

ORIGINAL

Decision No. 87871 SEP 20 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DAVID E. PARKER,  
 Complainant,  
 vs.  
 APPLE VALLEY RANCHOS WATER COMPANY,  
 Defendant.

Case No. 9942  
 (Filed July 11, 1975;  
 amended August 11, 1975)

Archbald, Zelezny & Spray, by John Patrick McEvoy,  
 Attorney at Law, for complainant.  
 Ball, Hunt, Hart, Brown & Baerwitz, by Clark  
Heggeness, Attorney at Law, for defendant.  
William J. Jennings, Attorney at Law, and Joel H.  
Lubin, for the Commission staff.

O P I N I O N

David E. Parker (Parker) seeks an order to require the defendant utility, Apple Valley Ranchos Water Company, to furnish him domestic public utility water service at a 4- $\frac{1}{2}$ -acre parcel of land owned by him in Apple Valley, California, upon which he has built a home used as his residence. He has requested the defendant to provide such service upon his payment of the cost of extending the water service to his property and his request has been denied.

The land is outside the claimed service boundary of the defendant utility but it is adjacent thereto and in close proximity to its water line. The defendant has in the past and now provides water service to property outside the area on its filed service area map and near the property of Parker. Parker contends that the defendant has a duty to extend its service to serve his property and that the defendant's refusal to do so is arbitrary and discriminatory conduct which does not justify the refusal.

The defendant admits that since before 1969 its has continually provided water service to two residences in the general vicinity of Parker's property but contends that it has not provided new service for any land outside of its service area since 1968, denies that it has a duty to extend its service to Parker's property and contends that it has not dedicated its public utility facilities to serve Parker or his property. Attached hereto is Appendix A illustrating the defendant utility's expressly dedicated service territory in proximity to Parker as well as part of its dedicated service area map boundary.

The defendant further contends that it would not be reasonable, feasible, proper, or appropriate to require it to serve Parker's property, and that Parker can procure a source of water for his property by drilling a water well, as other property owners in that area have done. It contends that it has no obligation to serve the property of Parker and that the Commission has no jurisdiction to order it to do so and if it is required to serve water to additional users it will be required to pay additional charges for such water to its provider of water, Mojave River Water Agency, and the additional users should be required to pay such additional charges. The utility states that at the request of a member of the Commission staff it has not provided any water service outside its service area since 1968 except as to such persons who were served in 1968 and prior years.<sup>1/</sup>

A hearing was held before Administrative Law Judge James D. Tante on April 27, 1976 in Los Angeles and the matter was submitted upon the filing of briefs in the form of letters to the presiding officer on or before May 3, 1976.

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<sup>1/</sup> The testimony shows, however, that the defendant intends to extend service to a tract acquired by its parent company, outside the filed service territory map area (Tr. 52).

The complainant Parker; the vice president of the defendant utility who is also a vice president and director of Reserve Oil and Gas Company (Reserve), a California corporation and parent company of the utility; and manager of the utility testified.

Exhibit 1, a schematic map of the area of Parker's property; Exhibit 2, a letter from Parker to Ranchos dated February 6, 1975; Exhibit 3, a summary of service request refusals; Exhibit 4, a map of Ranchos' service area; Exhibit 5, a list of customers receiving water service outside Ranchos' service area; and Exhibit 6, a map showing the location of customers receiving service outside Ranchos' service area, were received in evidence; Exhibits 7 and 8 consist of correspondence to the Commission following submission which reflect the present positions of the parties.

At the request of defendant the Commission took official notice of Decision No. 40424 dated June 17, 1947, which granted its certificate to operate as a public utility water company. For the limited purpose of showing the position taken by the defendant in previous cases where complaints have been filed seeking to require it to provide water outside its certificated area, and at its request official notice was taken of Decision No. 60716 dated September 13, 1960, and Decision No. 82805 dated April 30, 1974; and at the request of the Commission staff of Decision No. 62884 dated December 5, 1961.

The defendant's motion to dismiss the complaint is denied.

#### Discussion

In February 1975 Parker contemplated the purchase of four and one-half acres of land adjacent to the west side of Choco Road in Apple Valley, California, designated as Parcel 13 on Exhibit 1, and requested Ranchos orally and by letter (Exhibit 2) to provide water to the residence he intended to build on the land. He offered to pay the cost of extending service to his premises. Parker's request was denied. He was informed that several other prospective purchasers of the land had made similar requests which were denied.

In May or June 1975 he purchased the land and built a home thereon consisting of 2,250 square feet at a cost of \$34,000. He resides in the home, has seven horses and a pony on the premises, and intends to use the property to raise horses. The legal description is set forth in the complaint and the address is 13830 Choco Road. Parker could obtain water by drilling a well at a cost of \$2,500 to \$5,000 and has apparently done so (Exhibits 7 and 8).

Defendant has, since 1954, and now provides water for a single-family residence on a parcel of land to the north and adjacent to Parker's land, and on Choco Road (Parcel 11 on Exhibit 1) opposite the east side of the street which marks a boundary of the utility's claimed service area (Exhibit 5, No. 22-0A). It has, since 1968, and now provides water for a single-family residence and swimming pool on a 75-acre parcel of land a few hundred feet to the west of Parker's land (Parcel 7 on Exhibit 1), opposite the north side of Siesta Drive which marks a boundary of Ranchos' service area (Exhibit 5, No. 23-0A). In both cases it installed a 5/8-inch x 3/4-inch residential-type meter within its service area and the customers installed and paid for the extensions from the meter to their respective residences.

The service territory acknowledged by the utility is set forth on Exhibit 4 and its peripheral boundary extends 47.9 miles. After it received its certificate in 1947 and prior to 1969 it extended service to approximately 24 properties outside its service area, one of which was a four- or five-unit building and the others were single-family residences. In each case residential type meters were used which would only permit use of sufficient water for a residence and three-fourths of an acre. Exhibits 5 and 6 set forth the names and locations of the customers who have requested and were denied service.

A witness for the utility testified that in 1968 an unidentified member of the Commission staff advised him that it should discontinue the practice of providing new service outside its service area and since then it has complied with the request and has refused 240 to 300 oral and written requests for such service.<sup>2/</sup> The names and locations of 85 persons making such requests in writing, and who were refused service, are set forth on Exhibits 3 and 4. Some who have been refused service have drilled wells or have brought water to their premises by truck.

The defendant utility is a wholly owned subsidiary of Reserve, a California corporation, which owns land in the vicinity of and outside the service area of Ranchos. It subsidizes the utility to the extent of \$30,000 cash and \$90,000 in payroll payments for a total of \$120,000 a year. The utility has not requested a rate increase since it was certificated in 1947.

The vice president and director of Reserve testified that the availability of water service increases the value of land. In due time he may request Ranchos to supply water service to land owned by Reserve which is outside the utility's service area, and he may also handle the matter as vice president of the utility and seek to have approval of the Commission of such an extension of service. He believes that such a request would be approved by the Commission. He stated that Reserve may sell some of its land without water service on a wholesale basis, but would not sell land on a retail basis without providing water service. He stated that before 1969 requests

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<sup>2/</sup> We note that a staff opinion is not binding nor does it have the force and effect of a Commission decision. The defendant's witness could not recall who the staff member was that made the request regarding extension of service.

for water service outside the service area were granted to help the landowners and in the interest of the progress of Apple Valley. He stated that it would be unfair and discriminatory to provide service to Parker and continue to refuse to do so for the several hundred persons who had made similar requests and been refused. He testified that the utility has never intended to dedicate its property and facilities to serve the public outside of its service area. However, determining and delineating the utility service area is the central issue to be resolved here by the Commission.

Presently the Apple Valley Ranchos Water Company is wholly owned by Reserve. Reserve also acquired Apple Valley Building and Development Company in 1966, and the land development company was renamed Apple Valley Ranchos, Inc. Apple Valley Ranchos, Inc. operates as a division of Reserve in a capacity as its land dealer (hereafter the affiliated land company will be referred to as Reserve-Ranchos). When Reserve acquired the Apple Valley Development Company in 1966 its also acquired the Apple Valley Ranchos Water Company, which had been held by the Apple Valley Building and Development Company since about 1948.

Utilities which are controlled by affiliated non-utility entities can pose problems. The utility's activities may be directed toward accomplishing the goals of its holding company at the expense of not discharging usual public utility responsibilities. An example of this unfortunate result will be illustrated herein.

A review of the defendant's filed service territory map and the lists of parties granted and refused service outside the bounds of the map (Exhibits 3-6) concerns us. Parties totally surrounded, or bounded on three sides by the defendant's announced service territory have been refused service (Exhibits 3 and 4). One party within the defendant's expressly certificated but "unserved" area was refused service in 1971 (Exhibit 4, Section 22). Accordingly, by Case

No. 10373 dated July 12, 1977, we instituted an investigation into the defendant utility's practices, rules, and rates, but with particular concern about determining and clarifying the dedicated service territory of the utility. We discuss herein and find that defining service territory, and determining who is within and without, is not a simple matter of where a utility drew a line on a map. A review of Exhibit 4 shows that our determination in Case No. 10373 could affect many parties who may desire service in close proximity to, if not in areas surrounded by, the utility's announced service boundary. Rather than consolidate Parker's complaint with Case No. 10373, and further delay a decision with respect to Parker's requested relief, we are issuing this opinion. We have received correspondence from the defendant stating that Parker has drilled a well and that the controversy is now rendered moot. Parker has not withdrawn his complaint, and has corresponded that he still desires water service from the defendant (Exhibits 7 and 8).

The question before us is whether Parker's parcel for which he requests service is within the dedicated service territory of the defendant utility. Parker acknowledged, both in his complaint and testimony, that his parcel is outside the service territory as the utility depicts it on its filed service territory map. The complainant bases his cause of action on the grounds that the defendant utility has discriminated against him in the voluntary extensions of service beyond the service territory map. We are of the opinion that Parker's parcel is within the dedicated service boundaries of the defendant utility, irrespective of the service territory maps filed by the defendant.

This Commission is empowered to determine whether operations are actually conducted such that in fact they are public utility undertakings as defined by the Legislature in the Public Utilities Code. The question we address here is the extent to which an

acknowledged public utility has territorially dedicated public utility water service. The controversy is essentially a service area boundary dispute not between two utilities, but between a utility and a member of the public desiring service. Determining the extent of dedication, or here particularly the territorial area to which service is dedicated, essentially involves our reviewing applicable evidence. The territorial area of dedication, when disputed, is a question of fact.

A logical starting point as we review evidence is the utility's filed service area map. But such maps are not necessarily determinative. A review of the conduct of the utility and an analysis of all facts lead us to requisite findings of fact and conclusions. Evidence may persuade us, as it has in this case, that a utility has dedicated its service to a territory that is not depicted on its filed service area map. Such a determination by us is not onerous or unlawful. We are merely exercising our exclusive jurisdiction with respect to determining the extent of a fixed utility's territorial holding out of public utility service.

A utility's announced service territory consists of (1) its filed map of certificated territory, combined with, (2) voluntary extensions undertaken pursuant to Section 1001 of the Public Utilities Code. As can be seen from Exhibit 1, and Appendix A, the defendant's declared service boundary is to the east and north of Parker's parcel (No. 13). The defendant has undertaken to serve the parcel adjoining Parker to the north and another in close proximity to Parker to the west. The result is that the utility has expressly dedicated service in the territory east (across the street from Parker) to his immediate north and in close proximity to the west.

Although Parker's parcel is outside the utility's announced service territory, has the defendant dedicated service to Parker's parcel? By the defendant utility's conduct of expressly holding out



service on three sides of Parker's parcel, we are of the opinion the defendant has dedicated service to Parker's parcel. Furthermore, it is apparent from the evidence herein that Reserve would have the defendant utility voluntarily extend service to parcels south of Parker's (Parcels 2 and 6 as shown on Exhibit 1) and Appendix A if and when Reserve-Ranchos desired to sell those parcels.<sup>3/</sup> A vice president of Reserve, who is also a vice president of the defendant utility, testified that Reserve generally sells land with access to the utility's water service (Tr. 45). Accordingly, it is foreseeable that if we did not find Parker's parcel to be in the defendant's dedicated service area, Parker could eventually be totally surrounded by utility service, yet denied it. That result would be unconscionable.

Why the defendant utility did not acknowledge its obligation to serve Parker is not known with certainty. However, certain facts tend to indicate that the defendant, because of its affiliation with Reserve, does not entirely conduct itself as the usual water utility we regulate. Reserve-Ranchos is essentially a land dealer and developer, owning approximately 10,000 acres in the Apple Valley area. It sells land with water service provided by the defendant (Tr. 45, 50-52). When Reserve-Ranchos desires to develop a tract of land its wholly owned utility will undertake to extend service. Reserve-Ranchos has purchased land from parties outside the defendant's service territory who could not get utility service, and the utility intends to now extend service to those parcels (Tr. 52). The defendant has never refused to extend service to a development by Reserve-Ranchos, or its predecessor, that was outside its declared

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<sup>3/</sup> For all practical purposes the area to the south of Parker's parcel owned by Reserve-Ranchos could be considered to be within the defendant's service territory because the record indicates that when Reserve-Ranchos desires water service the utility will initiate steps to accordingly extend service.

filed service territory (Tr. 60). The board of directors of Reserve would have to approve the extension of utility service by the defendant utility, according to a vice president for Reserve and the utility (Tr. 68). The defendant's utility operation is subsidized by Reserve-Ranchos in the amount of about \$120,000 annually (Tr. 81).

The above facts illustrate that the defendant is manipulated by its parent land development company to be selective in extending service. Water is available for Reserve-Ranchos' developments, at a subsidized rate, which together has the practical result of providing Reserve-Ranchos a great advantage in its real estate development ventures, at the possible expense of the public that the defendant has an obligation to serve.

It is understandable why the defendant (and/or Reserve) may not have acknowledged its obligation to serve Parker: Reserve did not sell the parcel to Parker, and another service connection served at a loss would add to Reserve's already expensive subsidy. As illustrated by the above discussion, we have cause to be concerned about the defendant's conduct, which may to a great extent be the result of its affiliation with Reserve.

The defendant has undertaken to operate as a public utility. It applied for certification as a public utility water corporation and Commission authorization was granted in 1947. Our decision today partially defines the defendant's dedicated service territory, and finds Parker's parcel is within that dedicated service territory. It is consistent with the applicable law on public utility status and dedication. The Supreme Court has held that: "Property may be shown to have been devoted to a public use by implication from the acts of its owners and their dealings and relations to such property, without regard to statutory provisions." (Emphasis added.) (Edwards v Railroad Comm. (1925) 196 C 62, 70.) By this opinion we find that despite the defendant's express pronouncements that Parker's parcel

is outside its service boundary, the defendant's extension of service such that Parker is all but surrounded by utility service, means the defendant has by implication and conduct dedicated public utility service to the contiguous vicinity where Parker's parcel is located. We have held before that where a water utility has been and is rendering service outside the area of its claimed service boundary, the utility has dedicated its facilities to serve such outside areas, and may be ordered to supply water to property contiguous to such areas.<sup>4/</sup> (San Jose Water Works (1972) 73 CPUC 358.)

The basis on which we order relief for the complainant differs from the essentially equitable cause of action he pleaded. We suspect the complainant is not as familiar with dedication and service boundary questions as this Commission. However, whatever the reason, it is immaterial; Parker has adequately developed an evidentiary record such that we may make the requisite findings of fact to order the requested relief.

If after this decision is issued there are complaints filed by parties refused service by the defendant, we intend to consolidate such complaints for consideration with Case No. 10373 wherein the defendant's dedicated service area will be considered generally. Some of the evidence in this proceeding is germane to Case No. 10373, and we will incorporate this evidentiary record into that proceeding.

Findings of Fact

Based upon consideration of the record herein, the Commission finds as follows:

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<sup>4/</sup> In San Jose Water Works we found that the utility had voluntarily extended service to points outside its filed service area map, and that the service boundary was actually the contiguous area between those extended service points and the originally filed service map. The result was that complainants were found to be in the dedicated service area of the utility.

1. The complainant's property is not depicted within the boundaries of any service area map of the defendant utility as filed with this Commission.

2. The complainant has requested water service from the defendant utility and that request has been denied.

3. The defendant utility has voluntarily extended service beyond the service area boundaries as depicted on the utility's service territory map filed by the utility with this Commission.

4. The defendant utility's acknowledged service territory boundary consists of its filed service area map as modified by voluntary extensions beyond the boundaries of the filed map.

5. The defendant utility serves parcels across the road from the complainant's parcel to the east, adjoining the complainant to the north and in close proximity (several hundred feet) to the west.

6. The complainant's parcel is contiguous to and within the dedicated service territory of the defendant utility.

7. The defendant utility has not alleged that it lacks the water supply to serve the complainant.

#### Conclusions of Law

1. The defendant has been and is now supplying public utility water service outside of its filed service territory and has dedicated its facilities to serve such outside areas.

2. The defendant's filed service area map and its voluntary extensions outside such area, taken together, are not determinative of the extent to which it has dedicated its facilities as a public utility.

3. The defendant's conduct wherein it has extended service such that the complainant is almost surrounded by its utility service is, under the circumstances, conclusive evidence that it impliedly dedicated service to the contiguous area in which the complainant's parcel is situated.

4. The defendant should be ordered to provide public utility water service to the complainant upon the complainant making application in accordance with its filed tariff.

O R D E R

IT IS ORDERED that:

1. The dedicated public utility service territory of the Apple Valley Ranchos Water Company includes the territory north of Yucca Loma Road, between Apple Valley Road and Choco Road; and the Apple Valley Ranchos Water Company shall provide public utility water service to applicants, as prescribed by its tariffs, within that territory.

2. The Apple Valley Ranchos Water Company shall, upon application by David E. Parker (Parker), supply public utility water service, in accordance with its prescribed tariffs, to Parker's parcel as situated in the territory defined in above paragraph 1.

3. The evidentiary record developed in Case No. 9942 is hereby incorporated with Case No. 10373.

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

Dated at San Francisco, California, this 20th day of SEPTEMBER, 1977.

Robert B. ...  
President  
William ...  
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...  
...  
Commissioners

APPENDIX A  
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The map on the following page is from Exhibit 1. Shading was added to illustrate parcels receiving utility water service from the defendant.

Parker's parcel is parcel No. 13.

