. The 1973 reprint of Fire Flow Tests - Friction Losses in Pipes, a booklet issued by the Insurance Services Office, states that "Velocities of over 8 feet per second not considered good practice."

have meant that the apartment developers would have had to go to the vast expense of replacing the 6-inch mains with larger-sized pipe, and adding additional storage capacity. As a result, the Freedom Homes complex, intended to furnish low-cost housing, would probably never have been built. The Sunnydale system, virtually new and in good condition, had the capability of furnishing reasonable standards of fire protection as well as the required domestic flow, all to county standards. Accordingly, there was no good reason to impose a replacement burden long before the economic life of the system was over. Consequently no such requirement was imposed.

Returning to the mobile home park issues, we have seen that the Sunnydale system has more than adequate elevated storage to meet service requirements for a mobile home park on Bollinger's property. Furthermore, this water can be delivered at the park's service connection in a requisite volume and within acceptable pressure parameters. Forrester's testimony, backed up by that of Smyth and Gallardo, and substantiated in part by the instrument charts submitted (Exhibits 10-a through 10-f), establish that the system has no trouble meeting both the flow and pressure requirements of this Commission when we incorporate Madera County Ordinance 383 fire flow requirements. In addition, the system has the capability of adjusting the pressure at the booster pump to put any reasonable domestic flow pressure desired on the system under normal operating conditions. The tests at the Acorn and Redberry Drives hydrant indicate that a flow of 1,180 gpm can be available into the park under full flow conditions, and that a residual pressure of at least 20 psi can be maintained. Indeed,

the staff's own report (see paragraph 15) indicates that a flow of 450 gpm (well in excess of the 390 gpm flow the park would require) from the end of Acorn Drive into the park at a residual pressure of 20 psi can be supplied up to an elevation of 2,306 feet when the storage tanks are full, and after two hours to an elevation of 2,276 feet. As the point of service to the mobile home park would be at an elevation of only 2,246 feet, this indicates that the pressure requirements could be met with a margin to spare.[21/]

There remains the issue of what was intended by the requirement that each water system have two or more "independent source of supply." Hildebrand concluded that the Sunnydale system did not comply because "There's one well." Barnes concurred, stating in his report that "the source of supply is the radial well," and that since there is only one source the system does not comply with GO 103. On the other hand, Smyth contended that the radial well and the elevated storage tanks constitute the requisite two sources providing fire protection, so that the system does comply.

We begin our analysis by noting that "source means the point of origin" (Webster's Seventh Collegiate Dictionary (7th Ed., 1963), and thus refers to the root or beginning. But by this definition a mere well could not be a source, because strictly speaking a well is merely the conduit to tap the point of origin, the root or beginning of the water supply which in this instance is an underground stream or aquifer. Was such a purely semantical

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21/ Where, as here, the private property development will surely require internal fire protection services on site, including distribution lines and private fire protection hydrants located at strategic places depending upon the internal lay-out, the internal circulation plans and facilities, including the services, and auxiliary booster and elevated storage facilities required to handle internal elevation pressure requirements set by local authorities, are the responsibility of the developer.

interpretation intended when we amended GO 103 in 1975 to add the requirement? We think not. If such were the intent it would serve to ensure that numerous water systems in California could never be brought into compliance, not from a want of desire to conform, but rather as the consequence of nature's limitations. Many systems are located in areas where there is only one year around source of water, a river, lake, or underground aquifer. In an area of seasonal rainfall it was not intended to require, in Bermuda or Gibraltar fashion, that a utility had to construct substantial cisterns or reservoirs so that impoundment could provide a second independent source. Nor is it always economically feasible to pipe in water from a distant watershed to provide a second independent source.

Certainly something more practical and immediate was clearly intended. And in the context of the positioning of the paragraph containing the requirement, the answer is indicated. Note that the requirement arises, not as a part of Section II "Standards of Service" of the GO, applicable to the system as a whole (and calling for a system based upon a supply of water "free from pollution" and "from a source" (emphasis added) reasonably adequate to provide a continuous supply of water), but rather from its inclusion in Section VIII of the GO, the section dealing with "Fire Protection Standards." The positioning of this 1975 addition was significant. In Section II we were concerned with requirements applicable to the entire system. In Section VIII we were concerned not with the point of ultimate origin of water for the system, but rather with that part of the system concerned with fire protection, and more specifically, with where the water making up the two-hour minimum fire flow would come from. We

were concerned about the effect upon that fire flow should an interruption, say of the electrical supply powering the well pump, occur, cutting off that flow. We decided that we wanted at least a duplication of sources to provide some backup flow if one source were cut off.

In support of our above interpretation placing the source of supply requirement paragraph in the context of fire flow needs, we refer back to the source of the addition, the real genesis of the Section VIII "Source of Supply" requirement. This is found in statements made by the Insurance Services Office (formerly the National Board of Fire Underwriters) in their manual Grading Schedules For Water Supplies (1973 Edition), Exhibit 6 in C.9263. There this authority states:

> "In order to provide reliability, duplication of some or all parts of a water supply system will be necessary, the need for duplication being dependent upon the extent to which the various parts may reasonably be expected to be out of service as a result of maintenance and repair work, an emergency, or some unusual condition. The introduction of storage, either as part of the supply works or on the distribution system, may partially or completely offset the need for duplicating various parts of the system; the value of the storage depends upon its amount, location, and availability." (Emphasis added.)

And further along:

> "A gravity system delivering supply from the source directly to the municipality without the use of pumps is advantageous from a fire protection standpoint because of its reliability, but the reliability of a pumping system can be developed to such a higher degree that no distinction is made between the two types."

From the foregoing it is clear that compliance was not intended to be dependent upon the existence of more than one ultimate source of water. What was meant was that there should be at least two independent supplies of water available to furnish fire protection flow so that in case one was cut off or interrupted, the other could continue to provide fire flow. Thus each well, each elevated storage tank, each gravity flow reservoir, etc., can constitute an independent source of supply for fire protection purposes.

In the Hillview Sunnydale system, as a consequence of county policy, a substantial elevated storage capacity of 114,000 gallons is available for fire protection purposes (and domestic purposes) with gravity flow into the distribution system, in addition to the imput into the system directly from the pump at the well (which produces 145 gpm against system pressure and 185 gpm against little or no pressure). Thus the Hillview Sunnydale system, insofar as fire protection purposes are concerned, has at least two independent sources of supply,[22/] and fully meets our requirements.

Applicable PUC Rates
To be Charged

As witness Barnes acknowledged during the hearing, that portion of the staff report which listed Schedule No. RO-1A of the Hillview-Royal Oaks Tariff as being that which would be applicable

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22/ In addition, since September 1979 when the 12-inch intertie to the Royal Oaks system was completed, the shut-down Royal Oaks well in an emergency could be cut in (by closing a valve and pushing a button) to add 140 gpm. (The Royal Oaks well because of contamination problems from local Oakhurst sewage overflows has been shut down since 1979.) The Royal Oaks storage tank, although in poor repair, could handle the Royal Oaks domestic load in an emergency.

to any service furnished the Bollinger property, was in error. Actually during the period in interest here, the Sunnydale system operated under the Hillview-Goldside Tariff. We further note that effective May 3, 1981, subsequent to the hearing, the Hillview-Royal Oaks Tariff (Schedule No. RO-1) was amended to include the Sunnydale system.

However, in that no service connection has ever been made, no service has been rendered, and no charges could have been incurred. Accordingly, Hillview's attempted billing of complainant for monthly flat rate service is a nullity. That Hillview at all times has been ready, willing, and able to provide water to complainant is not determinative. Section V, Extension of Service, of GO 103 provides that "The customer as a condition precedent to receiving service shall furnish and lay the necessary piping to make the connection from the service connection to the place of consumption..." Until such time as complainant has met this condition precedent and has installed his distribution system, and made formal application for service, Hillview can incur no obligation to provide either facilities or water service. But neither can it charge for standby capacity.

Findings of Fact

1. In 1960 this Commission authorized the Forresters to operate a public utility water company to provide water service to a subdivision area known as Hillview Estates, west of the rural community of Oakhurst in Madera County. The company has since come to be known as Hillview Water Company.

2. In 1971 this Commission authorized Hillview to provide public utility water service to an additional noncontiguous 45-acre service territory near Oakhurst known as Sunnydale, having

determined that the water system earlier installed at Sunnydale was adequate under the then existing standards of GO 103 to provide domestic water service to the proposed addition of a 38-unit residential subdivision, a 100-unit mobile home park, a hospital, lodge, and church.

3. GO 103 contains PUC rules governing water service, including minimum standards for design and construction of water systems. First adopted in 1956, the GO was amended in 1960, 1967, 1975, and most recently, in 1982.

4. The 1975 amendment first added Fire Protection Standards (Section VIII) to the GO, basing minimum fire flow requirements on land use, and applying minimum standards to initial construction, extensions, or modifications of a water system to serve a new applicant, change in use, or for replacement mains used or useful for fire protection purposes. Also added was a requirement that there be more than one independent source of supply.

5. Through inadvertence, mobile home parks were overlooked and were not included when Section VIII, Fire Protection Standards, was added to GO 103 in 1975.

6. The 1982 amendment, inter alia, corrected the 1975 omission by adding a mobile home park classification to the land use list in Section VIII, and after clarifying that the fire flow standards set forth in Section VIII were statewide averages, provided that, where promulgated, fire flow standards of local agencies, whether higher or lower, govern, recognizing that there are widely varying conditions bearing on fire protection throughout the urban, suburban, and rural areas of California.

7. Madera County's code for years has contained fire flow requirements based on specific land uses. More specific and detailed

than those of Section VIII of GO 103, these were made applicable to water systems located in the county, and specifically included various sized mobile home parks.

8. Absent inclusion of a mobile home park land use classification in Section VIII of GO 103 before 1982, this Commission for fire flow standards relative to the Bollinger mobile home park would apply the Madera County Ordinance 383 standard for mobile home parks containing between 75 and 150 spaces of 300 gpm minimum fire flow for two hours duration.

9. In 1973, concurrently with initiation of an application to construct a 97-unit mobile home park on the Bollinger property, and with water supply difficulties allegedly experienced by new Sunnydale subdivision contractors, at the instigation of the county elevated storage tanks with a capacity of 70,000 gallons were installed at Sunnydale to comply with the county's then existing standards requiring water utilities in the county to provide both minimum system fire flow protection and emergency domestic service.

10. The mobile home park planned for the Bollinger property constitutes a single tract of private property undivided by dedicated thoroughfares and will offer individual spaces for rent to persons with mobile home units. The mobile home park venture will be operated as a private commercial enterprise for profit.

11. The mobile home park planned for the Bollinger property would not be a real estate subdivision, housing project, industrial development, or organized commercial district.

12. The mobile home park planned for the Bollinger property would qualify as a "Business Service", and the customer would take delivery of water from the Sunnydale system at a service connection which would be located at the property line where it intersects with Acorn Drive and the Sunnydale main.

13. As with any customer, it would be Bollinger's responsibility to furnish and lay the necessary piping from the service connection to the individual places of consumption, and to provide whatever private fire protection facilities, including private hydrants, on his property as may be required by local authorities. He must also furnish and install any accessorial facilities, such as sumps, booster pumps, pressure tanks, elevated storage facilities, etc. as may be required by local authorities to distribute water on his private property and to meet pressure requirements deemed necessary at elevations above the point of service on his private property.

14. Bollinger at no time has furnished and laid the necessary piping to make connection from the point of service to the proposed places of consumption.

15. Standards acceptable to the Commission, since addition in 1975 of minimum fire flow requirements, would require that the Hillview Sunnydale system have capability to deliver to the service connection of a 100-unit mobile home park on the Bollinger property, a minimum fire flow of 300 gpm for a period of two hours, as well as capacity to concurrently deliver to the Sunnydale system a minimum domestic flow of 195 gpm (of which 90 gpm are allocated to the park) for a period of two hours, while maintaining a normal operating pressure above 40 psi,and a residual pressure of 20 psi under flow conditions.

16. Both actual tests and the staff's report confirm that a flow of at least 450 gpm and a residual pressure of 20 psi can be provided by the Hillview Sunnydale system at the point of service to the proposed Bollinger mobile home park and maintained for a period of time in excess of two hours. In addition, the tests and the report also confirm that at the point of service the system has no difficulty in maintaining a normal operating pressure above 40 psi.

17. In mid-1978, largely as a consequence of contamination to its Sunnydale and Royal Oaks wells arising from runoff into the Fresno River from the Oakhurst Sewage Treatment Plant, Hillview sought and subsequently with concurrence of this Commission obtained a SDWBA loan primarily to add full-fledged water disinfection treatment facilities at Sunnydale, intertie the Sunnydale and Royal Oaks systems, and add substantial new storage facilities and new wells at Royal Oaks.

18. In the latter part of 1978, when 24 apartment units were substituted on 2 acres of a 10-acre proposed hospital site, Hillview again was required by the county to augment its elevated storage capacity to meet developing county standards requiring minimum fire flow protection for the apartment complex, and an emergency domestic service reserve for the entire Sunnydale system. The resulting 114,000-gallon capacity met county requirements, and as our 1982 amendment to GO 103, accepting local standards based upon varying local conditions and circumstances, would indicate, had one been sought, a variance applicable to the apartment complex would have been granted. Under the 1978 circumstances of this system it had not been deemed necessary to seek a variance.

19. Fire flow is the rate of flow needed for fire fighting purposes to confine a major fire to the buildings within a block or other group complex. Since no facts were presented to indicate that the Sunnydale system has special circumstances that would require it to consider simultaneous fires in each block or complex, the fire flow requirements for the apartment complex would have no bearing upon the fire flow requirements for the proposed mobile home park.

20. The Section VIII.5 requirement of GO 103 that each water system have two or more independent sources of supply means that there should be at least two independent available supplies of water that can be drawn upon to furnish fire protection flow. Each

artesian or pump-equipped well, each elevated storage tank, each gravity flow reservoir, etc., can constitute an independent source of supply for fire protection purposes.

21. The Sunnydale system has at least two independent sources of supply available to the system for fire protection purposes.

Conclusions of Law

1. Hillview is a public utility subject to the jurisdiction, control, and regulation of this Commission.

2. At all times since its certification in 1971, except for temporary emergency interruption such as the 1978 contamination situation resulting from overflow of the Oakhurst Sewage Treatment Plant, the Hillview Sunnydale system has had the capability to provide sufficient fire flow and domestic water in accordance with PUC rules and regulations to Bollinger's property to provide service for a 100-unit mobile home park.

3. Bollinger has never met the conditions precedent to become a Hillview Sunnydale customer. Therefore, although water has been available, no water has been provided.

4. The Hillview-Goldside Tariff would have been applicable had service been provided.

O R D E R

IT IS ORDERED that consonant with the above-stated conclusions, the complaint is denied.

This order becomes effective 30 days from today.

Dated OCT 6 1982, at San Francisco, Calfiornia.

JOHN E. BRYSON
President
RICHARD D GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

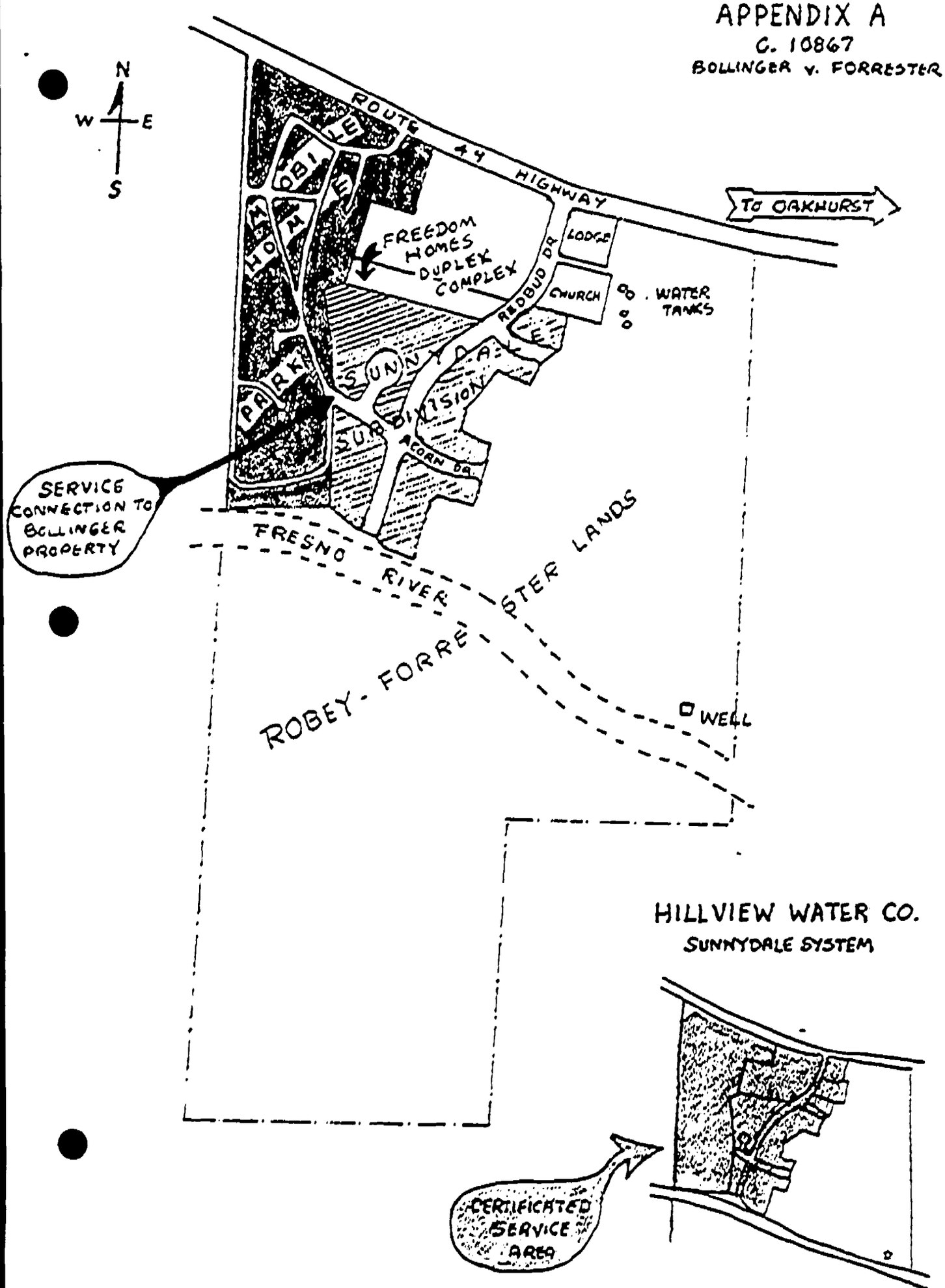
I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director

APPENDIX A

C. 10867

BOLLINGER v. FORRESTER



Commission's jurisdiction as defendants, and as to this proceeding were dismissed. However, they elected to participate as an interested party.

At the hearing Bollinger presented evidence through Noel L. Hildebrand, a licensed civil engineer employed by the Fred N. Rabe Engineering, Inc. firm, and Joseph C. Gasperetti, a local Oakhurst attorney.

The thrust of Hildebrand's evidence was that the Hillview system (which as a Rabe engineering employee he had designed back in the late 1960s) is short 145,000 gallons of storage capacity, because of other system commitments, to meet today's Commission standards under General Order (GO) 103, as he interprets them, to serve a 100-unit mobile home park on the Bollinger property. Hildebrand testified that in calculating minimum fire flow requirements, as he interpreted them, he applied the 2,000 gpm minimum flow set forth for Land Use No. 6 in GO 103 to the entire Hillview system (including the 38 residential, 24 apartment, and 100 mobile home units), and that under that application Hillview cannot meet the fire flow requirements. Hildebrand further testified that Hillview could not meet the fire and domestic flow requirements of Madera County's Ordinance 383 either. Finally Hildebrand contended that the system had but one source of water supply, the well, whereas under GO 103 two sources are required.

Gasperetti's testimony was that at another recent hearing Forrester had testified that as a consequence of contamination problems with the well formerly serving the nearby Royal Oaks-Hidden Oaks district of Hillview, that well had been disconnected and the Sunnydale district well was now also providing water to the 130-unit Royal Oaks-Hidden Oak's district, a companion district in the Hillview system to Sunnydale.

which included the 21-acre mobile home park area here at issue, was part of a 180-acre area owned jointly by the Forresters and the Robeys. Looking to the future, it was contemplated that eventually the new 45-acre Sunnydale service area could be expanded to embrace all 180 acres. As part of the system envisioned eventually to serve the full 180 acres, it was projected that a large water storage facility (the initial Rabe engineering drawing projected a 160,000-gallon tank; later this was changed to a 500,000-gallon tank), would at some undefined future time be sited to the south across the Fresno River on a hillside, thereby providing a gravity flow capability for the entire 180-acre service territory ultimately to be served. It was thought that at such future time this large storage facility would be connected to the initially installed pressure tank system by means of a 10-inch pipeline. As matters turned out, these future expansion plans have not materialized, and the proposed large storage facility across the river never was constructed.

After amending their application, the Forresters were granted a certificate of public convenience and necessity authorizing extension of Hillview at Sunnydale to serve the noncontiguous 45-acre territory (D.78170 dated January 23, 1971). This 45-acre service territory, in rolling hillside land, included 15 acres allocated for 38 individual home sites (to be known as the Sunnydale Subdivision), 21 acres allocated for a 100-unit mobile home park (the Bollinger property), and land reserved for a planned hospital, a church, and a fraternal lodge building. From this certification of the Hillview Sunnydale service territory, we obtain our present jurisdiction over the utility (see Appendix A map).

Water Public Utilities Duties And Responsibilities

Before addressing the specific issues raised by the instant proceeding, we will clarify what appear to be misconceptions regarding the basic duties and responsibilities of water public utilities. Fundamentally, a public utility in the nature of a water company is obligated by law to maintain and extend an adequate water service to all users in its dedicated service territory (PU Code § 451; Cal. Water & Tel. Co. v Public Util. Comm. (1959) 51 C 2d 478). But it must provide service without granting preferences or advantages (PU Code § 453), and do so only on the terms and conditions provided in its filed tariff (PU Code § 532). Deviations from the filed tariff require prior Commission authorization, and unless approved by the Commission are of no force or effect (Shaeffer v Avila Wtr. Co. (1956) 55 CPUC 262).[5/] Contracts involving extensions, to the extent that they provide for construction of facilities under conditions at variance with the utility's main extension rule, are ineffective unless specifically authorized by the Commission. (California Water & Tel. Co. (1962) 59 CPUC 735).

5/ We take notice that the Commission's Tariff File for this utility contains no variance relative to the subject property. Accordingly, as property which is located within the utility's authorized service territory, the mobile home park site under any owner (whether it would be the Forresters, Robeys, Bollinger, or anyone else) would have been entitled to receive water service, but only under the terms of the utility's filed tariff. Any agreement by Hillview to provide or deliver water under other terms and conditions is void, and cannot be enforced as a covenant upon the utility. However, any promises or inducements which may have been made by the Forresters or Robeys, beyond the fact that this specific property was entitled to receive water service, would be beyond the jurisdiction of this Commission to interpret or enforce.

was made.[9] Where real estate subdivisions are involved, the utility is indeed obligated to extend its water mains, service pipes, and meters throughout the public streets serving the subdivision area being developed (assuming the subdivision is in the service area), and to provide public fire protection service including hydrants on these public streets. Further, the utility must deliver water to every service connection in the subdivision, including the highest areas served, in sufficient volume and under sufficient pressure to meet our GO standards. But these installations are made only after the developer has made formal application, signed the appropriate main extension contract provided for in the tariff, and has advanced the costs, including those required for additional lift zones, booster pumps, storage tanks, and even additional wells where such are needed to serve the new subdivision or to meet the new fire flow requirements where applicable. (Mountain Power Co. (1920) 18 CRC 377, and see In Re Cal. Water Service Company and Alisal Water Corporation, D.91857 dated June 3, 1980 in A.59225 and A.59320.)

But such is not the situation here. No subdivision is proposed. There is no division of unimproved tracts of land into separate lots for sale to individuals. This tract of land will remain one entity, owned and operated by Bollinger as a private

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9/ The essential function of a water main extension rule in the field of large scale land developments such as residential subdivisions is to provide a method by which construction of the necessary distribution facilities may be accomplished with minimum financial risk to the utility and its consumers from potentially uneconomic or speculative developments. In re Revision of Water Main Extension Rules (1962) 60 CPUC 318.

than those of Section VIII of GO 103, these were made applicable to water systems located in the county, and specifically included various sized mobile home parks.

8. Absent inclusion of a mobile home park land use classification in Section VIII of GO 103 before 1982, this Commission for fire flow standards relative to the Bollinger mobile home park would apply the Madera County Ordinance 383 standard for mobile home parks containing between 75 and 150 spaces of 300 gpm minimum fire flow for two hours duration.

9. In 1973, concurrently with initiation of an application to construct a 97-unit mobile home on the Bollinger property, and with water supply difficulties allegedly experienced by new Sunnydale subdivision contractors, at the instigation of the county elevated storage tanks with a capacity of 70,000 gallons were installed at Sunnydale to comply with the county's then existing standards requiring water utilities in the county to provide both minimum system fire flow protection and emergency domestic service.

10. The mobile home park planned for the Bollinger property constitutes a single tract of private property undivided by dedicated thoroughfares and will offer individual spaces for rent to persons with mobile home units. The mobile home park venture will be operated as a private commercial enterprise for profit.

11. The mobile home park planned for the Bollinger property would not be a real estate subdivision, housing project, industrial development, or organized commercial district.

12. The mobile home park planned for the Bollinger property would qualify as a "Business Service", and the customer would take delivery of water from the Sunnydale system at a service connection which would be located at the property line where it intersects with Acorn Drive and the Sunnydale main.