

CORRECTION

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Decision No. 88195 DEC 6 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gail K. Gillson and Harold Hanerfeld,
Complainants,

vs.

California Water Service Co., a
corporation,
Defendant.

Case No. 10254
(Filed February 8, 1977)

Harold Hanerfeld and Gail Gillson, for themselves,
complainants.
Ed F. Catey, for California Water Service Company,
defendant.
Eugene M. Lill, for the Commission staff.

O P I N I O N

Statement of Facts

The Bear Gulch District of the California Water Service Company, (Cal Water) services a territory encompassing the Atherton-Menlo Park, Woodside, Ladera, and Portola Valley area of the mid-peninsula. Under provisions of a water supply contract dated August 24, 1961, Cal Water obtains its water from the city and county of San Francisco. The terms of this supply contract restrict water purveyance to customers within Cal Water's delineated territory save for certain specific services to fourteen named customers outside the delineated service area. The meter and service size to each of these fourteen externally located customers is limited pursuant to the terms of the supply contract with the city and county of San Francisco.

the tank it serviced. All three had 5/8-inch meters and 3/4-inch pipes. (See Appendix A map.) Both the Bovet ranch service and the Revendell Mutual Water Company service are among the 14 specifically mentioned customers provided for outside the delineated Cal Water service area and are listed by name in the Cal Water tariff on file with this Commission.^{1/}

In September 1973 Hanerfeld and the Gillsons, mutually unhappy over water pressure problems arising from use of the water from the redwood water storage tank on the Gillson property, had determined that each wanted an individual water service directly from Cal Water by means of a street main source, and they applied for such service. After ascertaining that both applicants were within its delineated service area, Cal Water accepted the applications and drew up plans for a 380-foot water main extension up Alpine Road from the nearest Cal Water main at the junction of Alpine and Corte Madera Roads.

^{1/} Referring to the contract dated August 24, 1961 between Cal Water and San Francisco, Cal Water's tariff (Revised Cal. P.U.C. Sheet No. 1559-W filed November 26, 1975 and effective December 26, 1975) provides as follows:

"Pursuant to the provisions of the above-mentioned contract, service outside the delineated area is limited to the following existing customers (at locations indicated by circled numbers on maps—Sheets 1 and 2) through the size of facilities shown."

Thereafter are listed 14 entities including the Bovet ranch and customer No. 4—Revendell Mutual Water Company—meter size 5/8" and service 3/4".

ascrivable to the contribution in aid of construction, and \$226.10 to cover the additional costs on that portion of the project advanced subject to possible subsequent refund.^{3/}

Interestingly enough, the fire hydrant assertedly insisted upon by the local fire protection agency, and to be installed at their requirement at the end of the 380-foot main extension, was actually located some 128 feet back up the main on Alpine Road because of concerns that it would be struck by automobiles failing to negotiate the curve located on Alpine Road near the end of the main extension.

In May 1976 the twelve families forming the Revendell Mutual Water Company decided they wanted to improve service to their redwood water storage tank because several times in the preceding summer they had run out of water, and had concluded that their difficulty lay with their pipeline connecting the tank to the Cal Water main at the junction of Alpine and Corte Madera Roads. They approached Cal Water and allegedly Cal Water advised the Revendell group to abandon that portion of their private pipeline paralleling the new main extension paid for by Hanerfeld and the Gillsons, and recommended a new hook-up at the end of the new main extension, and installation of a new private pipeline to the Revendell redwood storage tank. These suggestions were adopted and a new connection was made near the end of the new main extension.

3/ In this instance Cal Water, following its policy on incremental advanced costs subject to potential refund, advised complainants by letter dated March 29, 1974 that the additional \$226.10 in effect need not be advanced but would be withheld from future refunds. The complainants deny receiving such letter.

Utility in cash, without interest, in payments equal to the actual construction cost of 50 feet of the Extended Facilities for each bona fide customer attached to the Extension in excess of the number specified on page 1 hereof, exclusive of that of any customer formerly served in a reasonable manner at the same location." (Emphasis added.)

First, is Revendell Mutual Water Company a "bona fide customer" subject to the refund provisions of the contract between the parties? Section A.3.a of Rule No. 15 applicable to this utility sets forth the definition of a "bona fide customer" as follows: "A 'bona fide customer', for the purposes of this rule, shall be a customer (excluding any customer formerly served at the same location) who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced." (The balance of the definition is not applicable here.) Dealing first with the exclusion, we note that while the Revendell group have not moved, their service connection to the Cal Water supply is no longer at the same location. It is now located on the main extension paid for by the complainants. Under the provisions of General Order No. 103, a service connection is construed to mean the point of connection of a customer's piping with the meter owned by the utility. The Revendell Mutual Water Company has purchased water over a considerable period of time, and thus the service must be construed as being reasonably permanent. The property serviced has been improved with buildings of a permanent nature; indeed, there are 12 permanent and substantial residences involved, and service continues. Accordingly, we conclude that Revendell Mutual Water Company is a "bona fide customer", and though its service is no longer at the same location, it should be treated as a customer subject to the refund provisions of the contract.

of the total cost of the entire 8-inch project--eliminating the fire protection aspect entirely. This would result in refunds to complainants of approximately \$107 more per service connection than under the calculation method used by the utility in making the June 30, 1976 refund. We will approve this approach, noting that not only was the contract a form of adhesion contract,^{5/} but that there are unanswered questions as to the role of the utility in the determination finally reached that an 8-inch main extension and a fire hydrant would be required. Complainant Hanerfeld testified that upon first talking to the chief of the Woodside Fire Protection District, the chief had stated that a 2-inch main extension would be approved. Certainly that size extension would have provided all the water the complainants wanted, and they did not need another hydrant. There was an existing hydrant within 350 feet of the Hanerfeld home. Normally, hydrants are spaced approximately 500 feet apart in such residential areas. It seems obvious that the reason to have here required a second hydrant at the end of the 380-foot main extension was not to benefit the Hanerfeld property, and certainly not to benefit the Gillsons whose property extended between the Hanerfeld property and the existing hydrant, but rather to benefit and protect the Revendell group of homeowners! What persuaded the fire chief to change his initial decision is unknown. A staff witness testified

^{5/} The term "adhesion contract" signifies a standardized contract, which--imposed and drafted by the party of superior bargaining strength--relegates to the subscribing party only the opportunity to adhere to the contract or reject it. Such an agreement does not issue from that freedom in bargaining and equality of bargaining which are the theoretical parents of the American law of contracts, and accordingly must be interpreted in the light of reasonable and normal expectations of parties.

Findings

1. The properties belonging to Hanerfeld and the Gillsons involved herein lie within the dedicated service territory of Cal Water.

2. Revendell Mutual Water Company, a long-time customer of Cal Water purchasing water by means of a single service connection, serves 12 residences which lie outside the delineated service area of Cal Water. Service to Revendell Mutual Water Company is specifically authorized by the underlying water supply contract between Cal Water and its supplier, the city and county of San Francisco.

3. Following problems arising from service out of their private system which in turn obtained water from Cal Water by means of a single service connection, the two participants in the private system, Hanerfeld and the Gillsons, determined to bifurcate their service and applied to Cal Water for installation of a 380-foot, 2-inch main extension up Alpine Road beyond the Cal Water main at the junction of Alpine and Corte Madera Roads, so as to provide individual service for each applicant.

4. Initially Hanerfeld and the Gillsons were told a 2-inch main would be approved; however, after discussion with the local fire chief, the utility advised that an 8-inch main and a fire hydrant would be required, a requirement applicants accepted albeit reluctantly.

5. A fire hydrant already was in service at the junction of Alpine and Corte Madera Roads.

6. Estimated costs were calculated for both an 8-inch and a 6-inch main, the difference in costs being designated as a contribution from applicants, and the adjusted estimated 6-inch main cost being designated as an advance subject to subsequent refund from future service connections under provisions of Cal Water's tariff.

16. It is questionable that a second fire hydrant should have been required at this location or that it should have resulted in higher main extension costs to these applicants.

Conclusions

1. Revendell Mutual Water Company is a bona fide customer of Cal Water and has one service connection to the Cal Water distribution system.

2. Hanerfeld and the Gillsons are entitled to one refund under their main extension agreement with Cal Water for the relocation of the single service connection to the Revendell Mutual Water Company.

3. That refund, and all further refunds, should be calculated based upon the total cost of the entire 8-inch main extension-- eliminating the fire protection aspect entirely.

O R D E R

IT IS ORDERED that:

1. Gail K. Gillson and Harold Hanerfeld shall be paid one refund by California Water Service Company for the relocation of the Revendell Mutual Water Company service connection.

2. That refund, and all future refunds as may become payable under the provisions of the refund section of the main extension agreement between the complainants and California Water Service Company, shall be calculated and paid based upon the total cost of the entire 8-inch main project without consideration for the fire protection aspect of the project.

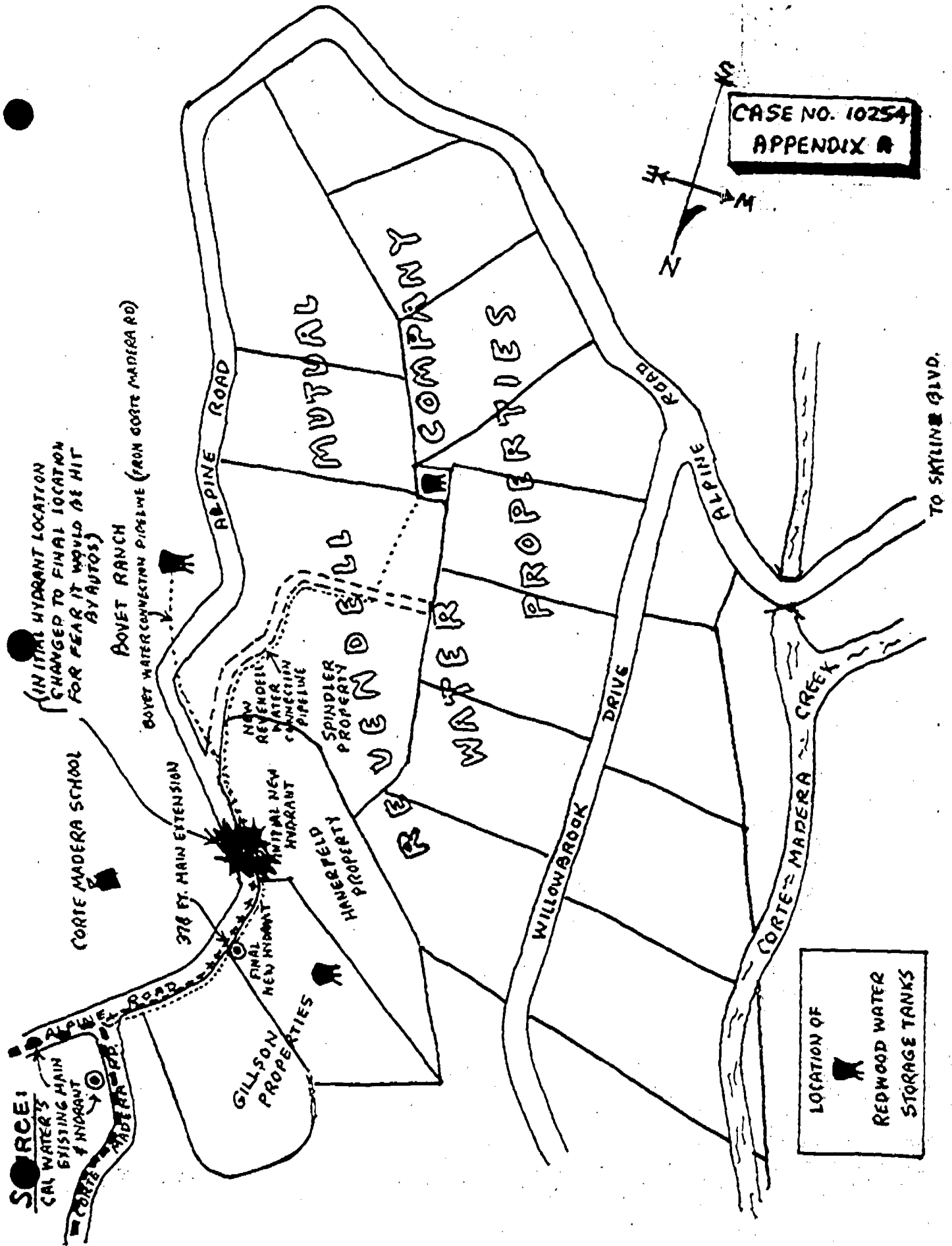
3. California Water Service Company shall make payment to complainants for the Revendell Mutual Water Company refund no later than thirty days from the effective date of this order.

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

Dated at San Francisco, California, this 6th day of DECEMBER, 1977.

Robert Bateman
President
William J. Jones
Jefferson L. Sturgeon
Richard D. Stovall
Gene L. DeBriak
Commissioners

CASE NO. 10254
APPENDIX A



(INITIAL HYDRANT LOCATION
CHANGED TO FINAL LOCATION
FOR FEAR IT WOULD BE HIT
BY AUTOS)

BOVET RANCH
BOVET WATER CONNECTION PIPELINE (FROM CORTE MADERA RD)

376 FT. MAIN EXTENSION
CORTE MADERA SCHOOL
FINAL NEW HYDRANT
INITIAL NEW HYDRANT
HINERFIELD PROPERTY

GILLSON PROPERTIES

NEW REVOLUTION
WATER CONNECTION
PIPELINE
SPINDLER
PROPERTY

SOURCE:
CAL WATER'S
EXISTING MAIN
& HYDRANT

LOCATION OF
REDWOOD WATER
STORAGE TANKS