

ORIGINAL

Decision No. 87002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jacqueline P. Harvey,

Complainant,

vs.

San Jose Water Works, a corpora-
tion,

Defendant.

Case No. 10200
(Filed November 4, 1976)

Harvey M. Freed, Attorney at Law, for Jacqueline P. Harvey, complainant.
McCutchen, Doyle, Brown & Enersen, by Crawford Greene, Attorney at Law, for San Jose Water Works, defendant.
Lacroix & Schumb by Joseph G. Schumb, Jr., Attorney at Law, for Mr. and Mrs. John Magee; and David Conner, for David and Carole E. Conner, intervenors.
Eugene M. Lill, for the Commission staff.

ORDER OF DISMISSAL

South of the town of Los Gatos, California, State Highway 17 threads its scenic way past Lexington Reservoir through the billowing slopes of the green foothills leading upwards to the heavily wooded Santa Cruz mountains, seeking the gap that leads to Santa Cruz. Those billowing slopes west of the reservoir are interspaced, checkerboard fashion, by grazing areas, vineyards, Christmas tree farms, redwood groves, and native brush, with a light sprinkling of ranch homes placed so as to take in the splendid vistas. The area is a watershed for San Jose Water Works (SJWW) which has substantial land holding and riparian rights in the superposed hills. Although relatively close in to Los Gatos, and only 10 miles from downtown San Jose, and therefore highly desirable land for suburban development, it is but sparsely built upon to date. To a certain extent, this is attributable to the unavailability of water.

SJWW owns, operates, and maintains a 6-inch water line which commences at its Montevina Reservoir sited adjacent to the Lexington dam, and runs approximately one mile south on the easterly side of Highway 17, across from both Black Road and Bear Creek Road. SJWW historically has been averse to extending its service area into foothill areas such as those in this area. In the past the Commission staff has taken the position that as the major water purveyor in a large and growing metropolitan and suburban area, SJWW has a moral obligation to grow into contiguous areas. This Commission itself has expressed its concern with the utility's "...shortsighted policy of refusing to extend its mains to serve areas located at higher elevations outside its present service area and, instead furnishing water for resale by newly formed small utilities in those areas."^{1/} In response, in 1970 the utility promulgated a statement of position regarding service areas which, in part, stated that it would agree to waive extensions to "...accommodate one additional water lift of approximately 300 feet in elevation along the foothill boundaries of the service area", limiting such extensions to territory contiguous to its existing service area boundaries.^{2/}

By Decision No. 49159 issued September 29, 1953, in Case No. 5490, this Commission ordered nine water connections to this 6-inch line, seven of which were to service previous customers whose connections were displaced by the replacement of the Alma distribution line necessitated by construction of Lexington Reservoir. The remaining two connections were ordered for property owners Coffing and Jewett whose properties lay west of Highway 17.

^{1/} See Decision No. 57296 dated June 3, 1964 in Application No. 45787.

^{2/} See Decision No. 77766 dated September 22, 1970 in Application No. 51283.

In Decision No. 79991 issued April 25, 1972 in Cases Nos. 9166, 9169, 9170, 9172, 9176, and 9178, the Commission concluded that SJWW had been and was continuing to supply public utility water service outside its filed service area, and had thereby dedicated its facilities to service such outside areas. However, other than concluding that the complainants in that proceeding were within this expanded de facto service area, we did not define the boundaries of the expanded area but merely ordered extension of service to those complainants. Subsequently, a main extension up Bear Creek Road was constructed to service those complainants.

Mrs. Jacqueline Harvey, complainant here, acquired a multiacre portion of the land formerly owned by Coffing (See Decision No. 49159 above). Her property borders the Magee property on the west and the Murray property on the east, both serviced by SJWW under the Commission order in Decision No. 49159.^{3/} Her property fronts on Black Road, a mountain road running westward from Highway 17 and thence up into the hills to Skyline Boulevard in the Santa Cruz Mountains. West of Lexington dam in the area involved here, Bear Creek Road parallels Black Road approximately one-third of a mile to the south. Mrs. Harvey intends to subdivide her property into three homesites, and with that intention in mind entered upon construction of a multistory residential building on the southern third portion of her property. The framing on the building is now completed. She assertedly made application to SJWW for domestic water service and was denied; consequently, she filed this complaint with this Commission, seeking an order to SJWW to make available metered service to service her property.

^{3/} Magee succeeded to a portion of the Coffing interest and Murray succeeded to the Jewett interest. Both Magee and Murray have individual services, each metered and each running across intervening easements to and under Highway 17 to connect to the SJWW 6-inch line. See Appendix A, Page 4, for diagram of area.

A duly noticed public hearing was held in Los Gatos on December 23, 1976 before Examiner John B. Weiss. At that hearing, following a three-quarter hour off the record conference with the examiner requested by the parties, the parties agreed to stipulate that the Harvey property came within the Coffing interest recognized in SJWW's tariff IL-2, and was recognized as being within the service area expansion ordered by Decision No. 49159 dated September 29, 1953 in Case No. 5490. It then became apparent, as a practical matter, that it would be necessary to continue the hearing to a later date in order to obtain certain information and expert testimony on the capabilities of both the 6-inch Highway 17 line and the Bear Creek line to support additional service.^{4/} Accordingly, the hearing was recessed until January 20, 1977.

Early in January 1977, complainant's attorney informed Examiner Weiss that the parties had concluded a settlement of the complaint whereby SJWW, without admitting that the Highway 17 and Bear Creek lines have any excess capabilities to serve beyond the previously ordered connections plus the three connections to Harvey requested herein, agreed that it can and will furnish domestic water service to the lands of Harvey from three 3/4-inch household metered service connections on Bear Creek Road. Subsequently, on January 14, 1977, the complainant in writing, pursuant to the terms of the settlement reached by the parties, and memorialized in a formal

^{4/} The 6-inch line east of Highway 17 was installed by the Santa Clara Valley Water Conservation District in 1953 to replace a SJWW 6-inch line to Alma which had been inundated as a result of the construction of the Lexington Reservoir. After construction was completed, SJWW assumed operation of this replacement pipeline. SJWW has since asserted that the line has limited capability for additional services.

At the hearing 12-23-76 Mrs. Harvey made it clear that she was, in essence, seeking not one, but rather three domestic metered services to service her property.

agreement attached hereto as Appendix A, requested that the Commission dismiss this complaint. In that the building is nearing completion and water is urgently required, this dismissal should be made to be effective immediately.

Therefore, IT IS ORDERED that Case No. 10200 is dismissed without prejudice.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 23rd
day of FEBRUARY, 1977.

John R. Brown
President

[Signature]

[Signature]
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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

APPENDIX A
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HARVEY M. FREED
Attorney at Law
2351 Leavenworth Street
San Francisco, California 94133

Tel: 673-4911

Counsel for Complainant
Jacqueline Harvey

SETTLEMENT AGREEMENT

Jacqueline P. Harvey ("Harvey") and San Jose Water Works ("Water Works"), complainant and defendant, respectively, in Case No. 10200 before the Public Utilities Commission of the State of California ("Commission"), hereby stipulate and agree to settlement of said Case upon the following terms and conditions:

1. Water Works stipulates that the lands of Harvey, located adjacent to Black Road, Los Gatos, shown on Exhibit A hereto, (Santa Clara County Assessor's Parcel No. 544-26-16), are located within Water Works dedicated public utility service area.
2. Water Works agrees that it can and will furnish domestic water service to said lands of Harvey in addition to the twenty-nine customers described in paragraph 5 of this agreement.
3. Water Works hereby agrees to install three 3/4" household metered service connections on the 6" Bear Creek Road main, adjacent to the uphill side of the pumphouse whose location

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is shown on said Exhibit A. Harvey or her agent shall designate to Water Works on site or in writing the exact location of the proposed connections in accordance with the provisions of the preceding sentence, and Water Works agrees to complete installation of said three connections within 30 days thereafter. The connections shall be for the exclusive use of Harvey, her heirs, successors and assigns, for the purpose of providing domestic water service to said lands of Harvey. The terms and conditions of water service are to be in accord with the applicable rates and rules of Water Works filed with the Commission, as in effect from time to time.

4. Upon the execution of this agreement by the parties hereto, Harvey authorizes and directs her counsel to effect the dismissal of her Complaint in said Case No. 10200 and the termination of any related proceedings then pending before the Commission.

5. It is expressly agreed by the parties hereto that this settlement does not constitute an admission by Water Works as to the capability of the Bear Creek Road main and the Highway 17 Line, to which it is interconnected, to serve any customers in addition to those nine specified in Commission Decision No. 49159 (and Water Works' Tariff Schedule No. IL-2), plus those twenty specified in Commission Decision No. 79991 (Olson case), plus those three stipulated to in this agreement. A list of the customer connections and reservations to which

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Water Works is currently providing, or has agreed to provide, utility service is indicated on Exhibit B hereto.

6. This agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the dates indicated below.

January 7, 1977

Jacqueline P. Harvey
Jacqueline P. Harvey

January 11, 1977

SAN JOSE WATER WORKS

✓ By Norman E. Andrews
Norman E. Andrews
Vice President

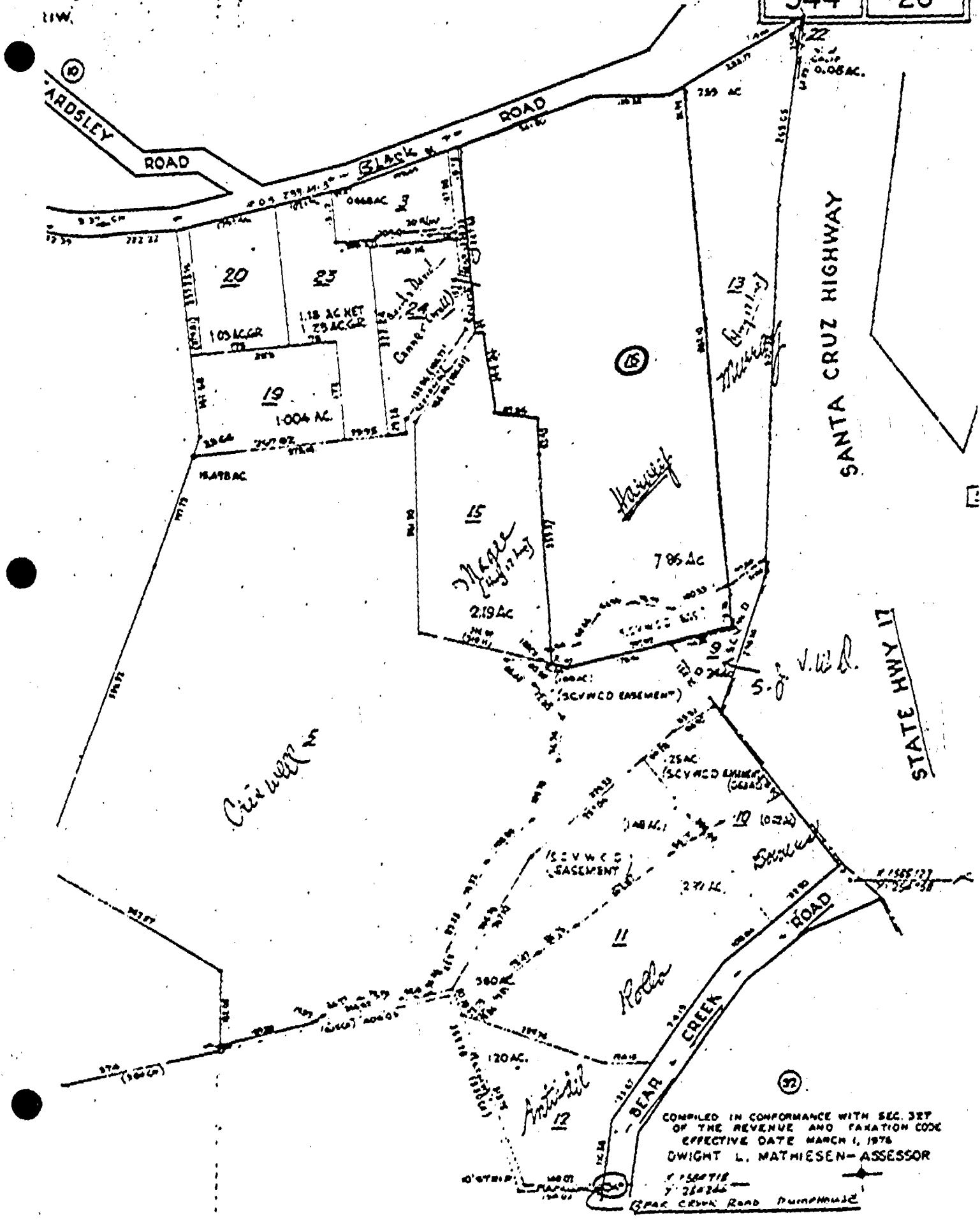
Approved as to form:

Harvey M. Freed
Harvey M. Freed, Esq.
for Jacqueline Harvey

January 6, 1977

A. Crawford Greene
A. Crawford Greene, Esq.
for San Jose Water Works

January 5, 1977



COMPILED IN CONFORMANCE WITH SEC. 327
OF THE REVENUE AND TAXATION CODE
EFFECTIVE DATE MARCH 1, 1976
DWIGHT L. MATHIESEN-ASSESSOR

158018
7 28224
BEAR CREEK ROAD PUMPHREY

LIST OF PROPERTIES AS PER PUBLIC UTILITIES COMMISSION'S DECISION NO. 49159

Service or Property No.	Original Owner	Present Owner	Address of Present Owner	Address of Property	Services Installed	
					Date	Active
1	State Fire Station (Division of Forestry)	Same	19650 Santa Cruz Hwy. Los Gatos, Calif.	Same	11-06-53	Yes
2	Lexington School	Same	19700 Santa Cruz Hwy. Los Gatos, Calif.	Same	11-07-53	Yes
3	Yehudi Menuhin	Same		19750 Alma Bridge Road Los Gatos, Calif.	11-07-53	Yes
4	John A. Feehan	Same	17770 Alma Bridge Road Los Gatos, Calif.	Same	8-31-53	Yes
5	J. J. Beatty	Same	17820 Alma Bridge Road Los Gatos, Calif.	Same	8-31-53	Yes
6	E. E. Dadmun	Patricia A. Rollo	1489 16th Street San Francisco, Calif.	18501 Bear Creek Road Los Gatos, Calif.	11-06-53	Yes
7	Earl O. Coffing	John J. Magee	18340 Black Road Los Gatos, Calif.	Same	11-06-53	Yes
8	Evelyn Jewett	Karen J. Murray	18240 Black Road Los Gatos, Calif.	Same	11-06-53	Yes
9	Conrad Frank	Santa Clara Valley Water District	5750 Almaden Exprwy. San Jose, Calif.	None	11-06-51	No

LIST OF PROPERTIES AS PER PUBLIC UTILITIES COMMISSION'S DECISION NO. 79991

Property No.	Original Owner	Present Owner	Address of Owner	Address of Service	Services Reserved		Services Installed			Pressure	Planned Date of Connection
					No.	Date	No.	Date	Active		
1	James Barnett	Same	19101 Bear Creek Road Los Gatos, Calif.	Same	1	4-4-73	1	5-27-76	Yes	75#	-
2	Lloyd W. Olson	Same	18921 Bear Creek Road Los Gatos, California	Same	4	5-22-73	1	7-20-73	Yes	75#	-
3	A. R. Marcus	Same	14881 Golf Link Drive Los Gatos, Calif.	18450 Black Road Los Gatos, Calif.	1	3-16-75	-	-	-	-	1977
4	Robert P. Criswell	Same	20259 Black Road Los Gatos, Calif.	Black Road Los Gatos, Calif.	2	5-22-73	-	-	-	-	-
5	A. George Stubbe	Same	18805 Bear Creek Road Los Gatos, Calif.	Same	3	5-22-73	2	7-20-73 7-23-76	Yes	85# 90#	-
6	Harold N. Lyng	Same	18765 Bear Creek Road Los Gatos, Calif.	Same	4	5-22-73	2	7-23-73 7-24-73	Yes	120# 95#	-
7	E. E. Dammun	Gene C. Antisdel	3131 Homestead Road Santa Clara, Calif.	Bear Creek Los Gatos, Calif.	1	5-22-73	-	-	-	-	-
8	Gilbert C. Bowers	Same	271 Black Oak Drive Medford, Oregon	Bear Creek Los Gatos, Calif.	1	6-1-74	-	-	-	-	1977
9	Frank C. DeHoss	Daniel C. Fitch	P.O. Box 1842 Los Gatos, Calif.	Bear Creek Los Gatos, Calif.	1	3-6-73	-	-	-	-	1977
10	Daniel C. Fitch	Don J. Vyhna	18706 Bear Creek Road Los Gatos, Calif.	18706 Bear Creek Los Gatos, Calif.	1	3-28-73	1	9-17-73	Yes	110#	-
11	Frank C. DeHoss	Same	18710 Bear Creek Road Los Gatos, Calif.	Same	1	3-6-73	1	9-17-73	Yes	105#	-