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Decision No. 90376 JUN 5 1979

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of EVAN M. EDWARDS and RUTH M.
EDWARDS, dba MONTEREY TRADE CENTER
for inclusion of property to the
service area by Monterey Peninsula
District of California-American
Water Company.

Application No. 58450
(Filed November 1, 1978)

E. M. and Ruth Edwards, for themselves,
applicants.
Lenard G. Weiss, Attorney at Law, for
California-American Water Company,
interested party.
Eugene M. Lill, for the Commission staff.

O P I N I O N

Statement of Facts

The Monterey Peninsula Airport (airport)^{1/} lies to the east of downtown Monterey and south of Del Rey Oaks. The airport in part is girdled on the north, east, and south by narrow strips of land bordering State Highways 218 and 68, respectively. These strips of land, not part of the airport itself, for years have been within the city limits of either Monterey or Del Rey Oaks. In this area to a large extent the city limits of these cities and the service territory of the California-American Water Company's Monterey Peninsula District (Cal-Am) were co-extensive; therefore, these strips of land were inside Cal-Am's service area.

^{1/} The Monterey Peninsula Airport, established by Senate Bill 1300 on March 22, 1941, is an independent airport district entirely apart from the city of Monterey.

In March of 1968 the city of Monterey annexed the 547.7 acres of the Ryan Ranch, including those portions of the ranch across Highway 68 to the south. This annexation completed the encirclement of the airport by municipalities. However, at that time the boundaries of Cal-Am were not extended to take in these undeveloped Ryan Ranch lands. In 1977 the city, having acquired a federal source of funds, determined to build a new corporation yard and a 52-acre industrial park on a segment of the Ryan Ranch lying east of Highway 218. Thereafter, the city acquired this segment from the Work Family, owners of the Ryan Ranch, and asked Cal-Am to provide water service for fire protection purposes only. According to the records of this Commission, Cal-Am, by filing Advice Letter No. 167^{2/} on January 11, 1978, added the entire 547.7 acres of the Ryan Ranch to its service territory, adjusting its boundaries in this area to coincide with the city limits, and completely surrounding the airport property.

Meanwhile, as a result of the disastrous drought conditions of the earlier 1970's, this Commission after extensive hearings in Case No. 9530 in 1973 had prohibited Cal-Am from providing water to new service connections other than those in municipally sponsored redevelopment or renewal projects (with certain exceptions not applicable here). But on August 8, 1978 by Decision No. 89195 in Case No. 9530, these restrictions were lifted insofar as applicable to new service connections inside Cal-Am's then existing service territory. The ban on service outside Cal-Am's service territory continues.

2/ A procedure normally applicable in contiguous territory annexations by water companies.

Inside the airport enclave and along the southern border of that enclave there is an 18.6-acre strip of privately owned land. This parcel adjoins the northern side of Highway 68 and lies directly across the highway from part of the Ryan Ranch (See the map in Appendix A hereto). These 18.6 acres are owned by J. Arch and Rosanna Butts. Approximately in mid-1977 Evan M. and Ruth M. Edwards, dba Monterey Trade Center (applicants), made a purchase agreement for this parcel of land with the Butts. They made this agreement while aware that Case No. 9530 was still pending before this Commission.

Since signing the purchase agreement applicants have proceeded with annexation proceedings with the city of Monterey, including zoning changes. These proceedings have involved the City Planning Commission, Airport Land Use Committee, airport board of directors, and the Local Agency Formation Commission. As a consequence the applicants have secured approval to develop an industrial research park^{3/} on the 18.6 acres, beginning with Phase I to utilize 6.2 acres at the western end of the property. Phase I involves erection of a 1-story warehouse building and four 2-story commercial retail office buildings. Phase I will involve approximately 63,000 sq. ft. of space. Phase II, for which approval has not yet been received, will cover the central part of the strip parcel. It is contemplated, however, as being essentially duplicative of Phase I. Phase III, planned for the future, would basically be a 16,000 sq. ft. professional building. The entire project will require fire hydrants and all buildings would have

^{3/} The permitted uses here include administrative, business, executive, editorial and professional offices, general research and testing laboratories, printing, publishing and lithographic facilities, manufacturing, assembling, or packaging from previously prepared materials (excluding saw and planing mills, or manufacturing involving primary production from raw materials or uses prohibited in the "I-R" Zone) and electronic manufacture.

automatic sprinkler systems. There will be landscaping irrigation including a 30-foot buffer strip alongside Highway 68. Construction would not begin on Phases II or III until Phase I is completed and occupied, and a complete evaluation of traffic, parking, and the visual impact of Phase I has been completed by the Planning Commission.

A duly noticed hearing on the application was held in Monterey on January 29, 1979 by Administrative Law Judge Carol T. Coffey and at the conclusion of the hearing the matter was submitted. However, before ALJ Coffey could prepare a draft decision he became ill and was forced to go on extended leave. Thereupon, the matter was transferred to ALJ John B. Weiss for preparation of a draft decision.

By the application applicants seek to have the 18.6 acres that constitute this property included within the Cal-Am service territory in order that they can obtain water service for their project. While the applicants had no estimate of the probable water requirements of the project, our staff, using a consumption table from a community water service source book used in the profession to make rough usage calculations, estimated that 10.3 acre feet per year of water would be required.

Cal-Am objects to inclusion of the property in its service area, contending that its water supply as denoted in considerable detail in Case No. 9530 is limited, it has none for expansions of territory and must consider that its primary obligation is to its present customers. It objects to any "chipping away" process which it fears would result if the Commission yields to the blandishments of each applicant; each of which will have an appealing position to promote. The utility asserts that granting this application would result in an additional net increase in demand upon its limited supply, a demand not contemplated in its build-out consumption projection set forth in Case No. 9530. Cal-Am further relies upon Cal. Water & Tel. Co. v PUC (1959) C 2d 489 to the point that it cannot be compelled to render service or to use its facilities where it has not dedicated itself or its facilities.

The staff, on the other hand, noting that there is very little real possibility that this property could produce well water, feels that some provision should be made for servicing this 18.6 acre parcel, and recommends that Cal-Am be authorized to file a revised service area map extending its service territory to take in this parcel if it will.

Discussion

Having literally gone through years of difficult proceedings, costly to all, in Case No. 9530 to obtain a narrow equilibrium between current supply and demand in Cal-Am's area of operation, certainly this Commission is not disposed to entertain proposals tending to chip away at that balance by destroying the efficacy of Ordering Paragraph 6 of Decision No. 89195, and undo what was achieved. But disputes do arise and this Commission is mandated by the provisions of Section 761 of the Public Utilities Code to require a utility to provide proper and adequate service to customers in the utility's service area, and by Section 453 of that same code to see that service is available without discrimination.

We are well aware that a public utility cannot be compelled to render service where it has not dedicated itself to serve (Cal. Water & Tel. Co. v PUC (1959) 51 C 2d 489), and it is clear that applicants' property is outside the service territory of the utility as Cal-Am depicts it on its filed service territory map. But the filing of a service territory map by the utility is not conclusive or final as to the limits within which the utility will be obligated to render service. This Commission has exclusive jurisdiction to determine the extent of a fixed utility's dedication of service, and in making such a determination we will be guided by the rule of reasonableness. When service is extended into a new area the area must not be gerrymandered to exclude potential customers, and should be extended to new boundaries which are logically and naturally defined, avoiding unserved enclaves, peninsulas, or islands (Radisavljevic and Bakun v Cal-Am Water Co., Decision No. 90262 dated May 8, 1979 in Applications Nos. 58345 and 58464).

In the instant situation Cal-Am made its own decision and elected to go further than was required by the city of Monterey to extend its service boundaries to include the limited 62 acres of the planned corporation yard and industrial park. Instead of the limited extension requested Cal-Am went forward and filed an advice letter to embrace all 547.7 acres of the Ryan Ranch, even jumping Highway 68 to take in the 300-foot wide panhandle and other areas south of the highway, completely bypassing the small 18.6-acre parcel of the applicants. In doing so Cal-Am completed encirclement of the airport by its service territory. (Although the airport is not within the service territory Cal-Am does provide domestic service to the terminal and other buildings as well as water for irrigation systems and fire protection.) This leaves the applicants' territory an isolated unserved 18.6-acre island in the midst of Cal-Am's actual and effective service area - totally surrounded but denied water service. To allow such a gerrymandered result and an unserved island would be unconscionable and violative of the rule of reasonableness (see Parker v Apple Valley Ranchos Water Co., Decision No. 87871 dated September 20, 1977 in Case No. 9942; writ denied). Accordingly, we conclude that when Cal-Am extended its service territory boundaries by Advice Letter No. 167, the extension impliedly included the 18.6-acre parcel of privately owned land which is the subject of this application. 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.

When a public utility voluntarily determines to extend its service into an area heretofore outside its recognized or declared service territory 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 (Di Liberto v Park Water Co. (1956) 54 CPUC 639). The applicants herein are within the Cal-Am extended service territory and entitled to receive water service upon demand on an equal basis with any other property inside Cal-Am's Monterey District service area.

Findings of Fact

1. The applicants seek water service for their property.
2. The applicants' property is not depicted as being within the boundaries of Cal-Am's service area maps filed with this Commission, and Cal-Am accordingly denies that it has any obligation to furnish the applicants with service.
3. The ban imposed by Decision No. 89195 against extending water service beyond the boundaries of its service territory without prior Commission approval continues.
4. Cal-Am voluntarily extended its service territory beyond the then existing boundaries when in January 1978 it filed Advice Letter No. 167 extending its boundaries to embrace all of the Ryan Ranch, bypassing the applicants' property.
5. The airport, an independent legal entity, bounds the applicants' property to the north. The airport, although not in Cal-Am's service territory, is serviced by Cal-Am.
6. The Advice Letter No. 167 expansion as depicted by Cal-Am would leave the applicants' 18.6-acre parcel of land an unserved island surrounded on all sides by lands either inside Cal-Am's service territory, or lands such as the airport otherwise served by Cal-Am.
7. To permit such a gerrymandered small island of property, denied water service, would be unconscionable and be violative of the rule of reasonableness.

Conclusions of Law

1. By extending its service area boundaries as it did in Advice Letter No. 167, Cal-Am impliedly included the applicants' 18.6-acre property in its expanded service area along with the Ryan Ranch.
2. Denial of service to any of the properties within the extended service area created by the Advice Letter No. 167 annexation would be discrimination in violation of the provisions of Section 453 of the Public Utilities Code.

3. Being within the expanded service territory, the applicants' property is entitled to water service on an equal basis with other persons presently served. To obtain such service applicants should make application to Cal-Am.

O R D E R

IT IS ORDERED that:

1. The dedicated public utility service territory of the California-American Water Company's Monterey Peninsula District includes the 18.6 acres of applicants' property lying south of the Monterey Peninsula Airport and north of Highway 68.

2. 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 Advice Letter No. 167 annexation of its Monterey Peninsula District in conformance with this opinion and order.

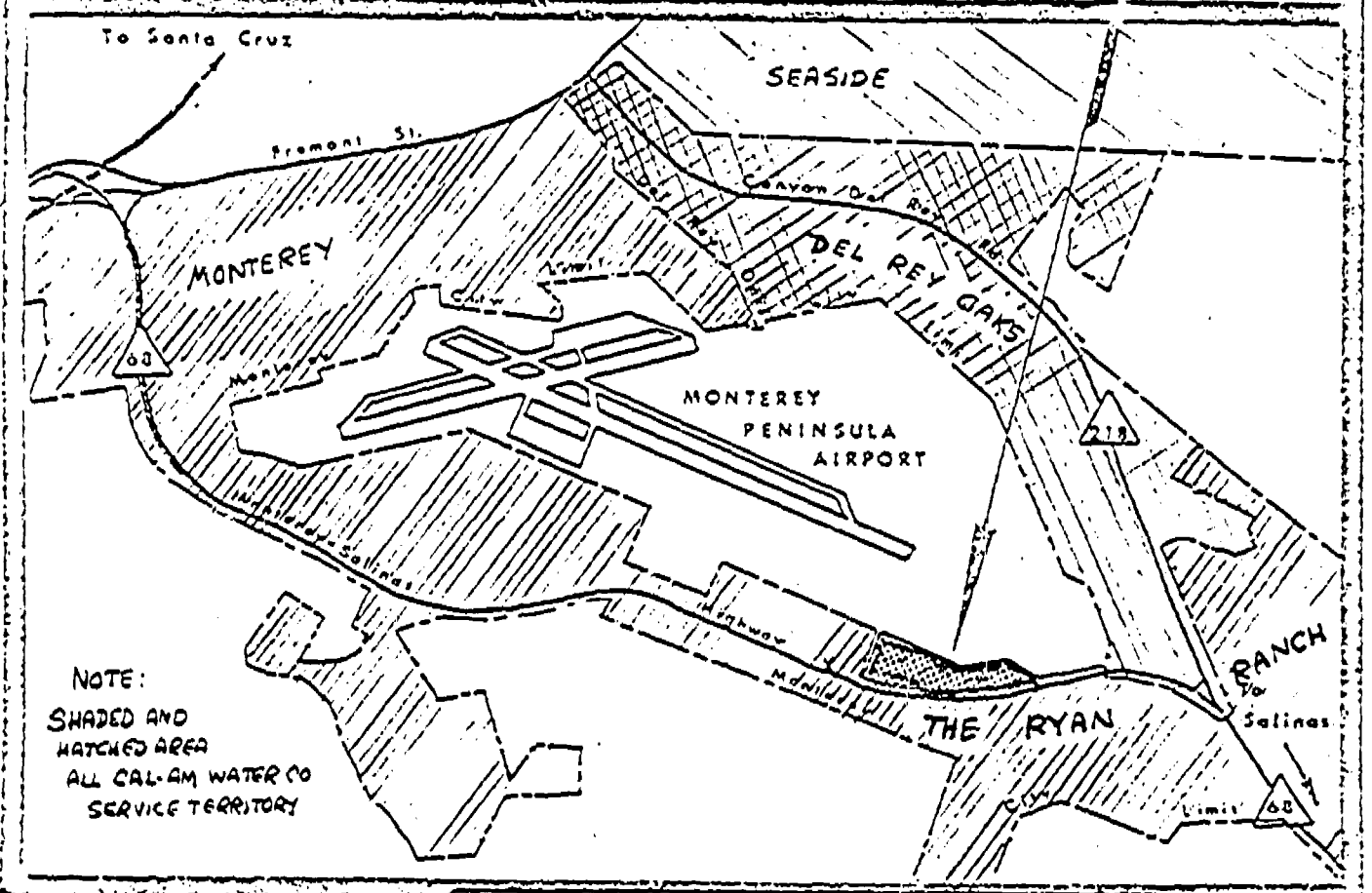
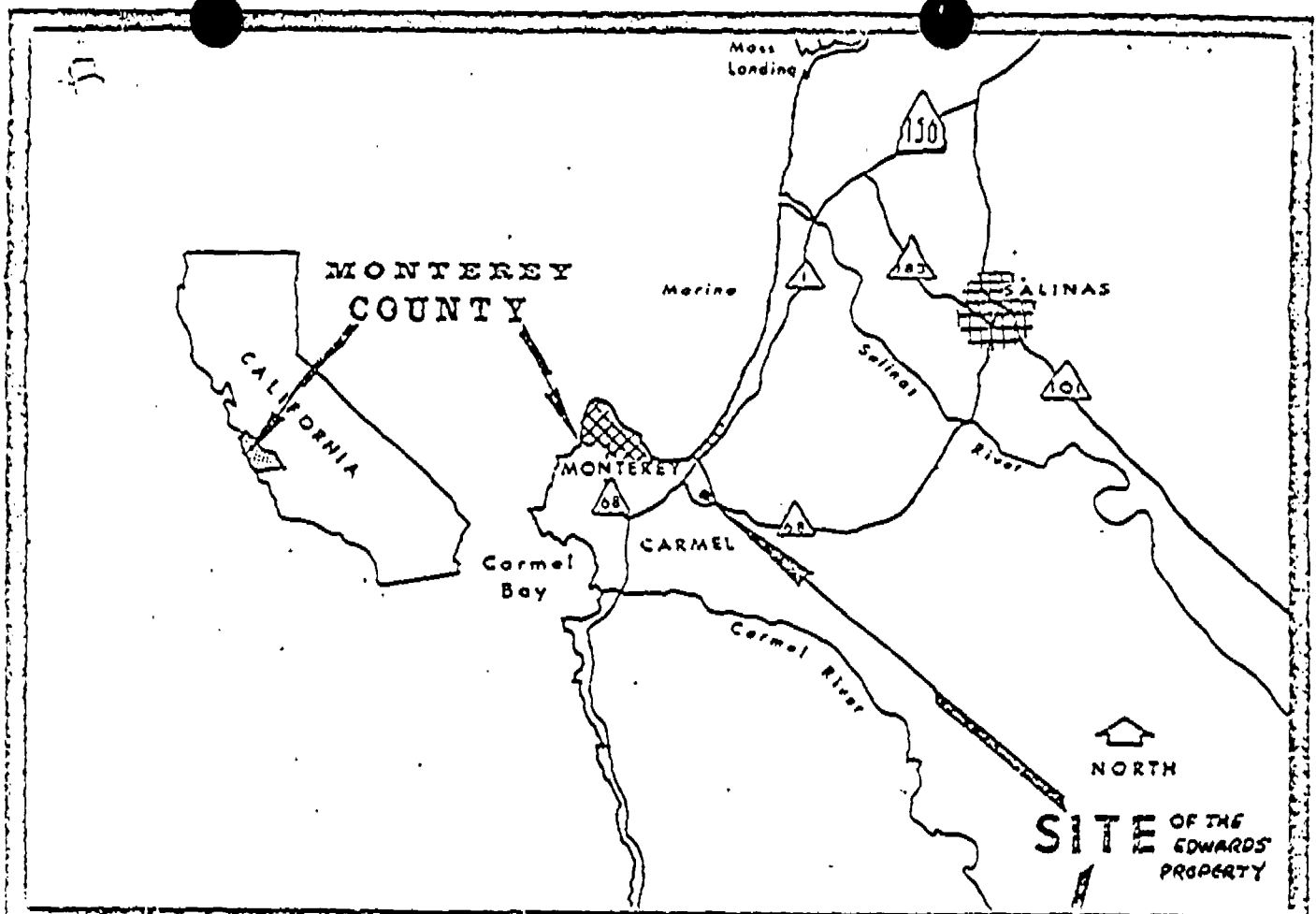
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3. California-American Water Company shall cease denial of water service to applicants' property.

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

Dated at San Francisco, California, this 5th day of JUNE, 1979.

John E. Guy
President
George L. Johnson
Robert D. Swartz
Charles J. Del Rio
Ronald H. King
Commissioners



A. 58450: EDWARDS V. CAL-AM WATER CO.
 APPENDIX A