

ORIGINAL

Decision No. 90262 MAY 8 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dragoslav and Paula Radisavljevic asking Public Utilities Commission to extend a contract made with Cal-American Water Co. for 30 months to compensate for loss suffered due to a P.U.C.-imposed moratorium on water hookups during the period of the contract.

Application No. 58345
(Filed September 8, 1978)

Application of Andrew Bakun for a variance from Decision No. 89195 and for an order authorizing water service from the California-American Water Company.

Application No. 58464
(Filed November 14, 1978)

Kosta Radisavljevic, for Dragoslav and Paula Radisavljevic; and Andrew Bakun, for himself; applicants.
Lenard G. Weiss, Attorney at Law, for California-American Water Company, respondent.
Eugene M. Lill, for the Commission staff.

O P I N I O N

Statement of Facts

The Carmel Valley Road traverses the entire length of the valley from Carmel through the village of Carmel Valley up into the hills leading to Highway 101. Approximately 10 miles east of Carmel, but about 3 miles short of the village of Carmel Valley, the Los Laureles Grade Road originates out of the Valley road and begins its steady ascent in a northerly direction from the valley floor toward and then over the rocky overhanging escarpment into the hills which separate the Carmel Valley from the Salinas Valley. An area involving many retired people and characterized by homesites of one or more acres on the eastern side of the Los Laureles Grade Road just north of its intersection with Miramonte Road is the area with which we are here concerned.

Water service to most of the populated areas of the Carmel Valley is provided by the Monterey Peninsula Division of the California-American Water Company (Cal-Am). In the area at issue here, Cal-Am maintains a 50,000-gallon concrete water tank sited and constructed on a 150 x 200 foot ledge located on the hillside near the foot of the overhanging escarpment which forms an abrupt easterly border to all the lands involved herein. In this area the steeply sloped but usable terrain between the escarpment foot and the parallel Los Laureles Grade Road ranges from approximately 300 feet to 630 feet wide. A 6-inch water line contained within a 10-foot wide utility easement runs west-southwesterly down the slope along the southern borders of the Huff and McCullough properties, leading from the water storage tank on the escarpment hillside to the Los Laureles Grade Road. At the intersection of the Los Laureles Grade Road and Miramonte Road this water line feeds a street main which in turn runs roughly westward down the southerly side of the Miramonte Road, and roughly southward down the Los Laureles Grade Road, enroute providing water through a lateral main to La Rancheria Drive. From the intersection of Miramonte and Los Laureles Grade Roads, a main extension some 680 feet long extends roughly northward up the easterly side of the Los Laureles Grade Road. It is this last described main extension which is the source of certain of the issues in this proceeding (see Exhibit A). This main extension came about in the following manner.

For many years a Mr. Archie Fleming (Fleming), operator of a local gravel business, has owned a 600-acre ranch in this area, the lands of which extend eastward and northward from the Los Laureles Grade Road up over the escarpment into the hills. Fleming's home is on one of these acres in the southwest corner of the ranch, and fronts that road approximately 370 feet north of the junction of Miramonte Road with the Los Laureles Grade Road. Fleming since 1946 has enjoyed domestic water service to his home; water supplied and metered from a connection to the Cal-Am water main which crosses the

Miramonte-Los Laureles Grade Road junction. The water was delivered to Fleming's home from the meter connection by means of a private pipeline which crossed the intervening properties (today owned by McCullough, Coniglio, Ruhl, and Shepherd). The pipeline paralleled the Los Laureles Grade Road.

In 1955 Fleming sold an acre homesite which lay directly adjacent to the east side (or rear) of his own homesite to Mary L. Abbott (Abbott), a friend of Fleming's daughter. Miss Abbott initially intended to build a home on this site; unfortunately for her hopes, over the years her circumstances changed adversely and she was unable to bring her plans to fruition. Thereafter, she held the land as an investment. We will return to her situation later in this opinion.

About 1961 Fleming conveyed another parcel of his ranch, a 5-acre parcel north of his homesite, to Dragomir Dimitrijevic (Dimitrijevic), who remodeled a barn on the northermost or upper acre into a residence for himself. Dimitrijevic installed a pipeline to Fleming's property and Fleming supplied him with water. Shortly after acquiring the five acres, Dimitrijevic in turn sold three of them to Dragoslav Radisavljevic (Radisavljevic), a friend, who later built a home for himself on the lower acre fronting the Los Laureles Grade Road.

In 1966 Radisavljevic determined to make a minor subdivision of his remaining two acres. He approached the county of Monterey for the necessary approvals, filing Minor Subdivision Application No. MS-442. The County Department of Public Health informed him that he had to obtain guarantees from Cal-Am of adequate water volume and pressure to cover the proposed subdivision parcels. Meanwhile his friend Dimitrijevic had also determined to sell his unused acre, the one fronting the Los Laureles Grade Road (he subsequently did sell this acre to one Sasic in 1967 who in turn conveyed it to Gilbert, who sold to Hillman, who in turn sold it to Munn, the present owner). Accordingly, the two friends, Radisavljevic and Dimitrijevic, in April 1967 went to the

Cal-Am office to consult with the then district manager, A. K. Fuller (Fuller), about their present and prospective needs.^{1/} Cal-Am, to meet their requirements, proposed that a 680-foot 6-inch main extension be constructed under provisions of the company's Main Extension Rule; the extension to run on the east side of the Los Laureles Grade Road from the existing main at the intersection of Miramonte and Los Laureles Grade Roads to the southwest corner of Radisavljevic's property, from whence Radisavljevic and Dimitrijevic could both be served.^{2/} The map prepared on August 3, 1967 by Cal-Am, a map entitled "Water Facilities For Radisavljevic Subd" (on which the Radisavljevic property is diagonally striped in one manner and the Dimitrijevic

1/ In this regard Dimitrijevic testified on cross-examination that he had told Fuller at this meeting that he had two acres and wanted to divide them into two 1-acre sites, and that Radisavljevic had told Fuller that he had three acres and wanted to divide these into three 1-acre sites, a total of five acres between them. This testimony was inadvertently corroborated in substance by a map attached to the working papers dealing with the main extension contract in Cal-Am's file. The map, although undated, was shown to be contemporary in time by indications entered upon it of a main extension short of the one finally adopted. The map bore notations of five building site elevations (two on the Dimitrijevic property and three on the Radisavljevic property) and these elevations corresponded to the sites in the five lots resulting from the subdivision. Furthermore, the map bore a notation that three of the sites (one of the Dimitrijevic and two of the Radisavljevic sites) would require pressure systems. Fuller was unavailable to testify, having retired in 1967 and being no longer in the area.

2/ Cal-Am's business manager testified that while the company discouraged terminating a main at a given point and then allowing the parties to extend service over private pipelines into a subdivision, at one time the county may have allowed private parties to run their lines parallel to a county road. It is evident that in this area this had been a common practice since Fleming and others were so served with the company's knowledge.

property in another, as contrasted with no striping at all on all the surrounding properties) would appear to show that the main extension was designed to serve all five acres even though the main extension ended at the southwest corner of the combined properties. A draft standard Main Extension Contract was prepared by Cal-Am (incorporating the above-stated map as an exhibit). This draft provided one 50-foot free footage allowance and required a \$2,965 advance to cover construction of the 680-foot extension (including one fire hydrant). However the draft (under the subtitle "purpose of contract") provided that the purpose was to provide service to "that certain property known as Radisavljevic Property comprising three acres." (Emphasis added.) But then, ambiguously enough, (under the subtitle relating to refunds for subsequent additional connections under Section B.3 of the Cal-Am filed Main Extension Rule) the draft contract provided specifically that refunds were to be made 3/5 to Radisavljevic and 2/5 to Dimitrijevic. (Emphasis added.) The draft contract was sent with a cover letter dated August 15, 1967 to Radisavljevic by the Cal-Am district manager, Fuller. The draft letter, further evidencing the underlying intention that the main extension would serve all five acres of the Radisavljevic-Dimitrijevic properties, in part stated:

"In order to secure the allowance for 50 feet, you should also apply for the service to your present home, and both you and Mr. Dimitrijevic may apply for any additional services which you wish at this time. However, you should understand that we do not wish to install services for future use, and if additional services are installed, we would expect to bill you for their use from the date of installation." (Emphasis added.)^{3/}

3/ And Dimitrijevic filed the first application on August 28, 1967, giving Radisavljevic-Dimitrijevic a \$191 deduction from the construction advance. As will be seen, Dimitrijevic filed the second application also on September 13, 1967 along with one from Radisavljevic.

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The contract was signed on August 28, 1967, and Radisavljevic and Dimitrijevic paid the \$2,965 advance against construction. The extension was expeditiously completed at an actual cost of \$2,551.47 and a refund was paid, 3/5 to Radisavljevic and 2/5 to Dimitrijevic. Service connections to the new main extension were made as follows:

<u>Service No.</u>	<u>Customer</u>	<u>Application Date</u>	<u>Service Inst. Date</u>
14335	Dimitrijevic	8/28/67	9/13/67
14339	Dimitrijevic*	9/13/67	9/14/67
14340	Radisavljevic	9/13/67	9/14/67
14341	Fleming	9/14/67	9/14/67
14358	Coniglio	10/4/67	11/17/67
16744	Ruhl	4/4/73	5/9/73
18662	Gunter	9/9/77	1/31/78

*Service transferred to Sasic, Gilbert, Hillman, and Munn.

In making refunds for each additional service connection to the new main extension, Cal-Am deducted a 50-foot free allowance from the initial construction advance put up by Radisavljevic and Dimitrijevic, including the first service connection, No. 14335 - Dimitrijevic. Subsequently, allowances were paid in the amount of \$191 each (3/5 to Radisavljevic and 2/5 to Dimitrijevic) for three service connections: No. 14340 - Radisavljevic, No. 14341 - Fleming, and No. 14358 - Coniglio. Thereafter, one more allowance of \$191 was paid (3/5 to Radisavljevic and 2/5 to Dimitrijevic) for service connection No. 16744 - Ruhl. But no allowance was paid on service connection No. 14339 - Dimitrijevic, in that Cal-Am asserts that it had to withhold this allowance to recover the allowance paid earlier for service connection No. 14358 - Coniglio, which latter allowance Cal-Am asserts was paid in error. Cal-Am contends that Coniglio took over the former Fleming service meter and connection at the old street main at the Miramonte-Los Laureles Grade Roads intersection when Fleming decided on September 14, 1967 to connect to the new main extension running past his home on the

Los Laureles Grade Road. It is Cal-Am's position that Coniglio then became that former Fleming meter customer. A month later, however, Coniglio decided he wanted his newly assumed meter service relocated to connect into the new Radisavljevic main extension at a point on his property where it fronts on Los Laureles Grade Road. Accordingly, on October 14, 1967 he made the necessary application and on November 17, 1967 Cal-Am made the relocation. Cal-Am asserts that Coniglio is exempted from the refund provisions because he was a "customer formerly served in a reasonable manner at the same location."^{4/} The company states that the former Coniglio meter and connection remains unused since Coniglio relocated on his own property. Radisavljevic feels he should be paid.

As can be seen from the above list of connections to the new main, on September 9, 1977, Gunter (who earlier had purchased one of Radisavljevic's three acres in the minor subdivision) applied for connection using the easement on Fleming's property to reach the new main extension. On January 31, 1978, after expiration of the 10-year refund period, the connection was made.^{5/} Under the main extension refund provisions of Cal-Am's Rule 15, B.3, it is stated (insofar as relevant here) that "no refunds shall be made after a period of 10 years from the date of completion of the main extension..." The main extension was completed September 13, 1967; therefore, the 10-year refund period normally would have expired September 12, 1977 (not the August 28 anniversary of the signing of the contract asserted by the company). However, there was an unusual intervening factor which Radisavljevic feels should be considered.

^{4/} See Cal-Am Rule No. 15 Main Extension B.3 Refunds.

^{5/} Cal-Am has denied the \$191 allowance refund to Radisavljevic and Dimitrijevic on the belief that the refund period expired August 28, 1977.

During the last years remaining in the refund period a very abnormal and severe drought condition was experienced in California, and the Cal-Am Monterey District involved here was particularly adversely affected. In 1973 this Commission opened an order instituting investigation (Case No. 9530) into Cal-Am's plight. The deepening drought thereafter on June 10, 1975 led to Decision No. 84527 (effective June 30, 1975) prohibiting additional service connections (with certain exceptions not applicable here) in Cal-Am's district. On January 5, 1977 these restrictions were eased with respect to certain lot owners of record zoned for single residential use.^{6/} and later Decision No. 89195 dated August 8, 1978, effective September 7, 1978, lifted service connection restrictions. However, this latter decision also provided, inter alia, that "Cal Am shall not extend water service beyond the boundaries of its present service area in the Monterey Peninsula District without prior Commission approval."

Now, back to Miss Abbott's property. For the past five years she has been trying to sell her property, but asserts that she has been unable to do so because authorization for water service could not be obtained from Cal-Am. A company witness testified that prior to 1973 Cal-Am probably would have granted service but that after May 1, 1973 service to the Abbott property would have been denied on the basis that the property was outside the company's service boundaries. In the interval, taxes have continued on her property, assertedly creating a hardship. Recently Andrew Bakun (Bakun) and his wife, Monterey residents, have agreed with Miss Abbott to purchase the property, planning to build their home on it. This agreement is conditioned upon provision of water service

^{6/} See Ordering Paragraph 4 and Appendix C of Decision No. 86807 dated January 5, 1977, subsequently modified further by Decision No. 87715 dated August 16, 1977.

by Cal-Am. Pursuant to this objective Bakun and Fleming have agreed that Bakun will be permitted to run his pipe up the driveway easement along the northwest border of Fleming's property^{7/} and thence across the rear of Fleming's property to the Abbott property. The meter would be located at the intersection of this driveway with Los Laureles Grade Road along with the other service meters clustered there. Bakun also contacted Cal-Am requesting water service and on August 17, 1978 a letter signed by Frank J. Nuovo (Nuovo), the Cal-Am business manager, informed him that "the property is located outside our service area boundary; therefore, we will be unable to provide service to the property."

Cal-Am asserts that its service area boundary in that region extends southwestward (along the northern boundaries of the Huff and McCullough properties - see Exhibit A) from its escarpment water tank site to the Los Laureles Grade Road, and thence northwestward along the eastern side of Los Laureles Grade Road. It asserts that all the lands of Coniglio, Ruhl, Shepherd, Fleming, Gunter, Radisavljevic, Munn, and Dimitrijevic - although these lands are served with water now - are outside Cal-Am's service boundary. The company further asserts that effective May 1, 1978 it adopted a new policy that it would not grant any new hookups to any person or potential customer whose property is outside of the certificated area even if the point of service is within the certificated area. Therefore, even though the point of service, the meter location, for the Bakun-Abbott property would be at the main extension, the land to be served is outside their service borders, and they deny service to Bakun.

A duly noticed public hearing was held in Monterey on November 21, 1978 by Administrative Law Judge John B. Weiss on these applications. In that many of the factual circumstances in the two matters were inter-related the two proceedings were consolidated for hearing purposes. Although at the time the ALJ

^{7/} This driveway easement also serves as ingress and egress to the Gunter property and to the upper Radisavljevic acre.

intended that separate decisions would issue we believe that the rights of no party would be prejudiced in any way by a consolidated decision and will proceed in that manner. Both matters were submitted upon receipt of points and authorities from Cal-Am on December 12, 1978.

By Application No. 58345 Radisavljevic asks for an order by this Commission extending the refund period of his main extension agreement. He contends that the service connection moratorium ordered by the Commission intervened so as to deprive him of refund allowances which otherwise would have been rightfully his in that certain service connections necessarily were delayed or deferred beyond expiration of his 10-year refund period by operation of the moratorium. Cal-Am was requested but refused to voluntarily extend the refund period. However, at the hearing the company stated that it would have no particular objection to such a tolling. Radisavljevic also asks review of the Cal-Am disallowance of one refund in the Cal-Am substitution of Dimitrijevic - 14339 for the Coniglio - 14358 relocation. Finally, Radisavljevic asks that Cal-Am be directed to provide a service connection, and presumably another allowed refund if the application is made soon enough, to service the remaining upper homesite acre of the three in the original minor subdivision which underlaid the main extension. That remaining acre has been reserved for the Radisavljevic's son Kosta.

By Application No. 58404 Bakun requests an order from this Commission granting a variance from the provisions of Decision No. 89195, a variance order directing Cal-Am to provide a service connection from the Radisavljevic main extension and supply water to the Bakun-Abbott acre behind Flemings.

Discussion

The threshold issue is jurisdiction, the question being whether or not the lands involved in this proceeding are within or without the service area Cal-Am has dedicated itself and its facilities to serve. If the lands are outside the dedicated service

area we have no jurisdiction (the dedication concept is still vital in California public utility law (Cal. Community Television Assoc. v Gen. Tel. Co. (1970) 71 CPUC 123)), as a public utility cannot be compelled to render service or to use its facilities where it has not dedicated itself or its facilities. (Cal. Water & Tel Co. v PUC (1959) 51 C 2d 489.) But while the decision, whether or not it should service or use its facilities in a new area, is discretionary for a water utility, once it decides and provides service to an area, or holds itself out, either expressly or impliedly, to serve the public or a portion of the public in that area, there has been the requisite dedication. Furthermore, while a utility may have no legal obligation to undertake a service extension, once it does undertake it, the utility assumes an obligation to serve all potential customers within the reasonable scope of the extension area equally, and this Commission has jurisdiction to inquire whether the utility is discriminating between persons in the service it has undertaken to provide (Boynton v Virginia (1960) 364 US 454; Pub. Util. Code Section 453). Finally, where a public utility water corporation has been and is presently rendering a number of public utility water services outside the area of its claimed service boundary, the utility has dedicated its facilities to serve such outside areas, and the utility may be ordered to supply water to property contiguous to such areas (San Jose Water Works (1972) 73 CPUC 358).

In the instant proceedings the files of this Commission reveal that on October 3, 1957 Cal-Am's predecessor, California Water and Telephone Co.^{8/} filed a service map with the Commission entitled "Map Showing Los Ranchitos Del Carmelo & La Rancheria Del Carmelo". This map indicates by a dotted line the boundary

^{8/} By Decision No. 70418 dated March 8, 1966 in Application No. 48170 Cal-Am was given authority to acquire California Water and Telephone Co.

of the utility's then service area. In the area of our interest this boundary ran from the 50,000-gallon concrete tank on the escarpment southwestward along the pipeline easements to the intersection of Miramonte and Los Laureles Grade Roads, thence northwestward along what is deliberately and distinctly indicated as the western side of Los Laureles Grade Road. It is clear that in 1957 the lands here involved all lay outside the utility's service boundary (see the extracted relevant portion of this map here attached as Exhibit B).

As stated earlier, the Radisavljevic main extension was installed by Cal-Am September 13, 1967, and runs 680 feet northwestward from the Miramonte junction on the eastern side of Los Laureles Grade Road, i.e., outside the 1957 service border.

But as recently as May 20, 1976, Cal-Am filed Advice Letter No. 126, a filing made pursuant to Decision No. 84334, Paragraph A. 18, requiring filing of maps designating those portions of Cal-Am's system designed to meet minimum pressures of 25 psig which could not be rebuilt to meet minimum pressures of 40 psig. Attached to that filing and effective May 25, 1976, was CPUC Sheet No. 947-W, a detail map referenced to a larger scale map as area 1 (see Exhibit C). This detail area 1 map shows the Radisavljevic extension on the eastern side of Los Laureles Grade Road, but it also shows the service border to be distinctly on the other, or western side of this road. However, this same map, interestingly enough, shows the Huff property, heretofore shown on earlier maps as being outside the utility's service boundary, as being inside the service boundary. Therefore, on this CPUC 947-W detail map filed in 1976, except for the Huff property, all the properties (including those of McCullough, Shepherd, Ruhl, Coniglio, Fleming, Abbott, Gunter, the two Radisavljevic properties,

Dimitrijevic, and Munn) are indicated as still being outside Cal-Am's service area; this despite the facts that as far back as 1967 both Shepherd and Fleming were being served, and between 1967 and 1979 all the others listed above, except the Abbott and the Kosta Radisavljevic properties, have obtained service! It seems clear that the service boundary in this area of Cal-Am's Monterey District is elastic if not illusionary.

When a public utility voluntarily determines to extend its service into an area outside its recognized or declared service area boundaries, the utility concurrently must accept an obligation to serve all customers in that area as it has then dedicated its service to said new area. (DiLiberto v Park Water Co. (1956) 54 CPUC 639.) In the instant proceeding, when Cal-Am offered a contract for a main extension to Radisavljevic's property and installed such main, it declared itself, in effect, ready, willing, and able to serve outside its previously certificated area. Its intentions were further declared by its extension of service to other customers in the area east of Los Laureles Grade Road. By having so declared its intentions, Cal-Am dedicated its service to said territory and was and is bound by its rules, regulations, and tariffs in serving said territory. The utility discriminates when it would deny service to other customers in the additional territory (see Public Utilities Code Section 453). Nor do we consider the filing of a water service area map by the utility as being the final or conclusive circumscription of the limits within which the utility will be obligated to render service. When an issue arises as to the appropriateness and extent of the utility's extension of its service boundaries, this Commission has exclusive jurisdiction to make a determination, and in making a determination of the new service boundaries created by a main extension, the Commission will be guided by the rule of reasonableness. Such extended service areas, preferably to the extent possible, should be defined by logical natural boundaries, avoiding small unserved enclaves or peninsulas, and they may not be gerrymandered to exclude customers or potential customers.

In this instance the logical and natural boundaries of the extended service area created by the installation of the Dimitrijevic-Radisavljevic main extension became: on the east the escarpment beyond which by reason of the abruptness of the cliff any further subdivision was highly improbable; and on the north the dirt road extending roughly eastward from the Los Laureles Grade Road and bordering the Dimitrijevic property.

The Abbott and the Kosta Radisavljevic^{9/} properties are within these logical and natural boundaries of Cal-Am's extended service area and are entitled to receive water service upon demand on an equal basis with any other property inside the utility's Monterey District service area.

Turning to the issue of a possible refund due Radisavljevic and Dimitrijevic for Service No. 14339 - Dimitrijevic, we must also find against Cal-Am's position. Under the terms of the refund provisions of Cal-Am's Rule 15, refunds are due whenever an additional service connection is made to the new extension, exclusive of that of any customer formerly served in a reasonable manner at the same location (Emphasis added). The company denies the refund on the basis that it has in effect traded it for a refund paid in error when Service No. 14358 - Coniglio was relocated to the new main extension. Coniglio,

9/ There is a further basis upon which the Kosta Radisavljevic property cannot be denied service - one rooted in the original Dimitrijevic-Radisavljevic contract for the main extension itself. Radisavljevic created a legal minor subdivision which was sanctioned by the county of Monterey only after Cal-Am gave assurance of volumes of water and adequate pressure to the three lots in the minor subdivision - including the Kosta Radisavljevic lot - premised upon Radisavljevic (and Dimitrijevic) putting up the \$2,965 (\$3,200 less the \$235 allowances for Service No. 14335 to Dimitrijevic). The map in the Cal-Am files (a map attached to the contract draft), with clear indication of being prepared before the contract was drafted, demonstrates that the three Radisavljevic sites were among the five sites to be served at various elevations, and the Kosta lot is one of the three in the Radisavljevic properties. Thus Radisavljevic has a contractual right for service to the Kosta lot.

it will be recalled, had taken over the former Fleming service when Fleming elected to relocate service to the new main extension. After Coniglio relocated his old service (the former Fleming connection to the old main at the junction of Miramonte and Los Laureles Grade Roads) was returned to Cal-Am.

Precisely, this same issue under remarkably similar circumstances was raised and resolved in Gillson & Hanerfeld v Cal Water Service Co. (Decision No. 88195 dated December 6, 1977 in Case No. 10254).^{10/} We will not now replot that ground. It suffices to note that Coniglio, after having succeeded to Fleming's pipeline maze, wanted direct service onto his own property from Cal-Am, and Cal-Am was loath to get involved with maintenance of all the cross-country piping back to the meter connection on the old main. Accordingly, Cal-Am relocated Coniglio's service, installing a new meter connection for him in front of his own property, and took back the old meter connection on the old main to hold in reserve possibly for some future use. Therefore, while Coniglio's residence location did not change, the location of his meter - and thus his service - did. As Coniglio is an additional service connection to the new main extension and is not a customer formerly served at the same location, a refund for the additional connection

^{10/} Where, after complainants paid for an extension of a main down a road, their neighbors (organized as a mutual using one service meter on the old main and transporting their water from that meter across country in their own pipeline) elected to abandon their old and leaking pipeline from the old main and hooked up to the new extension. We noted that under the definitions provided by 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. Thus while the neighbors had not moved their residences, after relocation of their service connection they were no longer served at the same location, and a refund allowance was due the complainants. To do otherwise would merely have allowed the neighbors to upgrade their service and obtain a free ride.

was properly due Radisavljevic and Dimitrijevic, and Cal-Am had not erred as it alleged in earlier making payment.^{11/} Accordingly, the company cannot substitute Service No. 14339 - Dimitrijevic for Coniglio, and we will direct Cal-Am to pay a refund for Service No. 14339 - Dimitrijevic also.

Although Service No. 18662 - Gunter was not installed by Cal-Am until January 3, 1978, we observed earlier that Gunter made application for service on September 9, 1977, a date still within the refund period of the Radisavljevic-Dimitrijevic main extension agreement.^{12/} Furthermore, the moratorium restriction prohibiting additional service connections had been eased on January 5, 1977 with respect to certain lot owners of record zoned for single residential use. There was no issue raised that Gunter would not fit that category. Being a lot owner within the service boundary, Gunter therefore on September 9, 1977 was entitled to service and another main extension contract refund was due Radisavljevic and Dimitrijevic after the installation was completed. (It is our view that so long as the application is timely, and the installation ultimately made, it is not material when the utility makes the installation, although the utility will not be required to pay the resulting refund until after the installation is made.) Accordingly, we will direct Cal-Am to pay a refund for Service No. 18662 - Gunter.

^{11/} In view of this resolution of the "same location" issue, we do not address the additional issue whether the former service, designed or developed as it was to serve cross-country Fleming and a number of subcustomers, could be considered to be residential service in a "reasonable manner".

^{12/} As noted earlier, the refund period ran 10 years from date of completion of the main installation September 13, 1967. Thus the period expired September 12, 1977.

Finally, we conclude it would be reasonable and equitable to extend the 10-year main extension refund period in Radisavljevic's agreement by a period of time equal to that lost by reason of the operation of the service connection moratorium ordered in the Cal-Am Monterey District effective June 30, 1975 by Decision No. 84527 in Case No. 9530, a moratorium not lifted until September 7, 1978 by Decision No. 89195 in the same case. Certainly the extension of a main extension refund period established under a rule prescribed by this Commission as part of a utility's tariff is an action which we may deem necessary and convenient in the exercise of our power and jurisdiction (Section 701 of the Public Utilities Code). There has been advanced, and we perceive, no reason why Radisavljevic and Dimitrijevic should not receive connection allowances, which they otherwise might have received, merely because connections by subsequent customers were deferred as a consequence of a moratorium necessitated by an act of nature. In this regard Cal-Am has generously stated that it has no particular objection to such a tolling. Whether it will further benefit Radisavljevic and Dimitrijevic remains to be seen in that after service to the Bakun-Abbott and Kosta Radisavljevic properties is installed, the expanded territory to the east and north of the former territory boundary will be served out to the limits of the utility's service boundary. However, there is some undeveloped land west of the Los Laureles Grade Road which potentially could draw service from the Radisavljevic main extension. We will direct Cal-Am to extend the refund period of the Radisavljevic-Dimitrijevic main extension agreement three years, two months and seven days from September 12, 1977.

Findings

1. In August 1967 Cal-Am's local water service boundary in the Miramonte-Los Laureles Grade Roads intersection area was the northern edge of the utility's pipeline easement running southwestward from the utility's tank site on the escarpment east of the Los Laureles Grade Road to the Miramonte-Los Laureles Grade Roads intersection, and thence northward along the western side of the Los Laureles Grade Road.

2. In August 1967 Cal-Am was serving at least two customers outside its local water service boundary on file with the Commission, Fleming having been served since 1946 and Shepherd since approximately 1966.

3. In 1955 Fleming sold a one-acre building site adjacent to his own to a family friend Abbott. In approximately 1961 Fleming sold another five acres to Dimitrijevic who in turn sold three of these to his friend Radisavljevic.

4. Fleming provided water from his Cal-Am meter connection at the Miramonte-Los Laureles Grade Roads intersection to Dimitrijevic and others.

5. In 1966 or early 1967 Radisavljevic and Dimitrijevic, desiring to subdivide their properties and being required as part of the approval process by the county to obtain certain guarantees of water to the parcels, began negotiations with Cal-Am for water service. These negotiations culminated in an offer to serve by Cal-Am, and on August 28, 1967 in a main extension agreement jointly financed by Radisavljevic and Dimitrijevic who signed providing for joint refunds to them on connection allowances for each additional connection to this main extension over a 10-year period.

6. Installation of the 680-foot main extension from the old main to the nearest corner of Radisavljevic's properties was completed on September 13, 1967 concurrently with the first meter connection to that main extension to serve Dimitrijevic.

7. Since September 13, 1967 additional service connections beyond the initial Dimitrijevic service have been made by Dimitrijevic, Radisavljevic, Fleming, Coniglio, Ruhl, and Gunter.

8. The obvious, logical, and natural boundaries created by result of the new main extension agreement were the very steep escarpment rising to the east and parallel to Los Laureles Grade Road, a barrier effectively preventing further eastward subdivision, and the dirt road extending east from the Los Laureles Grade Road and partially encircling the Dimitrijevic properties to the north.

9. The 10-year main extension agreement refund period extended from September 13, 1967, the date the installation was completed, to September 12, 1977.

10. During the three year, two month, and seven-day period between June 30, 1975 and September 7, 1978, a moratorium against additional Cal-Am service connections (imposed by this Commission as a consequence of a severe water shortage caused by prolonged drought) may have prevented Radisavljevic and Dimitrijevic from realizing potential connection refunds.

11. Coniglio's former water service, connected across intervening properties and metered at the old main (and assumed from Fleming, the initial customer), was relinquished back to Cal-Am in 1967, and Coniglio applied and was added to the new main extension by a service connection made in front of Coniglio's own property.

12. Cal-Am, although it initially paid a refund on Coniglio, later asserted that it had done so in error, and in a purported exchange to rectify the error, denied a refund on Service No. 14335 - Dimitrijevic.

13. Gunter applied on September 9, 1977 for service (within the 10-year refund period and after the Commission had eased the connection restriction on his class of applicants) although service was not installed until January 3, 1978, after expiration of the 10-year refund period.

14. Misconstruing the date of signing of the main extension agreement as starting the 10-year refund period, Cal-Am denied refund for the Gunter connection.

15. This Commission has jurisdiction to extend main extension refund periods created under utility tariffs to compensate for time lost as a consequence of Commission imposed moratoriums on connections necessitated by acts of nature.

16. Although it is providing service to all other properties within the obvious, logical, and natural extended service area created by the 1967 Radisavljevic main extension agreement, Cal-Am asserts it cannot grant service connections to Abbott and Kosta Radisavljevic (one of the three original subdivision lots of the Radisavljevic subdivision which gave rise to the extension), contending that these two properties are outside its service boundaries.

Conclusions

1. By contracting with Radisavljevic and Dimitrijevic to install a main extension and to offer water service outside its dedicated water service boundaries on file with this Commission, Cal-Am concurrently extended its water service boundaries to the obvious, logical, and natural boundaries of the extended area the new main extension would serve; these being to the east the foot of the steep escarpment east of the Los Laureles Grade Road, and to the north the dirt road branching off to the east of the Los Laureles Grade Road and partially circling the Dimitrijevic properties.

2. Denial of service to any of the properties within the extended service area created by the 1967 Radisavljevic main extension agreement would be discrimination in violation of the provisions of Section 453 of the Public Utilities Code.

3. Both the Abbott and Kosta Radisavljevic properties are within the expanded service area and are entitled to water service on an equal basis with other persons presently served. To obtain such service each should make application.

4. Coniglio is an additional service connection to the Radisavljevic main extension and is not a customer formerly served at the same location under provisions of Cal-Am's Rule 15-Main Extensions. Accordingly, a refund was properly paid for Service No. 14358 - Coniglio.

5. A refund is payable for Service No. 14335 - Dimitrijevic and should be paid.

6. A refund is payable for Service No. 18662 - Gunter and should be paid.

7. The refund period of the 1967 Radisavljevic main extension agreement will be extended three years, two months, and seven days from September 12, 1977, and refunds will be paid for any additional service connections made to the Radisavljevic main extension from either side of Los Laureles Grade Road within the expanded Cal-Am service area (including the Abbott and Kosta Radisavljevic properties if connections are made).

O R D E R

IT IS ORDERED that:

1. California-American Water Company, within thirty days after the effective date of this order, shall file with this Commission a revised service area map indicating service area boundaries for the Miramonte-Los Laureles Grade Roads junction segment of its Monterey Peninsula District in conformance with this opinion and order.

2. The refund period provided in the August 28, 1967 main extension agreement between California-American Water Company and Dragoslav Radisavljevic shall be extended three years, two months, and seven days beyond September 12, 1977.

3. California-American Water Company, in conformance with the terms of its August 28, 1967 main extension agreement with Dragoslav Radisavljevic, shall pay one refund allowance each for completed service installations Service No. 14335 - Dragomir Dimitrijevic, and Service No. 18662 - Gunter.

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4. California-American Water Company shall cease denial of water service to Mary L. Abbott's and Kosta Radisavljevic's properties.

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

Dated at San Francisco, California, this 8th day of MAY, 1979

John E. Burton
President

David T. DeBorja
Joseph W. Coniff
Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

EXHIBIT A

A. # 58345
A. # 58464



THE ESCARPMENT

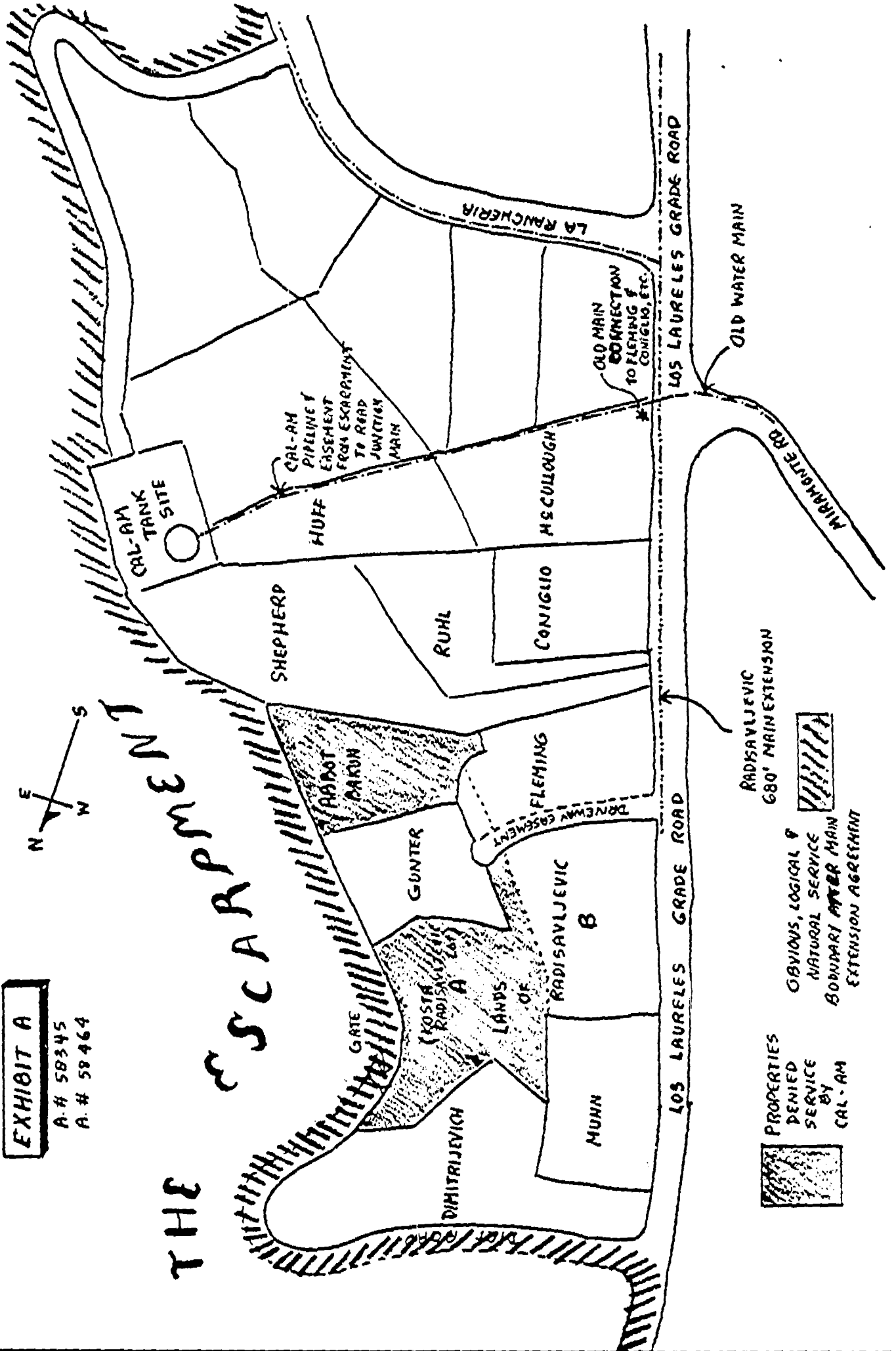
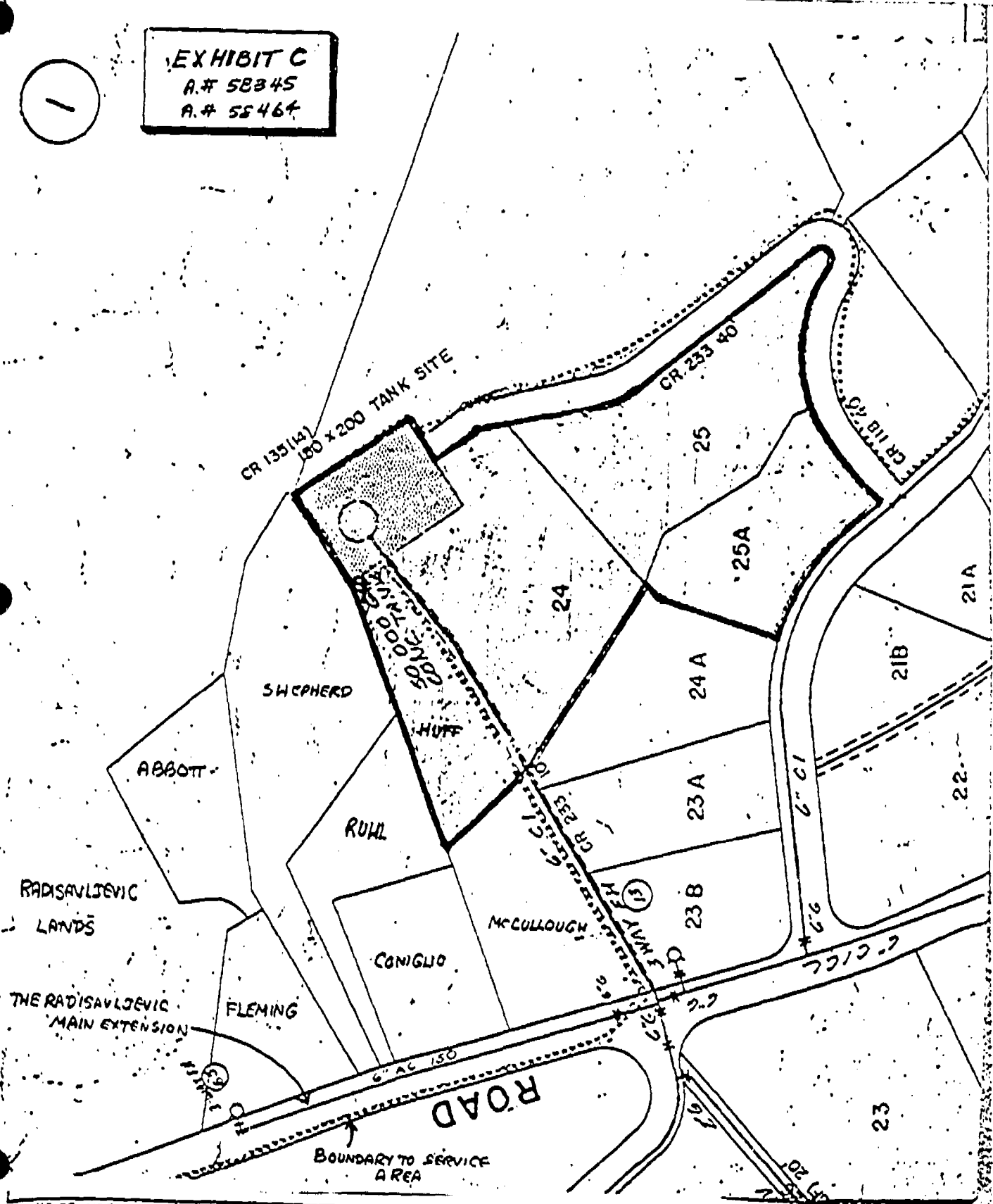




EXHIBIT C
A.# 58345
A.# 58464



(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 126
DEC. NO. 84334

ISSUED BY
O. L. BANZ
NAME
President
TITLE

(TO BE INSERTED BY C.P.U.C.)
DATE FILED 20 1976
EFFECTIVE 25 1976
RESOLUTION NO. _____