

**ORIGINAL**

Decision No. 91496 APR 2 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WEST SAN MARTIN WATER WORKS, INC., a California Corporation, for a Permission of Encroachment/Certificate of Public Convenience and Necessity to extend its water system in, through, and around the water system of Earl Powell and Louise Powell, individually and doing business as San Martin Water Works, in the unincorporated area of San Martin, County of Santa Clara.

Application No. 58540  
(Filed December 21, 1979)

In the Matter of the Application of WEST SAN MARTIN WATER WORKS, INC., a California Corporation, for a Deviation of Rule 15, Main Extension to Serve a Subdivision, in the Unincorporated Area of San Martin, County of Santa Clara, California.

Application No. 58827  
(Filed April 27, 1979;  
amended May 1, 1979)

Investigation on the Commission's own motion into the rates, operations, practices, service equipment, facilities, contracts, rules, regulations and water supply of Earl Powell and Louise Powell, individually and doing business as San Martin Water Works.

OII No. 52  
(Filed June 5, 1979)

George W. Robinson, dba Depot Associates,  
dba San Martin Land Company,

Complainants,

v.

Case No. 10646  
(Filed August 3, 1978)

Earl Powell, dba San Martin Water Works,

Defendants.

JOHN TURNER and CHRISTINE TURNER, et al.,

Complainants,

v.

Case No. 10653  
(Filed August 18, 1978)

EARL L. POWELL and LOUISE L. POWELL  
dba SAN MARTIN WATER WORKS, aka EAST  
SAN MARTIN WATER COMPANY,

Defendants.

Jack E. Hinds, for West San Martin Water Works, Inc., applicant in A.58540 and A.58827, and interested party in OII 52, C.10646 and C.10653.

George W. Robinson, for himself and San Martin Lions Club, complainant in C.10646, and interested party in A.58540, A.58827, OII 52, and C.10653.

John E. Turner and Christine Turner, for themselves and other petition signatories, complainants in C.10653, and interested parties in A.58540, A.58827, OII 52, and C.10646.

Earl Powell, for himself and Louise Powell, respondents in OII 52, defendants in C.10646 and C.10653, and interested parties in A.58540 and A.58827.

Fred A. Hoffmeyer, for County of Santa Clara Fire Marshal's Office; Kurt Fisher, for County of Santa Clara Environmental Health Services; and Alfred Chan, for County of Santa Clara Transportation Agency; interested parties in all proceedings.

Elinore C. Morgan, Attorney at Law, Ray Charvez, and Eugene M. Lill, for the Commission staff.

INDEX

<u>Subject</u>	<u>Page No.</u>
<u>Opinion</u> .....	4
<u>Statement of Facts</u> .....	4
San Martin Water Works .....	4
Decision No. 87860 .....	8
Complaints Nos. 10646 and 10653 .....	9
Santa Clara Transportation Agency- South County Facility .....	9
West San Martin Water Works, Inc. ....	10
The "Elstan Project" Subdivision .....	12
Encroachment .....	14
Commission OII No. 52 .....	14
Public Hearing .....	15
<u>Discussion</u> .....	15
The Complaints - Nos. 10646 and 10653 .....	15
The "Elstan Project"- Application No. 58827.....	24
(a) The Staff Position at Hearing .....	30
(b) The Capital Structure .....	31
(c) Management Fee on Contributed Plant ...	33
(d) A Facilities Financing Charge .....	34
(e) Deferred and Restricted Advance Repayment Schedule .....	36
(f) Special Facilities Limitations .....	36
(g) Separate County Rates .....	37
Pro Forma Summary of Earnings and Rate Base .....	38
Future Review Mandated .....	42
<u>Findings of Fact</u> .....	44
<u>Conclusions of Law</u> .....	49
<u>Order</u> .....	51
<u>Appendages</u>	
Exhibit "A" - Map of Service Areas and Encroachment Main	
Exhibit "B" - West San Martin Water Works, Inc. Projected Operating Expenses	

O P I N I O N

Statement of Facts

San Martin Water Works

San Martin Water Works (San Martin), also known as the East San Martin Water Company, both fictitious names for the small privately owned public utility at issue here, had its genesis in the installation of a water system in 1894 by one C. H. Phillips on the 3,300 acre Ramelli Ranch east of San Martin. That system, drawing its water from a spring situated on the ranch in the foothills about 3 miles east of the town, was intended to furnish water for domestic purposes to that portion of the unincorporated town of San Martin lying easterly of the Southern Pacific Railroad tracks. Water from the spring was stored in a 19,000-gallon concrete reservoir on the ranch, some 200 feet in elevation above the town-site, and was transmitted to the townsite through a 12,000-foot-long stretch of 2-inch S.S. black iron pipe. In the town itself, water was in turn distributed through a 2-inch distribution system.

The system slowly added customers until in April 1946 it provided water service through 6800 feet of distribution lines to about 70 metered customers in San Martin. At that point the Ramellis, with Commission approval,<sup>1/</sup> sold the ranch and the public utility to Elsa R. Wiel. Thereafter it became apparent that the spring could not provide sufficient water for the system.<sup>2/</sup> In 1947, as the result of consumer complaints, a hearing was held and it was recognized that the 2-inch transmission line down San Martin Avenue from the spring and reservoir was completely inadequate. Mrs. Wiel drilled a well after acquiring a wellsite in town, and installed an electrically driven pumping system and an automatically controlled pressure tank to serve the townspeople. The five consumers

---

1/ See Decision No. 38849 dated April 9, 1946 in Application No. 27390.

2/ It developed that there had been inadequate supplies of water or no water at all at times during the summer months for many previous years.

living in the eastern area along San Martin Avenue thereafter continued to be served from the 2-inch transmission line from the spring and reservoir, an arrangement which in 1948 was formalized when the then owner, Eli H. Wiel,<sup>3/</sup> agreed to maintain service to these San Martin Avenue customers from the spring and reservoir on the ranch using the 2-inch line.<sup>4/</sup>

Thereafter, ownership of this water utility was transferred, each time with approval of the Commission,<sup>5/</sup> successively to Sada Coe Robinson, John J. Baumgartner, Jr., Harvey L. and Marjorie L. Bear, and finally, to Earl L. (Powell) and Louise L. Powell. In each of these transfers excepting the last one, the lands, including the spring and the reservoir in the foothills, which basically had formed the old Ramelli Ranch were also concurrently sold to the new owners of the utility. In the most recent instance, however, the Bears retained the ranch lands including the spring and reservoir, and transferred only the water utility to the Powells,<sup>6/</sup> it having earlier been determined that the spring and reservoir were no longer necessary or useful in the performance of the utility's duties to the public.<sup>7/</sup>

---

3/ Wiel, with Commission approval, purchased the water system from his wife on May 25, 1948. See Decision No. 41632 in Application No. 28316.

4/ See Decision No. 42241 dated November 16, 1948 in Application No. 29450.

5/ See respectively: Decision No. 44620 dated August 8, 1950 in Application No. 31629; Decision No. 45049 dated November 21, 1950 in Application No. 31872; Decision No. 67191 dated May 12, 1964 in Application No. 46288; and Decision No. 81618 dated July 24, 1973 in Application No. 53881.

6/ Under the terms of the Bear-Powell purchase approved by the Commission in Decision No. 81618, the spring and reservoir on the ranch were not transferred to the Powells, although the Powells were allowed 1 year to install a new well source of water to serve the Eastern San Martin Avenue customers, and the sum of \$23,000 from the \$48,000 purchase price for the utility was retained by the Powells to pay for provision of a new well and storage facility.

7/ In 1948, in Decision No. 41632 the Commission concluded that at that time the yield from the new well in the town of San Martin  
(Continued)

This utility, today situated in an essentially rural area east of Monterey Road (Old U.S. Highway No. 101) embracing most of the unincorporated community of San Martin, and a certain area to the east of the town, all in Santa Clara County, has over the years since 1947 evolved into what are actually two separate and distinct water systems. Each system draws its water supply from a separate source and each system supplies a separate area. (See Exhibit A.)

The western half of San Martin encompasses a basically rectangular area lying between Monterey Road on the west and new U.S. Highway No. 101 on the east, and it serves several markets, a packing house, a few small business establishments and about 110 residential customers in what is the old townsite. It consists of a looped distribution system utilizing 2-inch, 6-inch, and 8-inch mains served from a 5,000-gallon hydropneumatic tank drawing water by means of a 20-hp pump from a 243-foot-deep well (originally drilled in 1948, but rebuilt in 1968) located on a utility-owned site near the corner of Llagas and Spring Avenues. Pressure is maintained between 22 and 48 psi and service appears generally satisfactory for residential purposes. However, there is insufficient water flow and pressure for normal sprinkler fire protection and for industrial purposes.

---

7/ (Continued)

would be ample to provide for the utility's then existing requirements, and would also be able to take care of requirements for some time into the future. Accordingly the Commission determined that the spring and reservoir source were no longer necessary or required as used and useful property by the utility. Later that year, in a subsequent rate proceeding by the new owner, Mrs. Wiel's husband, the staff filed a report wherein it stated that the spring and reservoir were no longer owned by the utility, although the ranch owner, Mrs. Wiel, would allow their use as an emergency supply source in the event the well supply failed or was inadequate. In the resulting Decision No. 42241 issued November 16, 1948 in that Application, No. 29450, the Commission approved the utility's request that the utility be allowed to expense the sum of \$60 per annum to cover the cost of water purchased by the utility from the ranch and taken from the spring. Since then Mr. Bear has continued this accommodation.

The eastern half of San Martin, also rectangular in form, stretches eastwardly for 1-1/2 to 2 miles along both sides of San Martin Avenue from new U.S. Highway No. 101 to New Avenue. It serves an area essentially rural, with farms and pasture lands being interspaced by residential buildings and a few small commercial operations. However, it is in this eastern area that the principal demand for new service exists and it is this area which will experience growth in the immediate future. Water for this portion of the system is still obtained from the spring and reservoir on the adjoining Bear ranch, Powell having failed to provide the new well source contemplated in his purchase agreement. The spring water is transported by gravity flow from the Bear ranch reservoir westwardly the length of San Martin Avenue through the 2-inch main installed in 1894. Tapping into this 2-inch artery are 6-inch lateral mains leading to hydrants that produce little or no water. Pressure, while theoretically 30 psi, is frequently nonexistent and water outages are regular events. The water from the spring source has frequently shown heavy contamination, primarily because Powell fails to consistently operate a chlorinator installed at the reservoir in 1974 in response to an order by the Gilroy-Morgan Hill Justice Court. Powell has also from time to time augmented this spring water with additional water taken without authorization from other springs on the Bear ranch. In addition to the spring water, some water from time to time is introduced into the eastern system from the western system by means of a valve connection between the 2 systems in an interconnection 4-inch main under new U.S. Highway No. 101.<sup>8/</sup> The County Health Department placed a moratorium on Powell's adding new connections, asserting that to allow additional connections would be to the detriment of existing customers. At present there are about 42 customers east of new U.S. Highway No. 101.

---

<sup>8/</sup> However, when this is done problems arise in the western system in the old townsite area, and pressure there, already minimal, drops.

Decision No. 87860

In 1977, as a result of numerous informal consumer complaints accruing over a 2-year period, the Commission on its own motion instituted an investigation into San Martin.<sup>9/</sup> Concurrently the Fire Marshal's office and the Environmental Health Service Department of Santa Clara County had filed a formal complaint.<sup>10/</sup> Following consolidation of these matters a public hearing was held at which residential and business consumers detailed their unsuccessful efforts to get problems resolved, or even to reach Powell; a county environmental health sanitarian told of his agency's difficulties getting Powell to chlorinate; and the county deputy fire marshal told of unkept promises by Powell, waterless fire hydrants, and inadequate mains. Powell readily admitted the problems, said that he had no money, and pleaded past long-term mental and physical consequences arising from a serious auto accident incurred the very same day he had purchased the utility. Powell accepted responsibility and asked for time to apply for a safe water bond act loan to finance needed improvements. Thereafter the Commission on September 13, 1977 issued Decision No. 87860 wherein, inter alia, the Commission reminded Powell of his responsibility to make reasonable and serious efforts to improve facilities of his public utility so that a satisfactory service could be rendered (pointing out that he could not merely plead no money and wait out developments in the hope that something might turn up) and then ordered resumption of regular chlorination to the standard set by the county, correction of billing irregularities, and allowed the Powells 6 months to produce a satisfactory rehabilitation plan including financing arrangements, or face favorable consideration by the Commission of encroachment applications by other water utilities.

---

9/ Case No. 10286.

10/ Case No. 10318.



Complaints Nos. 10646 and 10653

In the intervening time since issuance of Commission Decision No. 87860 it is alleged that the San Martin water supply situation has further deteriorated while Powell continues to do nothing. Accordingly, George W. Robinson (Robinson) on August 3, 1978 filed formal complaint No. 10646 alleging billings and double billings by Powell without substantiation from meter readings, and further alleging that the meters on his services do not work at all. Later in the same month John Turner and Christine Turner (Turner), joined by 30 other petitioning customers of the utility, filed formal Complaint No. 10653, alleging inadequate or no pressure on numerous occasions, inaccessibility by Powell, untreated water, inadequate water supply for fire protection, estimated billings and haphazard meter reading in those instances where the meters are not broken or inoperable, unauthorized and disparate rates charged considering the filed tariff and service rendered, and the failure of Powell to comply with Decision No. 87860 which ordered formulation and timely filing of rehabilitation and financing plans for the faltering utility.

Santa Clara Transportation Agency-South County Facility

Meanwhile, in a parallel development, the Santa Clara Transportation Agency (Agency), as part of its ongoing 5-year transportation planning for the county, determined that it would purchase another 300 new transit-type motor coaches, thus doubling the size of its existing bus fleet in the near future and necessitating addition of new or enlarged operational facilities.<sup>11/</sup> The transportation plan impinges on our problem, as in the South County the Agency had been leasing about 3 acres of a 7.56 acre site previously purchased by the county and has been using this 3 acres as a satellite bus terminal facility. Located near Murphy Avenue adjacent to the southbound exit ramp from new U.S. Highway No. 101 to San Martin Avenue, and a short distance north of the South County Airport (Airport),

---

<sup>11/</sup> To expand the fleet and support facilities the Transportation Agency would use Urban Mass Transportation Agency grants.

this facility will be substantially expanded to accommodate about 60 more buses. The Agency would add office, terminal, warehouse and minor maintenance buildings, gravel storage bins, propane gas fueling facilities, extensive paved parking areas, and a recycling bus wash facility. It is estimated that water consumption needs would approximate 2400 gallons daily, but more importantly, it will require substantial reserves for fire protection purposes. The Agency determined not to develop an existing well on its site. It also considered obtaining water from San Martin, but in view of the inadequacies of that system it concluded San Martin was not capable of reliably serving its needs. The Agency then determined that it would seek a main extension from the West San Martin Water Works, Inc. (West San Martin), a neighboring water public utility across Monterey Road from San Martin, and Agency engineers have been working with West San Martin management to that result since.

West San Martin Water Works, Inc.

West San Martin traces its history back to early this century when a person or persons unknown, from records presented to or on file with this Commission, constructed a small water supply and distribution system to provide domestic and minor irrigation water service in that portion of the town of San Martin lying west of Monterey Road. The new system initially consisted of a well, a pump, an elevated tank and a grid of 2-inch galvanized pipe laid out roughly to conform to the street pattern. By 1935 the system supplied 25 customers. At that point James and Theresa Carpignano, farmers in the area since 1919, purchased the system. Thereafter they acquired a new well site, adding a new well, a new pump and a pressure tank to the system. Slowly expanding, by 1961 the utility served 57 customers. In 1961 the Carpignanos filed to obtain a certificate of public convenience and necessity and for

authority to increase rates. Following hearing and the airing of complaints, the owners were ordered to reconstruct the system and conform it to the standards of General Order No. 103. The Carpignanos complied, rehabilitating the utility to Commission standards at a cost of over \$43,050. The utility was thereupon certificated to serve its 55-acre service area through 5700 feet of main. The county of Santa Clara also granted the utility a 50-year franchise (No. NS-4.28).<sup>12/</sup>

On June 25, 1968, by Decision No. 74296 in Applications Nos. 50225 and 50274, the Carpignanos were authorized to sell the utility to West San Martin, a California corporation organized on or about November 28, 1967, it being intended that in turn West San Martin would be the wholly owned subsidiary of Lucky Livestock Company (Lucky), owned by Eugene and Jeanne Salvage. Such result occurred. About this time Lucky was substantially indebted to the Bank of America. As a consequence of generally unprofitable cattle-raising experience in California, Lucky thereafter encountered difficulties in meeting due dates on its indebtedness to the bank, and determined to sell its land holdings in the San Martin area. Roy and Esther Monschke purchased half of these holdings (the purchase being secured by a trust deed which Lucky in turn pledged to the bank against its debt to the bank). As part of this purchase the Monschkes also obtained an option to buy West San Martin for \$50,000. In subsequent discussions between the parties an agreement was reached between Lucky, the Monschkes, and the bank, whereby the bank in 1972 bought Monschkes' note to Lucky with payments on the note to be applied to Lucky's obligations to the bank, and the Monschkes purchased West San Martin's stock from Lucky for the agreed-upon \$50,000 with the purchase price to be applied against Lucky's

---

<sup>12/</sup> Adopted January 7, 1963 and effective February 6, 1963.

obligations to the bank. Thereafter, in 1975 by Application No. 55851, Mrs. Monschke<sup>13/</sup> sought authorization from this Commission to ratify her earlier acquisition of the utility. By Decision No. 85926 the transfer was ratified. Since 1975 Hinds has continued to manage West San Martin. At the time of the instant proceedings the utility was well-maintained and efficiently serves 85 customers.

Today the West San Martin system consists of two land parcels each containing one well. The first well, 354 feet deep, drilled in 1950, test pumped at 400+ gpm and utilizes a 15 hp lineshaft vertical turbine pump tested at 290 gpm. The second well, 350 feet deep, drilled in 1961, test pumped at 960+ gpm and utilizes a 15 hp submersible vertical turbine pump designed to produce 175 gpm. There is no water treatment equipment. The system operates as one pressure zone system at 60 to 85 psi static pressure off a 4,000-gallon hydropneumatic tank (1/2 air-1/2 water).

The "Elstan Project" Subdivision

An 860-acre subdivision project has been approved by the county and adjoins the western border of the West San Martin service area<sup>14/</sup> and is under development at the present time. Known as the

---

13/ Following the death of Roy Monschke, Mrs. Monschke became the sole owner of the West San Martin stock. Mrs. Monschke retained the services of a part-time manager with engineer training to handle the affairs of West San Martin. This manager, Jack E. Hinds (Hinds) also manages other nonutility properties of the Monschke family.

14/ By Advice Letter No. 9 filed December 15, 1978, West San Martin proposed, among other matters, extension of its service territory to embrace the entire area known as the "Elstan Project". The Hydraulic Branch of the Commission's Utilities Division on January 3, 1979 rejected the extended territory proposal as premature pending clarification of questions pertaining to the contiguous nature of the area to the utility's existing service area as depicted in Commission records, and resolution of financing issues associated with the proposed service to the projected subdivision. These issues remain open and will be addressed later in this decision.

Hays Ranch, it is also called the "Elstan Project" (Elstan), and contemplates development of 43 lots in the initial subdivision. The developer has approached West San Martin seeking water service, asking to enter into a reimbursement contract under the utility's main extension rules, with certain modifications including deferred and limited refunding. The estimated cost of the Elstan project facilities was stated to be approximately \$323,000 which would be treated as a contribution in aid of construction. In addition, another \$170,000 would be advanced by Elstan, subject to reimbursement from the utility, for water storage tanks, booster pump stations, controls, main oversizing and a 1,463-foot main extension. In contemplation of approval, the developer has begun construction of the initial 50,000-gallon water storage tank on the Elstan property. Later, two additional 50,000-gallon tanks are contemplated, and with the booster stations, will serve higher elevations in the Elstan project. The first tank, together with the oversize main segments, would convert West San Martin from a pressure zone system to a gravity flow system capable of providing a 1,700 gpm flow,<sup>15/</sup> exceeding the immediate requirements of all existing customers, the Elstan subdivision, and anticipated growth. The West San Martin-Elstan agreement would require Elstan to finance the special facilities 100 percent, with refunds to be made as this Commission may approve. To obtain Commission approval for deviation from the provisions of Rule 15 of its tariff, West San Martin on April 27, 1979 (amended on May 1, 1979) filed Application No. 58827.

---

<sup>15/</sup> And would make a maximum pressure of 85-90 psi available on the valley floor below.

Encroachment

While Elstan was on the drawing boards, discussions between the Agency engineers and West San Martin over proposed water service to the south county bus facility were extended to include anticipated water requirements and service to the South County Airport.<sup>16/</sup> To provide water from the West San Martin wells to these county facilities would require some adaptation of the West San Martin system as well as construction of approximately 4,000 feet of 10- and 12-inch water mains, and necessitate boring under both Monterey Road (Old U.S. Highway No.101) and the Southern Pacific Transportation Company railroad tracks and hanging a main under the bridge spanning Llagas Creek on San Martin Avenue. Assuming a gravity flow capability in the West San Martin utility, this project is estimated by the Agency to cost \$130,000. The understanding reached between West San Martin and the Agency would require the county to 100 percent finance the entire project. The cost would be treated as a contribution in aid of construction by West San Martin with no refunding by the utility and all facilities would become the property of West San Martin. In that both the project bus facility and airport are in San Martin's service territory, to achieve this objective it would be necessary that West San Martin be granted authority by this Commission to encroach upon and through the service territory of San Martin. To obtain such encroachment authority, including a main extension to serve the county facilities (and potentially more), and after fruitless efforts in June 1978 to purchase the assets of San Martin, West San Martin on December 21, 1979 filed Application No. 58540 with this Commission.

Commission OII No. 52

Against this charged backdrop of alleged poor, unresponsive, and at times nonexistent service to some of its customers by San Martin, and of an apparent indifference, inability, or a paralysis of will and decision-making on the part of San Martin's ownership to comply with the ordering paragraphs in Decision No. 87860, and

---

<sup>16/</sup> The South County Airport extends south from San Martin Avenue to Church Avenue, lying between Murphy Avenue and new U.S. Highway No. 101. The airport presently has no water for fire protection and must use a small well on its premises to provide for domestic uses.

despite the potential application of a remedy stated in Decision No. 87860 that in the event of failure to comply the Commission would "look with favor on encroachment applications by other water utilities", and considering the emerging substantial water needs of the county agencies together with the expressed willingness of a neighboring water utility to expand to meet at least part of the resulting void, this Commission on June 5, 1979 on its own motion issued its Order No. 52 instituting an investigation into all aspects of the problems and potential solutions associated with San Martin, and ordered the consolidation for hearing of the complaints and applications associated with the problems.

#### Public Hearing

Upon completion of the staff investigation, a duly noticed and substantially attended public hearing was held in Morgan Hill on July 24, 25, and 26, 1979 before Administrative Law Judge John B. Weiss. After conclusion of the hearing and upon submission on July 30, 1979 of a late-filed exhibit, the matter was submitted. At the hearing nine complainant customers, one potential customer, three Santa Clara County representatives, three staff witnesses, a witness for applicant West San Martin, and defendant Powell presented evidence.

#### Discussion

##### The Complaints - Nos. 10646 and 10653

In Decision No. 87860, issued two years ago, we attempted to impress upon defendant Powell the nature and extent of the obligations he assumed when he entered upon the operation of a public utility water company. We pointed out that certification is not granted merely to meet the desires of an entrepreneur; rather that it is the convenience and needs of the general public which are always the paramount consideration. We pointed out specific instances of improvements urgently required, suggested the need for professional assistance, and ordered Powell to explore, develop and report on alternate financial plans to meet these problems.

We pointed out that "Defendant cannot merely wait out developments in the hope that something may turn up", and warned Powell that if the necessary investment to assure a reasonable water service was not made, we would no longer "prevent competition from any other water utility that might undertake to furnish a supply of water". In addition we directed Powell to either chlorinate the spring water from the Bear ranch source or cease using this spring water during times when chlorination could not be provided. Finally, we ordered a comprehensive study and cleanup of San Martin's chaotic billing situation, pointing out to Powell that a public utility is under a duty to adhere strictly to the rate structure and tariff procedures authorized by this Commission.

But the reminders, orders, and admonitions directed at Powell to remedy the unacceptable situation which existed 2 years ago relative to San Martin might as well have been addressed to the winds. It turns out that after 2 years, of the seven ordering paragraphs in Decision No. 87860, Powell has complied with only one.<sup>17/</sup> Other than that he has really done nothing but ineffectively procrastinate as time has slipped by and the situation has further deteriorated. Despite the fact that he and his wife hold title to eight contiguous lots located in downtown San Martin, lots transferred to them from the Bears as part of the water utility transaction in 1973,<sup>18/</sup> lots which were dedicated to the utility and specifically reserved for utility use,<sup>19/</sup> and lots worth thousands of dollars in the

---

17/ Powell did adjust the overbilling on the Crow's Nest Account.

18/ A letter dated July 17, 1973 to this Commission signed by the Bears and the Powells, and made a part of the record in Application No. 53881 (of which our ALJ in the instant proceeding took official notice), appended a copy of the Deed of Trust securing a \$20,000 promissory note dated February 6, 1973 made by the Powells to the Bears to secure the balance of the purchase price on the sale and transfer of San Martin to the Powells states that the lots were transferred to the Powells effective July 1, 1973.

19/ Both the letter and the Deed of Trust referred to in footnote 18, supra, state that these lots are dedicated to San Martin Water Works and are reserved for its utility use.



real estate market,<sup>20/</sup> Powell has pleaded financial incapacity and/or tax problems to excuse his inaction. Sale of some of this property would have produced funds which could have retired his debt to the Bears and provided some capital to have rehabilitated some of the utility's dilapidated plant. Instead these lands have been used to provide a location for his daughter's trailer home, and the daughter uses the land to raise a collection of pigs, goats, and chickens adjacent to the utility's well site creating a health hazard. Sewage effluent from the trailer discharges to the ground near the wellhead standing until absorbed into the ground. In the winter shallow pools of ground water form, providing dangerous unsanitary conditions despite the efforts of the county health personnel to prevent them. Despite orders from this Commission and the local court to either chlorinate the Bear spring water or discontinue using it, Powell continues to use it with irregular chlorination. He removed the automatic chlorinator from the reservoir site, stating there is insufficient pressure to operate it. He asserts "Usually I try and get there every week", or that he sends his son-in-law to chlorinate. The county environmental health representative testified that tests made vary week to week, and that when no chlorine has been added there is always a coliform count. The pipe from the hillside reservoir leading to the 2-inch San Martin Avenue main is on the surface of the ground in places and leaks badly, as the abundant green grass growth on the otherwise arid golden brown hillside readily evidences.

At the hearing a litany of complaints about erratic to nonexistent water pressure off the 2-inch San Martin Avenue main was entered into the record. Threaded throughout were instances of nonresponsiveness by Powell, of unanswered phone calls, of capriciously estimated water billings, of unread or unworkable meters. Person after person told of no water during summer months

---

<sup>20/</sup> The deputy fire marshal of Santa Clara county, familiar with real estate matters in this area, testified that lots would be worth about \$40,000 per building site in the downtown San Martin area.

until after midnight, and then of it taking 3/4 to 1-1/2 hours to refill a water closet tank. Witnesses testified of having to visit relatives to get a bath or to wash clothes; of arising after midnight especially in order to fill buckets so as to have water the next day. One witness told of paying a babysitter extra to bathe her children before bringing them home at day's end. Some complained of dirty water, but another stated "when it comes back on, I just thank God we have got it for a few minutes and don't care what it looks like. I haven't noticed, just grab jugs and fill them up." One home on East San Martin Avenue<sup>21</sup> burned down while the fire trucks commuted back and forth from town to get water. The hydrant out in front was dry. The operator of a dog kennel about half way out San Martin Avenue, just west of Center Avenue, complained of erratic flow. For 21 days in June 1979 he noted either poor pressure or none at all for some part of the day. Another customer near the eastern end of San Martin Avenue near New Avenue, testified of having no water at all during 17 days in May 1979, 25 days in June 1979, and for 11 of the first 16 days in July, 1979.

Downtown things are somewhat better although there are still problems. The neighborhood near Llagas and Spring has had lessened fire protection since 1977 when Powell, needing the regulation fire hydrant elsewhere, removed the hydrant at that intersection, leaving that neighborhood dependent upon a nonregulation small substitute outlet. After collecting from the contractor-developer involved for a regulation extension and hydrant, Powell then ran a 6-inch plastic irrigation pipe down the street to the three new homes and installed the borrowed hydrant at an unapproved site in an orchard. After two years the pipe ditch is still uncovered, allowing rain water to flood in.

But service and pressure are more acceptable in the downtown (the well-supplied western half) area of San Martin's system. The

---

21/ Adjacent to the Lyons home at 1294 East San Martin Avenue.

big problem here is not in getting water, but rather in getting billed accurately for the water supplied. San Martin's biggest water consumer, the pickle factory, presented testimony through an executive that it really had no lack of water service, but that it had been impossible over the past three or four years to get the company's water bill straightened out with Powell. As in 1977 (See Case No. 10286) it appears that service for domestic purposes downtown is generally acceptable, although pressures are low for business and industrial fire protection services. When new commercial or industrial structures are erected, the builder must spend thousands of extra dollars to install pressurized automatic sprinkler systems as a consequence of the low main pressures.<sup>22/</sup>

Powell readily concedes the truth of the problems encountered by the complainants, and as described by the witnesses. He states that he wants to do right, but that he does not have the money to give better service. With considerable verity he can and does point out that with a basic water rate per service of only three dollars a month he cannot do the things requested. He says that for ten cents a day he cannot pay the company's bills; that Pacific Gas and Electric billed him \$214.61; that the county taxes him 2 percent on his revenue and just sent him a bill for \$850; that it costs 15 cents just to mail a bill; that it takes almost a full day to read the meters; that he must pay his bookkeeper to write up the bills; that the bank wants \$6.00 for each customer's check that bounces (almost double the face amount of the usual bill), and that he netted a mere \$183 which does not pay him for his time. He argues "I have to make a living too—I have to get by." He points out that some customers run 2 houses on 1 meter.<sup>23/</sup> Powell testified that he has a second well located about 500 feet east of Llagas Avenue. He told of how he had planned to try to hook it up under pressure to try to force more water eastward up the 2-inch main running up San Martin Avenue, but that he did not have the money to run an adequate line across Llagas Creek to hook up to the 2-inch main. He testified that he had applied to

---

<sup>22/</sup> One owner testified of having to spend an extra \$16,000 to install sprinklers in his one-story warehouse-manufacturing building.

<sup>23/</sup> One paid \$5.40 for water from 1 meter for 2 homes.

a bank for a loan but had been turned down after the bank looked over his tax returns. He stated he went to Sacramento and tried to find out what he could do to get a safe water bond act loan to finance necessary improvements, but that when they learned he had roughly only 150 customers there was no interest, so he did not go back. When asked why he had directed his bookkeeper to raise the monthly rate to \$4.90 without having obtained authorization from the Commission, he stated: "I cannot pay my bills", that "You know I am not supposed to go out there and shut the water off either, but I have. I have had PG&E bills to pay. I don't know what else to do", and "I am not going to rob a bank". Powell has not paid off the mortgage held by the Bears,<sup>24/</sup> and steadfastly refuses to sell the utility,<sup>25/</sup> although he has offered to "give it" to a public agency such as the Santa Clara Valley Water District.<sup>26/</sup>

It is evident that Powell's bookkeeping procedures again have resulted in incorrect billings in some instances. Sorting out these billings to ascertain respective over- and undercharges does not lend itself to being readily determined on the record. Accordingly, we will direct our Hydraulic Branch staff to verify, and where necessary, correct all billings to the complainant parties to this proceeding since August 1978 (when Cases Nos. 10646 and 10653 were filed). The staff will advise Powell in writing of corrections. Unless Powell, within 30 days, files a written objection with Judge Weiss, that correction list will be deemed accepted by him, and Powell within 30 days thereafter will credit respective customers' accounts against payments becoming due in each instance where a customer complainant hereto has been overcharged. The staff will take into consideration and credit the payments made in some instances to the Commission in lieu of service cutoff in disputed billings as provided for under San Martin's tariff. Powell will at that time also be authorized to collect any undercharges indicated.

---

<sup>24/</sup> Mortgage payments were current, at least before the payment due July 1, 1978.

<sup>25/</sup> On June 23, 1978 by letter West San Martin offered Powell in effect \$10,000 for San Martin's land, water rights, plant, and distribution system; payable \$2000 down plus 4 annual payments of \$2000. By the proposed sale West San Martin would have assumed the Bear mortgage secured by a Deed of Trust in the outstanding amount of \$12,000.

<sup>26/</sup> There is some question whether the Santa Clara Valley Water District can itself legally own or operate a water distribution facility delivering water directly to retail customers. The District contends it cannot.

It further appears that San Martin's rates are inadequate to meet cost of service much less produce any return on investment. Service in San Martin's western half (west of new U.S. Highway No. 101 including the downtown area), apart from water pressure, is generally adequate. The last rate increase was approved in 1974 by Resolution No. W-1522 effective March 1, 1974. In recent years, Powell unsuccessfully has attempted to obtain rate relief by advice letter proceedings. The service deficiencies in the eastern (San Martin Avenue area east of new U.S. Highway No. 101) have led the Commission to delay relief pending improvement in the service. Those home owners necessarily dependent upon the slim and faltering water supply derived intermittently for part of the year, and spasmodically the rest of the year, from the 2-inch main on San Martin Avenue, despairingly seek the help of this Commission, even as they daily make do and risk disease using the often contaminated water delivered from the untreated spring sources on the Bear ranch. Those other individuals owning property out in the eastern reaches of San Martin Avenue who would develop their land necessarily at this time are administratively denied access to the San Martin system, and are forced to the expensive and ecologically undesirable alternative of sinking individual wells to provide interim fire protection volumes of water as prescribed by the local fire authorities until such time as an improved public water distribution system can be obtained.<sup>27/</sup> There are also large property developers, both commercial and industrial, who seek to build off of San Martin Avenue. They need and seek a reliable public utility, one able to deliver a constant and adequate volume of water under sufficient pressure to a bridgehead point near new U.S. Highway No. 101, so that from that point main extensions can be contracted for by them to further extend - at their expense - an adequate main out eastern San Martin Avenue

---

<sup>27/</sup> The county now requires each such individual to sign a formal agreement, placing inspection and approval of such facilities in the local fire authority, and requiring hookup to permanent public or private facilities when they become available.

to the properties they seek to develop.<sup>28/</sup> The Agency, not wanting to develop its own wells for its purposes alone, and equally determined not to rely upon Powell for its water for either its bus terminal or airport needs, seeks to encourage encroachment by any utility showing promise of being able to deliver. The Agency is prepared to substantially contribute to such a solution to the San Martin problem, as we have seen, by using federal grants to tie into a West San Martin system given substantially increased storage capacity from the Elstan project with gravity flow capability to serve the valley floor, thereby bringing West San Martin water across San Martin's territory part-way out San Martin Avenue to both satisfy the Agency's needs, and bring the prospect of not too distant relief to present and potential customers out San Martin Avenue.

The time has passed for temporizing with Powell. While the downtown half of the San Martin system, except as to water pressure, has somnambulantlly lumbered along without operational assistance from Powell, the eastern has virtually run dry while Powell dithers. Although the problems afflicting the lengthy 2-inch San Martin Avenue main and its spring source of water have existed for years and have not been unknown to Powell, absolutely nothing constructive to ameliorate the latter deplorable situation has happened. Our warnings and suggestions, as well as our orders of two years ago have failed to evoke any responsive action. A public utility in essence is the dedication of property to a public use, and as business enterprises, public utilities are in a class by themselves, with privileges and obligations differing essentially from other kinds of business (City of Redding (1921) 19 CRC 267). Of these obligations, a most fundamental

---

<sup>28/</sup> One such would-be developer, the proprietor of Casa de Fruta in Pacheco Pass near Hollister, seeks a reliable water source able to provide up to 2,000 gallons per minute for fire protection to property on the southeast corner of San Martin Avenue where it crosses new U.S. Highway No.101. He seeks to establish a venture similar to his Pacheco Pass operation on that property - provided he can obtain water. His project would serve to extend a new water main beyond the bus terminal 2,000 feet eastward on San Martin Avenue. The fire marshal told of another commercial operation seeking water for its proposed warehouse facility further east on San Martin.

one is that the utility will furnish an adequate and continuing service to the public at reasonable rates.<sup>29/</sup> Furthermore, it is the duty of the owners of the utility to provide the capital needed to improve their system (Park Woods Homeowner's Ass'n. v. Park-Woods Mutual Water Co. (1973) 75 CPUC 65). The burden of resolving service problems rests with the utility, not with its customers (Citizens Utilities Co. (1973) 75 CPUC 81). In the instant situation, although untapped land resources earmarked for utility use have all along been available to fund improvements, there has been a paralysis of will and effort on Powell's part, and Powell has utterly failed to meet his most elemental responsibilities as owner-operator of this utility. The public's interest is the paramount consideration in such a situation, and while as a general rule the Commission does not issue certificates of public convenience and necessity for water services in overlapping areas (Crystal Water Co. (1962) 59 CPUC 407), if a water utility is unwilling to make the necessary investment or expenditure to improve its system so that its customers receive reasonably dependable water service, have sanitary quality and satisfactory pressure, this Commission will no longer prevent competition from undertaking to remedy the situation. The facts presented have amply demonstrated that such is the situation here, and we conclude that it would be in the public interest to grant encroachment authority to West San Martin (Viet and Rohnerville Water Works (1954) 53 CPUC 681) to enable West San Martin to extend its

---

<sup>29/</sup> As was noted earlier, there exist valid questions about the reasonableness of San Martin's rates, but the fundamental issue over the substandard service to the eastern San Martin Avenue customers has overshadowed all other issues to date. Powell off and on for several years has been discussing rate relief with the staff in the context of an advice letter proceeding. Nothing came of such discussions, coupled as they were with a requirement for service improvement.

water system in, through, and around the water system of San Martin, so as to offer service to new customers or to existing customers of San Martin who might wish now or in the future to avail themselves of the alternative service offered under terms of West San Martin's tariff. In particular, West San Martin will be authorized to contract with the Agency, or an appropriate county organ, to extend 10- and 12-inch water mains across Monterey Road, the Southern Pacific Transportation Company right-of-way, up San Martin Avenue eastwardly, including hanging a main under the bridge spanning Llagas Creek, so as to provide water service as expeditiously as possible to the Agency's bus facility (Assessor's parcel No. 825-09-049) and the county of Santa Clara south county airport (Assessor's parcels Nos. 825-10-075 and 825-11-022). The project must include a 12 x 10-inch cross at the San Martin Avenue-Murphy Avenue intersection to enable West San Martin in the future to extend or offer extension of the main further eastward on San Martin Avenue. This entire main extension project, including the 12 x 10-inch cross fitting estimated to cost approximately \$130,000, will be constructed by funds advanced by the county of Sanata Clara with no requirement for reimbursement. All facilities when constructed will become the property of West San Martin<sup>30/</sup> and will be handled as a contribution in aid of construction.

The "Elstan Project" - Application No. 58827

Elstan essentially is a rural residential, very low density (43 lots on 460 acres), real estate subdivision approved by Santa Clara county and already under construction by the Elstan Corporation, a California corporation, on the former Hayes Ranch located southwest of and contiguous to the existing service boundary of West San Martin. The existing San Martin system, adequate as it may be for its existing service area, is a pressure zone system operated off a 4,000-gallon hydropneumatic tank. It could not handle, constituted as it is, the

---

<sup>30/</sup> During the hearing the Administrative Law Judge required that the Agency provide written affirmation of its expressed intention not to require reimbursement from West San Martin for the costs associated with installation of the main. This letter (Exhibit No. 11) is part of the record of this proceeding.



additional demand which would be imposed by the addition of Elstan. The present pumping capacity with the existing system limits West San Martin's 2 wells to providing 465 gallons per minute (gpm), although the wells are tested at 1,360 gpm. West San Martin today serves 90 customers. Assuming full build-out there are another 100 similar customers within its existing territory. Elstan in its initial stage would add 43 customers and anticipated growth during the subdivision development could add another 152. The water supply required to serve these 385 existing and potential customers is estimated to be 526 gpm. The proposed encroachment by West San Martin into San Martin to serve the county bus terminal and airport would add an additional estimated requirement of 40 gpm, making the total anticipated short-term requirement to be 566 gpm. This leaves a deficiency of 101 gpm under the existing pressure system.

But this deficiency is easily met. It must be recalled that the existing 2 wells have a rated capacity between them of 1,360 gpm. By increasing pumping capacity more water could be delivered. However, until demand at some future date warrants the cost of bigger pumps, this approach will not be taken. For the immediate future it is instead proposed to convert the existing hydropneumatic tank pressure zone system to a gravity flow system. This would be done by retaining the existing pumps, and by controlled pumping lift water from the wells to three 50,000-gallon concrete water storage tanks<sup>31/</sup> to be located on available elevated locations in the low hills of the nearby Elstan project. This gravity flow system which would result would provide abundant flow,

---

<sup>31/</sup> There are to be three 50,000-gallon storage tanks; one each in each pressure zone with the three zones to be stairstepped. The developer's first construction phase includes 1 tank which will replace the existing hydropneumatic tank, and his second phase includes 2 additional storage tanks plus corresponding booster stations. The first tank is under construction now. The main from this first tank connecting to the existing West San Martin system in town is under construction also. Although for purposes of the "Elstan Project" alone an 8-inch main would have sufficed, the developer oversized the main to the 10-inch and 12-inch sizes West San Martin required for purposes of serving the Agency and other potential customers. In all there are 1,463 feet of oversized main involved.

as much as 1,250 gpm, to the adjacent valley floor through connecting transmission mains, amply providing for all needs, including fire protection. In the future it could be expanded to add storage tanks on the hills above east San Martin Avenue. It is obvious that such gravity flow capability, backed by storage tank facilities, could make this small utility a keystone to the resolution of most of the local area's water problems today, and provide hope for short-term resolution of those on San Martin Avenue. It would provide a more reliable water supply to West San Martin's present customers, take care of fire protection, and would also provide all future requirements within the existing service territory. It would provide for present and future Elstan requirements. It would provide adequate and reliable water supplies and fire protection to the county's bus terminal and airport. It would accommodate existing and imminent small subdivision expansion throughout the expanded territory. It would provide an alternative now to Powell for the downtown industrial and commercial customers dependent on San Martin, and it would provide the potential of short-term relief to those on East San Martin Avenue now forced to depend upon that deteriorated 86-year-old 2-inch main from the Bear spring. Subdividers and developers of industrial and commercial enterprises are waiting the advent of a reliable utility before making extensions east on San Martin Avenue.

The big obstacle preventing attainment of these results rests in the financing. Elstan stands ready and is already working on its \$323,000 of improvements which it will pay and donate as a contribution in aid of construction. Similarly the county Agency will pay the \$130,000 cost of the encroachment main as a contribution in aid of construction. But there is the additional \$150,000 cost of the special facilities needed to effect the conversion to gravity flow. Without these special facilities, which stand to benefit all of the parties,

including the existing ratepayers, none of the other projects can be achieved. The problem is that with a rate base of only \$50,550,<sup>32/</sup> it is obvious that West San Martin is in no position to take on this expansion in any conventional Rule 15 advances configuration. Admittedly, it would ease the problem were the owner of West San Martin responsive to investment of additional capital. However, the owner, through her manager, has made it clear that her money is tied up largely in land investments and she is not interested at this time in investing more in the utility. The owner is also not interested in financing the special facilities by a stock issue. The principal source of such investment funds necessarily would have to be the developer, and its motives and interests are too divergent from those of the owner (if indeed, the developer would be interested at all.). Furthermore, control of this privately held utility would be involved. An interest-free loan from the developer was also considered, but rejected. It would place the entire \$150,000 into rate base immediately, and such an enlarged rate base and the resultant depreciation drain would create too high and unrealistic a water rate upon the present limited customer base. The developer and applicant thereupon concluded that the most feasible approach would be for the developer to advance financing of the special facilities, subject to a phased reimbursement by the utility to begin after 10 years. It is argued that this approach defers inclusion of the amount into rate base until after the utility can establish a reserve to begin making refunds. Consonant with this concept the developer proposed, and West San Martin seeks authority to enter into a main extension agreement, with deviations as follows:

---

<sup>32/</sup> This figure reflects staff adjustments to rate base calculations submitted by the applicant to support his 1978-79 advice letter application for a rate increase. Those adjustments pertain to capitalization of certain recent year expense and plant items.

1. No refunds against the advanced \$150,000 estimated cost of these special facilities<sup>33/</sup> would be made for an initial period of ten years.<sup>34/</sup>
2. No refunds would be required in excess of 5 percent in any year, and such would be conditioned upon the ability of the utility to reasonably afford to make them in any given year.<sup>35/</sup>
3. The obligation to contribute toward these refunds would be a charge upon the entire customer population of the utility, and would not be limited to any particular subdivision or project base.<sup>36/</sup>
4. That reductions from rate base for that part of the depreciation reserve attributable to the \$150,000 special facilities advanced would be deferred until the eleventh year when refunds would begin.

West San Martin further made it clear that in agreeing to participate in so extensive an expansion as is being proposed, it would be interested only if its participation can be through some viable form of proprietary participation. It is not interested in merely operating something it does not have a stake in and cannot earn on. It is not interested in merely managing someone else's property. Its witness expressed concern against the prospect of being left, after the useful life of the special facilities, were

---

<sup>33/</sup> These special facilities include three 50,000 gallon storage tanks, two booster pump stations, certain main oversizing, 1,463 feet of main extension, and the electrical installations and automatic controls needed to unify the system and convert it to gravity flow.

<sup>34/</sup> The applicant noted that although the developer is already actively putting in streets and water facilities, it will undoubtedly take time, probably up to 5 years, to sell all the 20-acre lots and bring all the 43 potential customers in this project on line. Therefore cash flow would be lacking to make immediate repayments on the developer's advance. Accordingly, the applicant asks that the 20-year reimbursement period of its tariff be deviated from in this instance to delay its start until the 10th year.

<sup>35/</sup> The applicant recognizes the fact that in some years it might not be able to make the full 5 percent maximum payment; therefore it could be that the 20-year reimbursement period could run out without full reimbursement being made.

<sup>36/</sup> The special facilities, it is contended, will benefit all customers, present and future, by providing abundant water, suitable constant pressure, and enhanced fire protection. Therefore, all consumers should share the burden of repayment.

they contributed property, with the responsibility, if not the obligation, to replace property which was really never its property. It raises the question as to just why it should not be permitted to earn something on contributed plant if ultimately it would be responsible to replace it?<sup>37/</sup> The utility recognizes the fact that with its existing rate base it is losing money and certainly lacks the capability to

---

<sup>37/</sup> At the hearing the question was asked why a public utility cannot earn on contributed property? One of the early experts in the utilities field, the former editor of Public Utilities Fortnightly, Francis X. Welch, years ago expressed the opinion that "There is no equitable reason why property validly acquired by a utility by way of voluntary donation should not be included in the rate base, just as in the case of a private citizen counting gifts made to him among his lawfully acquired capital assets" (see Welch, "Preparing for the Utility Rate Case", p.p. 169-170 (1954). But the overwhelming majority of regulatory Commissions throughout the United States have taken a contrary view. In 1 Priest, "Principles of Public Utility Regulation", p. 177, it is said "Court and Commission decisions holding that contribution in aid of utility construction must be excluded from rate base have been so uniform as probably not to require detailed citation." In essence the rationale is that it would be unequitable to require consumers to pay a utility a return on property which in virtually all cases they, not the utility, have really paid for. It makes no difference whether the contribution is made by the developer; any such costs originally laid out by the developer are passed on to lot purchasers in the form of increased prices for lots, and these lot purchasers, or their successors in interest, are the persons who must pay the water rates. Thus it is said that a utility having contributed property is not unlike a trustee; it simply holds legal title to the contributed property for the benefit of those with whom it has contracted, or their successors in interest, and to allow a rate of return would provide the utility with recoupment of an investment it did not make.

produce the cash flow needed to conventionally handle payback of Elstan's advances on the special facilities. It asks for the benefit of the rate increase requested by advice letter filed on August 9, 1979. It also seeks time to develop and accumulate funds to make a payback on the special facilities. It notes that it could require as much as 5 years to bring the Elstan lots on line. Meanwhile, apart from the proposals herein, there are other extensions, smaller and more conventional, which can be made in the near future, with or without the Elstan special facilities, and it wants to preserve some flexibility and reserve some cash flow to handle these opportunities as they arise to conventionally expand rate base.

(a) The Staff Position at Hearing

At the hearing portion devoted to the Elstan project, the Commission staff, while acknowledging its strong interest in finding a way to bring West San Martin a gravity flow capability, with its acknowledged benefit to the area, also expressed its concern that the deviations presented in West San Martin's approach in its application would only serve to create financial problems down the line when the utility subsequently tried to meet its refund obligations. Accordingly, in a written report submitted as Exhibit No. 8 in the hearing, the staff recommended that one-third of the special facilities cost, or \$50,000, be financed by additional capital to be raised by the utility owner, thus limiting the Elstan advance subject to refunding to be \$100,000. The staff also recommended that there be no deferment in start of pay-back, and that that part of the accrual for depreciation reserve as would be derived from addition of the special facilities addition to plant also not be deferred. Going on, the staff recommended finally that special rates be set for the water service to be furnished to the county's bus facility and airport - assertedly to assure that sufficient revenues be generated to meet the pay-back requirements. The staff position then split, with a representative of the Revenue Requirements staff advancing a last-minute alternative proposal for consideration. His proposal, set forth in the form of a question and answer exhibit (introduced as Exhibit No. 9), was that

while Elstan would be required to advance the entire \$150,000 cost of the special facilities, in turn it would be repaid, not as a conventional advance by the utility, but from the proceeds of a special connection fee fund. The utility would account for the special facilities advanced as a contribution in aid of construction. The special connection fee (starting, for example, at \$350 for 5/8 x 3/4 inch meter, but graduated upward by meter size) would be collected by West San Martin from all subsequent subdividers or individuals seeking future connection wherever made in the expanded West San Martin service territory. These connection fees would be set aside and used only to make repayments to Elstan until Elstan is reimbursed in full for its \$150,000 investment, or until a period of ten years has lapsed. This approach, the staff urged, has the advantage of meeting the developer's requirement for reimbursement on the cost of the special facilities, it eliminates all cash drain on the utility for refunds, and would result in lower property taxes and depreciation charges.

(b) The Capital Structure

The problem with the staff proposals, from the viewpoint of the West San Martin ownership, is that in the first instance West San Martin is just not prepared to make a further capital investment at this point, and in the latter instance it would only serve to further distort the disparate relationship between owner's equity and contributions in aid of construction, reducing the owner to mere managerial status;<sup>38/</sup>

<sup>38/</sup> The following tabulation shows West San Martin's capital structure on four bases: (1) as recorded 12/31/78; (2) as proposed by West San Martin; (3) as initially proposed by staff, and (4) as proposed finally by Revenue Requirements Division:

<u>Item</u>	<u>Recorded 12/31/78</u>		<u>Proposed</u>					
			<u>By Applicant</u>		<u>Initially By Staff</u>		<u>By Revenue Requirements</u>	
Equity	\$39,533	89.2	\$ 39,533	7.1	\$ 89,533	16.2	\$ 39,533	7.1
Adv. for Construction	2,762	6.2	152,762	27.6	102,762	18.5	2,762	0.5
Contribution in Aid of Construction	2,008	4.6	362,008	65.3	362,008	65.3	512,008	92.4
	<u>44,303</u>	<u>100.0</u>	<u>554,303</u>	<u>100.0</u>	<u>554,303</u>	<u>100.0</u>	<u>554,303</u>	<u>100.0</u>

something it will not accept. In all fairness it must be borne in mind that West San Martin was not the instigator of all these expansion plans. The Elstan developer, the Agency, and the county deputy fire marshal, as well as the Commission staff, have all had a role in attempting to evolve a satisfactory and durable solution to the complex and interrelated water supply problems of this area. West San Martin is acutely aware of both opportunities and burdens possible, and while willing to cooperate, it will not do so at the cost of economic suicide to itself. Any solution must benefit West San Martin to be acceptable to the utility. Considering the evidence adduced in this consolidated proceeding it appears that the most realistic prospect for resolving the majority of the area's pressing water supply problems rests with creation of a gravity flow capability in West San Martin. Powell has given ample evidence that he cannot be relied upon to produce any solutions. In 1978 the former Morgan Hill city engineer George Lewis recommended to that city that Morgan Hill take over Powell's utility to help out the residents. The city council refused saying that the utility would be more of a liability than an asset to Morgan Hill. Recently, the Santa Clara County supervisors refused to sanction a special assessment district for the area,<sup>39/</sup> despite the fact that the proposed South County offices project (to be located on the southern periphery of the present West San Martin service territory) was to have been one of the beneficiaries. No other alternative offers even the possibility of relatively short-term relief to the residents on

---

<sup>39/</sup> The Santa Clara County board of supervisors, at its January 15, 1979 meeting, had before it for consideration a request to proceed with approval on the formulation of a 550-acre assessment district to construct a new water system in the general area west of the town of San Martin; this new system to connect with and be operated by West San Martin Water Works, Inc. Despite expressed recognition of the immediate need for better fire protection, and concern over the growing number of individual wells, subdivision parcels and single building sites already conditionally approved, the board voted to indefinitely table the assessment district request. It elected to adopt the policy of delay, waiting until a General Plan Committee recommendation for land use is prepared before the issue of an assessment district may be raised again.



East San Martin Avenue. Accordingly, under the circumstances prevailing here, we have little choice but to try to reach a solution which will be both within the ambit of West San Martin's capabilities financially and fair and equitable to the utility's present and prospective customers. Particularly with respect to small privately owned water utilities, we believe that an economically healthy company, one with a respectable stake in its operation, and one earning a fair and adequate rate of return, is the utility which is most capable of and inclined to provide good service on a continuous basis to its customers. It is our objective to promote development of such utilities, and if we cannot accomplish our objective under traditional regulatory concepts, including those involving advances and contributions in aid of construction at issue herein, then tradition must yield, and we will adopt innovations which under the peculiar circumstances are justified and fair to accomplish our objective. Here, we will resolve the capital structure issue by approving the end result structure proposed by West San Martin which has as its objective the following ratios: equity 7.1 percent, advances 27.6 percent, and contributions in aid of construction 65.3 percent. We believe it to be the proposal most likely to further our objectives here of solidly involving management.

(c) Management Fee on Contributed Plant

Where, as here, a small but viable and well-managed water utility rendering satisfactory service to its customers in an area which essentially is rural and residential is called upon to expand its plant over tenfold the more traditional and desirable equity ratio limitations may be impossible to maintain. A small utility necessarily may be forced by circumstances to assume an overwhelming amount of contributed plant which it must faithfully manage, maintain, and ultimately find means to replace. Although all this contributed plant adds nothing to rate base so that the utility cannot earn on the contributed plant regardless of the time and effort required to manage it, nonetheless it is vital to successful operation of the utility. In such rare circumstances we are impressed by the argument

that the traditional concepts should be tempered so as to provide some proprietary incentive to the utility owner. In addition, in this instance the owner will be faced with the necessity of raising sufficient funds out of the operation itself to enable her to make the annual \$7,500 repayment on the advances made by Elstan for the special facilities which are the very heart of the conversion to a gravity flow system. The return on rate base alone will not provide sufficient funds to make these payments. Accordingly, considering the facts and noting the magnitude of the contributed plant that West San Martin will assume from Elstan and the Agency, all of which over the years will require close managerial attention verging on a proprietarial interest, we will provide a proprietarial incentive, and allow as a deductible operating expense in setting West San Martin's rates, an annual one percent proprietarial management allowance on the remaining nondepreciated balance of that portion of the plant attributable to contributed property, this allowance to begin the second year of operation, except that for the second year only, the allowance will be one-half of one percent. However, we will in addition restrict the use of these proprietarial allowances. Without the express written authorization of the Commission's Executive Director, they may be used for no purpose other than capital investment back into the utility for the purpose of providing some of the funds which will be required to make the annual \$7,500 repayment of the Elstan advances for the special facilities.

(d) A Facilities Financing Charge

In structuring the above we have also been concerned with a concurrent necessity to assure a cash flow which would be adequate to meet all demands. But this requirement for cash flow must not place an inequitable burden upon the utility's present customers, as these cannot be expected to have to finance the expanded opportunities of others. Certainly the existing customers will obtain substantial benefit from the more reliable water delivery system, the reliable pressure, and the greatly enhanced fire protection resulting from the conversion to a gravity flow storage

and delivery system. But the new customer in the expanded service territory will get more. Before in many cases he could not even get service. Now he will be able to get good service, and the expanded system will open opportunities to develop property to extents not possible without this service, thereby considerably enhancing the value of that property. While the rates of any water utility should be at a level which will enable the utility to perform its public duty, maintain its credit, provide a reasonable return to its owners for their investment and managerial efforts, and finance expansion of facilities reasonably necessary to render adequate service to present and prospective customers in its service territory, extraordinary circumstances may provide a basis for requiring something more from those especially benefited. Here there is a need for substantial cash flow to meet both increasing operating costs, and also exigently required and substantially improved operating facilities, and the full burden of that cash flow requirement cannot be met out of the revenues reasonably to be raised out of a fair rate of return, especially a rate which would be fair to the old customers. More will be needed. Therefore we will again depart from traditional concepts and obtain the needed additional funds each year from those who will gain the most from introduction of a gravity flow system, the new customers throughout the service territory to be. We will authorize West San Martin Water Works to charge a one-time facilities financing charge of each new customer obtaining new service within the utility's entire service territory. This facilities financing charge will be graduated based upon meter capacities, beginning

with a charge of \$150 for a 5/8 x 3/4-inch meter service. <sup>40/</sup> ✓

(e) Deferred and Restricted Advance Repayment Schedule

In order to allow West San Martin time to set aside and accumulate funds with which to make repayments each year against the Elstan advances for special facilities which are subject to reimbursement, we will permit a delay in the requirement to make refunds for a period of two years from the date these special facilities pass inspection by the utility and the county and are accepted by the utility. No refund will be required in any one year to exceed 5 percent of the total amount of the special facilities accepted, or \$7,500 per year, whichever is the lesser payment.

(f) Special Facilities Limitations

Here we must note that the original cost estimates on the various components of the special facilities set forth in Application No. 58827, facilities to be advanced by Elstan, date back to 1978. Since then the applicant has furnished the staff information indicating substantially higher costs than those estimated. However, in reviewing those special facility components, we also note that while each of three 50,000-gallon concrete storage tanks will benefit all of the utility's customers, old and new, by furnishing reserves of water for delivery, the location of 2 of these tanks at higher locations than the first tank would be for the exclusive benefit of certain of

40/ The proposed schedule would be: ✓

<u>Meter Size</u>	<u>Facilities Financing Charge</u>
5/8 x 3/4 inch	\$ 150
3/4 inch	165
1 inch	225
1-1/2 inch	300
2 inch	405
3 inch	750
4 inch	1,020
6 inch	1,695

the Elstan lots lying at higher elevations than can be served from the first tank. Similarly, the two booster pump stations are required solely to lift water from the first tank elevation to the two higher elevation tanks. Were all three tanks to be located at the elevation of the first tank, these two booster stations and pumps would not be required. As the higher elevations are solely to benefit the Elstan project we will accordingly expect Elstan to bear the full costs of site preparation for the two higher elevation tanks, as well as the cost of the two booster pump stations. These tank sites will be contributed by Elstan and together with the booster pump stations will become the property of the utility not subject to reimbursement. In summary then, the special facilities which we will approve to be advanced subject to reimbursement will be limited to the following:

- a. The cost of the 3 - 50,000-gallon concrete water storage tanks - now estimated @ \$30,000 each \$ 90,000
  - b. Site preparation for the initial, and lowest in elevation, of the 50,000-gallon concrete water storage tanks - now estimated @ \$25,000 25,000
  - c. One-third of the cost of the controls required for operation of the three 50,000-gallon tanks, the booster pump stations and the two existing well stations - 1/3 of the now estimated total cost of \$20,000 6,666
  - d. Oversizing of mains 8-to 10-inch and 8- to 12-inch 12,640
  - e. 1,463 feet of 8-inch ACP main extension 15,773
- Total Reimbursement approved: Total Special Facilities: 150,079

(g) Separate County Rates

We will not adopt the proposal contained in the staff report that the county be charged a special higher rate for water to be supplied to the bus facility. Nor need we address the arguments for and against, as the issue is made largely academic in that the county

will require relatively a small volume of water for bus washing. Therefore, a special rate would produce little extra revenue. Accordingly, the county will be charged on the same basis as any other customer.

We have in this instance also declined to require that all the facilities involved in this expansion be contributions in aid of construction. As pointed up by the applicant's general manager in his arguments for a mix of contributions and advances, unless some means to provide for ultimate replacement of the contributed plant is included, when the useful life of the contributed plant is used up, we will be right back where we started but without options. Who will then provide the replacement plant? The utility will very probably be in the same general financial posture it was at the time it had to take on the full load of contributed plant - that is, without capital to make the replacement. Certainly then it would be highly unlikely that another contributor could be found or forced to advance funds or make a new contribution. And by then the customers, having depended upon and become used to the service, and ill-remembering its initial birthing pangs, would expect replacement as some form of right, and would not be disposed to come up with a lump sum capital contribution themselves to renew the cycle. How can the utility be forced to come up with the investment capital then? Is it fair to anyone to leave to the vagaries of chance whether or not a utility, carrying such a heavily disproportionate load of contributed property, as the 92.4 percent which would be involved here, may in the distant future so have improved its financial position as to then be able to finance such replacements itself? It seems to us that under these circumstances we cannot impose upon the applicant more of a burden than it itself has generously agreed to assume by making its application.

Pro Forma Summary of Earnings and Rate Base

Putting the foregoing together into a pro forma summary of earnings and rate base projection, using 1980 as our test year, and including therein the 100 percent rate increase requested a year ago by the applicant, we obtain the following estimates. However, it must be remembered that these estimates include no allowance for any inflation factor.

West San Martin Water Works, Inc.  
A. Pro Forma Summary of Earnings

	1980 -		<u>Expanded Service Territory</u>				
	<u>Present</u>	<u>+ Incr.</u>	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>	<u>5th Year</u>
<b>Operating Revenues:</b>							
Basic Territory	\$10,740	\$21,480	\$21,480	\$21,480	\$21,480	\$21,480	\$21,480
Add'l Territories							
Elstan			1,720	5,150	8,580	12,010	15,440
Future Services			1,880	4,500	6,880	8,120	9,380
Transp. Agency			1,520	1,520	1,520	1,520	1,520
Airport			-	-	3,350	3,350	3,350
Total	<u>10,740</u>	<u>21,480</u>	<u>26,600</u>	<u>32,650</u>	<u>41,810</u>	<u>46,480</u>	<u>51,170</u>
Fac. Fin. Chg.			3,450	2,700	1,950	1,950	1,950
Total Revenue	<u>10,740</u>	<u>21,480</u>	<u>30,050</u>	<u>35,350</u>	<u>43,760</u>	<u>48,430</u>	<u>53,120</u>
<b>Deductions:</b>							
Operating Expenses*	11,650	11,650	13,000	15,130	17,070	18,430	19,810
Deprec. Expense	1,890	1,890	6,320	6,380	6,420	6,460	6,490
Taxes (Non-Inc.)	1,790	1,900	7,860	7,960	8,020	8,000	8,000
Income Taxes	200	1,280	520	700	1,760	2,600	3,430
Total	<u>15,530</u>	<u>16,720</u>	<u>27,700</u>	<u>30,170</u>	<u>33,270</u>	<u>35,490</u>	<u>37,730</u>
Mgmt. Fee	-	-	-	2,200	4,260	4,120	3,990
Total Deductions	<u>15,530</u>	<u>16,720</u>	<u>27,700</u>	<u>32,370</u>	<u>37,530</u>	<u>39,610</u>	<u>41,720</u>
Net Revenue	<u>(4,790)</u>	<u>4,760</u>	<u>3,250</u>	<u>2,980</u>	<u>6,230</u>	<u>8,820</u>	<u>11,400</u>
Ave. Dep. Rate Base	50,550	50,550	47,550	44,250	43,150	45,900	48,750
Rate of Return	Loss	9.4%	6.8%	6.7%	14.4%	19.2%	23.4%

(Red Figure)

\* See Exhibit B for supporting schedules of projected Operating Expenses.

A.58510 et al. 5/51 \*

-39-

West San Martin Water Works, Inc.

B. Rate Base

	<u>1980</u>		<u>Expanded Service Territory</u>				
	<u>Present</u>	<u>+ Incr.</u>	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>	<u>5th Year</u>
<u>Rate Base:</u>							
Utility Plant	\$79,650	\$79,650	\$683,400	\$685,400	\$686,900	\$688,150	\$689,400
Deprec. Reserve	<u>26,800</u>	<u>26,800</u>	<u>35,400</u>	<u>53,700</u>	<u>73,100</u>	<u>92,050</u>	<u>111,000</u>
Subtotal	52,850	52,850	648,000	631,700	613,800	596,100	578,400
Adv. for Const.	2,700	2,700	152,700	152,700	148,900	141,400	133,850
Cont. in Aid of Const.	<u>1,850</u>	<u>1,850</u>	<u>448,500</u>	<u>435,700</u>	<u>422,900</u>	<u>410,150</u>	<u>397,350</u>
Subtotal	48,300	48,300	46,800	43,300	42,000	44,550	47,200
Working Cash Allow.	1,500	1,500	-	200	400	600	800
Mat. & Supplies	<u>750</u>	<u>750</u>	<u>750</u>	<u>750</u>	<u>750</u>	<u>750</u>	<u>750</u>
Ave. Dep. Rate Base	<u>50,550</u>	<u>50,550</u>	<u>47,550</u>	<u>44,250</u>	<u>43,150</u>	<u>45,900</u>	<u>48,750</u>

✓  
✓

A-58510 et al  
cs/jm \*

-10-



In preparing the underlying computations which resulted in the above tabulations, certain assumptions and estimations relating to anticipated levels of future operation had to be made. From exhibits supplied by the staff and the parties, and testimony at the hearing, it was estimated that new service connections would develop in the expanded West San Martin service territory as follows: in the first year, apart from the Agency connection for the bus terminal facility, there would be 8 Elstan project connections,<sup>41/</sup> and 15 connections coming out of the backlog of those obligated by county agreements to switch from wells, or from entirely new applicants;<sup>42/</sup> in the second year, another 8 Elstan connections were anticipated plus 10 connections from the backlog and/or new applicants; and thereafter, that there would be 8 Elstan connections and 5 other additional applicants annually. We believe that these are conservative, reasonably sound expectations, particularly as they apply to the first 3 years period but they are still only estimates. We also believe that the level of expenses and rate base calculations as set forth in the tabulation are reasonably appropriate, and that these can be used with confidence to determine the indicated rates of return.

---

<sup>41/</sup> In this day of tight and expensive mortgage money, the 43 lots in the initial Elstan subdivision will not all be sold and developed immediately. We have here assumed that 8 lots would be developed each year.

<sup>42/</sup> The fire marshal's office advised that there are numerous lots within the proposed expanded territory of West San Martin; lots which the owners have been permitted to develop using private wells under county agreements requiring connection to utility service as it becomes available. There will also be new use applications in the territory once service is available. We have here assumed 15 connections the first year; 10 the second year, and 5 each year thereafter from these sources.

For the first 2 years of operation in the expanded service territory to be served by the gravity flow system, a relatively modest rate of return of 6.8 and 6.7 percent for each year is projected. Beginning the third year, however, the rate projected trends sharply upwards. But we must also note that no allowance has been made for the toll of inflation factors on any components of the expenses. Undoubtedly this element will serve to somewhat dampen the upward trend. Furthermore, if all the new connections projected for the later years fail to materialize in the optimistic numbers estimated by the participants to these proceedings after the second year, or if the airport connection (projected for the third year) is delayed or uses less water than forecast,<sup>43/</sup> revenues will be less and the trend will substantially flatten down.

#### Future Review Mandated

The estimates into the third year carry a degree of prior commitment which gives them considerable reliability; after that the vagaries of inflation, credit availability, the general business climate, and political determinations will play a heavy role. Accordingly, we make it clear that we include the tabulation estimates for the fourth and fifth years merely as indicators of a probable trend if all goes well as anticipated. We conclude that these uncertainties make it mandatory that another look be taken after reasonable opportunity is afforded the utility to shake down its expanded operations. Therefore the staff will be directed to make a study of West San Martin's operations during the third year of operation under the expanded system,

---

<sup>43/</sup> The projected revenue from the airport was derived from a comparison with San Jose Water Works' consumption figures for Hillview Airport, a comparable airport in mid-Santa Clara county. It was considered that the increased traffic volume at South County, as a result of the planned reduction in usage of Morgan Hill Airport, would produce comparable volume to Hillview.

A.58540 et al. ja

and to report back to the Commission with recommendations. We shall give particular attention to the cash flow generated from the management fee and the facility financing charge to cover pro rata shares of the storage facilities advanced by Elstan. Either or both of these charges may be adjusted at that time, as appropriate. At that time, if remedial orders are deemed desirable, we can either entertain an application from West San Martin or issue our own order instituting investigation. However, we place West San Martin on notice that if

its rate of return, apart from the management incentive fee on contributed plant, goes above the 9.6 percent we have recently sanctioned for certain well-run smaller water utilities, West San Martin will have to carry the burden of proof as to the reasonableness of that rate of return for subsequent applicability. At that level, and assuming continuing managerial practices sympathetic, understanding, and responsive to the requirements of the utility's customers as well as responsive to external opportunities for improvement of services and plant, we believe the rate of return when coupled with a management incentive fee appropriate to the level of contributed plant, would be adequate to keep the utility healthy, maintain and enhance its financial integrity, and compensate the owner for the risks inherent in her class of investment. At the same time we believe the rates and charges would not be unfair to the ratepayers.

Finally, it must be noted that the Agency, planning to obtain the funds for its \$130,000 contribution toward this water facility expansion project from capital grant fundings 80 percent from federal Urban Mass Transportation Agency (UMTA) participation and 20 percent from a combination of State Transportation Development Act gasoline sales tax shares and local Transit District sales tax funds, is under intense pressure to award contracts as soon as possible so as to qualify for the federal funds. But to do this, first it must have assurance that this Commission will authorize encroachment and approve some means of financing the special features. There are deadlines involved in the commitment of these funds and the county agency intends to let a contract to install the 12-inch and 10-inch extension across Old Monterey Highway, the Southern Pacific tracks, and under the Llagas Creek bridge as soon as we approve the encroachment and deviation application. Bids have been solicited and await our action. Accordingly because of the need for prompt action we will make the effective date of our order the date it is signed.

Findings of Fact

1. In 1977 in response to consumer complaints the Commission instigated an investigation of Powell and his San Martin Water Works.

2. The Commission investigation resulted in Decision No. 87860 ordering Powell to undertake remedial steps.

3. Two years after issuance of Decision No. 87860 Powell had complied with only one of the seven remedial ordering paragraphs of that decision.

4. Today while domestic service in the downtown district of San Martin Water Works continues to be generally adequate, water pressure is low.

5. Service in the eastern or San Martin Avenue segment of the San Martin Water Works territory is frequently unacceptable or nonexistent, justifying consumers complaints.

6. Billing is arbitrary and chaotic by San Martin Water Works, and Powell is usually unresponsive or ineffectual in response to complaints.

7. Without Commission authorization Powell raised rates and tries to collect these new rates from whomever he can.

8. Water delivered in the eastern or San Martin Avenue segment is only sporadically chlorinated, and at times contaminated water is delivered.

9. Despite a 1977 Commission warning of potential encroachment authorization to another utility if within six months he did not file a satisfactory rehabilitation plan, two years later Powell has failed to file such a plan and has ceased effective efforts to produce one.

10. Despite the fact that San Martin Water Works holds title to certain real estate lots which could have been sold or encumbered to alleviate some of the service problems besetting the utility, Powell has chosen to use them for personal use.

11. Apparently as the consequence of a 1973 accident Powell lacks the mental vigor and capacity required to appreciate and cope with the problems engulfing San Martin Water Works.

12. No public agency has been found willing to take over San Martin Water Works, and Powell declines to sell the utility at prices offered by private parties; meanwhile it appears that the utility's authorized rates are inadequate to meet cost of service much less produce a return on investment, but the utility has not filed any formal application for rate relief.

13. There are large and small developers and business entities interested in and actively exploring the possibilities in commercial and industrial development of properties along East San Martin Avenue; however, all demand the availability of a responsible water utility other than Powell and his San Martin Water Works.

14. The Santa Clara County Transportation Agency, owning land adjacent to San Martin Avenue and new U.S. Highway No. 101, seeks a responsible water supply source, a source other than Powell, to serve both its proposed bus terminal facility, and the adjacent South County Airport.

15. As a consequence of numerous and continued supply and enforcement problems with Powell and his utility, the office of the Santa Clara Fire Marshal and the county Environmental Health Services office both support the development of a viable alternate water supply service to that offered by Powell serving San Martin Avenue.

16. West of Monterey Road, in the western portion of the town of San Martin, water service is and has been for years adequately and satisfactorily provided by West San Martin Water Works, Inc., by means of a hydropneumatic pressure tank system with water drawn from two wells.

17. A 460-acre real estate development, currently under construction by the Elstan Corporation on the Hays Ranch, seeks water service from West San Martin Water Works, Inc. by means of a \$323,000 main extension project, the cost of which Elstan proposes to contribute to the utility.

18. The Elstan proposal includes converting the West San Martin Water Works system into a gravity flow system, with Elstan advancing the \$150,000 estimated cost of the conversion with its attendant facilities and certain appurtenances, subject to reimbursement, under a proposed deviation to the main extension provisions of West San Martin's tariff.

19. The county transportation agency proposes, through a West San Martin Water Works application, that West San Martin be allowed to encroach upon and through San Martin Water Works' territory to serve the county's bus terminal facility as well as the South County Airport; this to be accomplished by installation of a main and hookup to the West San Martin gravity flow system proposed by Elstan.

20. The county transportation agency proposes, through a West San Martin Water Works application, that the agency contribute the estimated \$130,000 cost of the main extension constituting the encroachment and the hookup to the gravity flow system proposed by Elstan. The agency's contribution will come from a federal grant.

21. Under provisions of agreements with county authorities, numerous individual property owners, on an interim basis, have been permitted in recent years to develop their properties utilizing wells to provide water requirements pending the availability of a responsible utility water service. Under terms of these agreements, the property owners involved must effect connection on a permanent basis to utility service when it becomes available.

22. West San Martin Water Works has sufficient well capacity, when used in conjunction with the proposed gravity flow storage and delivery system, to adequately meet all domestic, industrial, commercial, and fire protection requirements of the present and proposed customers within the proposed expanded utility service territory.

23. The proposed gravity flow storage and delivery system would provide substantially enhanced and more reliable water and

fire protection service to all existing customers of West San Martin Water Works, and would make possible full development of numerous additional properties which otherwise, under the limitations of the existing hydropneumatic pressure system, would not be susceptible of full utilization.

24. It is reasonable and equitable that all customers throughout an expanded West San Martin Water Works service territory receiving the benefits of the added gravity flow water storage and delivery system should be required to share in meeting the operating costs of the entire expanded utility, including those costs of the new gravity flow storage and delivery special facilities.

25. It is reasonable and equitable that all new customers who now, because of conversion of the West San Martin Water Works to a gravity flow water storage and delivery system, will be able to obtain service, or will be able to enjoy service of an enhanced quality, or in many cases, will now be able to fully develop heretofore undevelopable properties, should be required to pay the utility a reasonable one-time facilities financing charge to obtain such service. This finding relates solely to present and anticipated West San Martin Water Works service area conditions and is not intended to establish a precedent applicable to other water utilities.

26. The graduated facilities financing charge beginning at \$150 for a 5/8 x 3/4 inch meter connection proposed herein would be just and reasonable.

27. In order to secure continuing proprietarial involvement on the part of the owner of West San Martin Water Works in the corporate financing and in management of the disproportionately heavy share of contributed plant, which necessarily must be involved under exigent financing and expansion circumstances present in the instant situation, it would be reasonable and just to allow an annual managerial incentive allowance based upon the remaining nondepreciated balance of contributed plant as a deductible operating expense.



28. It is reasonable and just that the uses of the annual managerial incentive allowance be limited to capital investment back into the utility.

29. The annual managerial incentive allowance should first be paid the year of operation following the operational year the utility accepts the special facilities, and for that initial year be limited to one-half of one percent of the remaining nondepreciated balance of the contributed plant; thereafter, the allowance should be one percent per annum of the remaining nondepreciated balance.

30. In order to permit accretion of adequate funds it is reasonable to allow deferment of the commencement of repayments against the Elstan special facilities advances until the second operational year following the operational year in which the utility accepts the special facilities.

31. It is reasonable to require that in any operational year no Elstan special facilities repayment need exceed 5 percent of the advancement, or \$7,500, whichever is the lesser.

32. It is neither unjust nor unreasonable to require that the cost of any special facilities primarily required to serve a particular subdivision be paid by the subdivision developer as a contribution in aid of construction.

33. Higher elevation tank sites than that of the first water storage tank, and the two booster pump stations in this instance are required primarily to serve the Elstan project.

34. The estimates set forth in the pro forma summary of earnings and rate base for test year 1980, and the first two operating years thereafter, reasonably indicate the results of the utility's operations for the immediate future and are adopted.

35. The estimates set forth for the third year are less reliable, and are conditionally adopted subject to possible modification by the Commission based upon experience and following staff review during the third year of operation.

36. An average rate of return not exceeding 9.6 percent on the adopted rate base over a 3-year operating period is reasonable.

37. The rates and charges authorized herein are reasonable and justified; and the present rates and charges, or lack of them, insofar as they differ from those prescribed by this decision, are for the future unjust and unreasonable.

38. Santa Clara County urgently requires resolution of these matters in order to initiate its UMTA financing as early as possible.

#### Conclusions of Law

1. Service to the downtown western segment of its service territory by San Martin Water Works, except for pressure, in most regards is adequate, while service to the San Martin Avenue eastern segment is unacceptable.

2. The chaotic situation which characterizes San Martin Water Works' billing can be resolved only under direct Commission staff surveillance.

3. Powell has amply proven that he cannot be looked to as a source for solutions to the many problems besetting San Martin Water Works; under his leadership the utility is not in a position to cope responsibly with existing and emerging service requirements in the San Martin Avenue eastern segment, or with all business and industrial requirements in the downtown western segment.

4. Powell is unresponsive to Commission warnings that he either improve service or suffer encroachment.

5. With gravity flow capability obtainable through Elstan Corporation's advancement of certain special facilities and contributions in aid of construction providing other facilities, West San Martin Water Works, Inc. would be able to meet emerging

governmental, commercial, and industrial service requirements in the San Martin Avenue eastern segment of San Martin Water Works' territory as well as offer reasonable prospects for short-term relief to existing domestic customers in that area, and provide alternative service in the downtown western segment for commercial and industrial customers, were an encroachment to be authorized. \*

6. It would be in the public interest to grant West San Martin Water Works, Inc. authority to encroach upon the service territory of San Martin Water Works; such encroachment to consist of a 12-inch main extension from West San Martin's territory extending eastwardly across old Monterey Highway, the Southern Pacific Transportation Company tracks, and Llagas Creek, up San Martin Avenue; thus permitting West San Martin to offer service to the Santa Clara County bus terminal facility and airport, as well as to existing and future customers on and adjacent to San Martin Avenue, and to downtown San Martin commercial and business customers. All such service would be offered pursuant to the terms of West San Martin's tariff.

7. West San Martin Water Works, Inc. should be authorized to execute an agreement with Elstan Corporation which would deviate from its filed Rule No. 15, Main Extensions, to permit acceptance of advanced special facilities subject to reimbursement not to exceed \$150,000, deferred repayment, and an annual limitation on the repayment obligation.

8. West San Martin Water Works, Inc. should be authorized to amend its tariff to add a graduated one-time facilities financing charge, which charge would be collected from all new customers making application for service.

9. West San Martin Water Works, Inc. should be authorized an annual managerial incentive allowance on contributed plant as a deductible operating expense.

10. The effective date of this order should be the date hereof because of the need to expedite Santa Clara County's UMTA financing preliminaries.

O R D E R

IT IS ORDERED that:

1. Earl L. Powell and Louise L. Powell, doing business as San Martin Water Works (San Martin), shall resume regular chlorination of the spring source water delivered to the eastern or San Martin Avenue segment of the San Martin system, with chlorination to be to the standards set by the County Health Department.

2. The ban set forth in Decision No. 87860 dated September 13, 1977 in Cases Nos. 10286 and 10318 against further water connection without prior written authorization from this Commission is continued.

3. San Martin shall cooperate and work with the Commission staff to clean up San Martin's chaotic billing situation, correcting, where indicated, all billings to the complainant parties hereto since August 1978. If Powell disagrees with the staff corrections he shall have 30 days from the date he received the corrections to file a written objection citing specific accounts to Administrative Law Judge Weiss. If no objection is filed, the staff corrections shall be deemed accepted. Thereafter San Martin shall collect indicated undercharges, if any, and shall credit customer's accounts for overcharges in lieu of refunds.

4. The staff shall assist Powell in preparation of appropriate submissions leading to advice letter proceedings adopting a reasonable return on San Martin's operations in the downtown or western segment of the service territory. Until service can be improved there will be no change in the authorized rates in the eastern, or San Martin Avenue, segment east of Llagas Creek.

5. Powell is specifically instructed not to encumber or dispose of any of the real property belonging to San Martin without prior written authorization from this Commission.

6. West San Martin Water Works, Inc. (West San Martin) is authorized to encroach into San Martin service territory by installation of a 12-inch main extending eastwardly from West San Martin territory across Old Monterey Highway, the Southern Pacific Transportation Company tracks, and the Llagas Creek bridge to the Santa Clara County Transportation Agency (Agency) property at Murphy Avenue.

7. West San Martin is authorized to offer service of all classifications under the terms of its tariff from the 12-inch San Martin Avenue main, and subsequent extensions, to any and all applicants, including present customers of San Martin, out East San Martin Avenue as far as New Avenue; in essence duplicating the service territory of San Martin in the eastern San Martin Avenue area.

8. West San Martin is authorized to offer service of all classifications under the terms of its tariff from the 12-inch San Martin Avenue main, by means of lateral main extensions, to commercial and industrial applicants, including present customers of San Martin, in the western or downtown segment of San Martin's service territory.

9. West San Martin is authorized to execute an agreement with the Elstan Corporation deviating from its filed Rule No. 15, Main Extensions, to accept special facilities advanced by that company not to exceed \$150,000 in value, as set forth in this decision, which facilities will serve to convert West San Martin's system from a hydropneumatic system to a gravity flow system.

10. Repayment of the Elstan Corporation advances for special facilities may be deferred as provided in the opinion herein.

11. The annual limitation on reimbursement on the Elstan Corporation advancement for special facilities may be utilized as provided in the opinion herein.

12. After the effective date of this order West San Martin is authorized to file the graduated one-time facilities financing charge schedule to be collected from all new customers as provided in the opinion herein. Such filing shall comply with General Order No. 96-A. The effective date of the filed schedule shall be five days after the date of filing. The filed schedule shall apply only to service obtained on or after the effective date of the schedule.

13. West San Martin is authorized an annual managerial incentive allowance as a deductible operating expense as provided in the opinion herein.

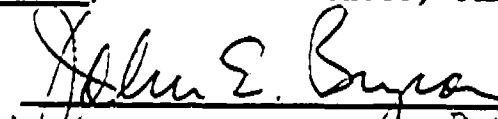
14. Within forty-five days after the effective date of this order, West San Martin shall file a revised tariff service area map.

15. West San Martin is authorized to accept the 12-inch San Martin Avenue main extension to Murphy Avenue, and to provide water service, only if the main is contributed by the Agency includes a 12 x 10 cross fitting at the San Martin-Murphy Avenue intersection to enable West San Martin to subsequently extend, or offer main extensions further eastward on San Martin Avenue.

16. The staff is directed to make a study of West San Martin's rates and operations during the third year of operation under the expanded system and to report back to the Commission with recommendations.

The effective date of this order is the date hereof.

Dated APR 2 1980, at San Francisco, California.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Charles J. Gault

  
\_\_\_\_\_  
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

# SAN MARTIN WATER WORKS

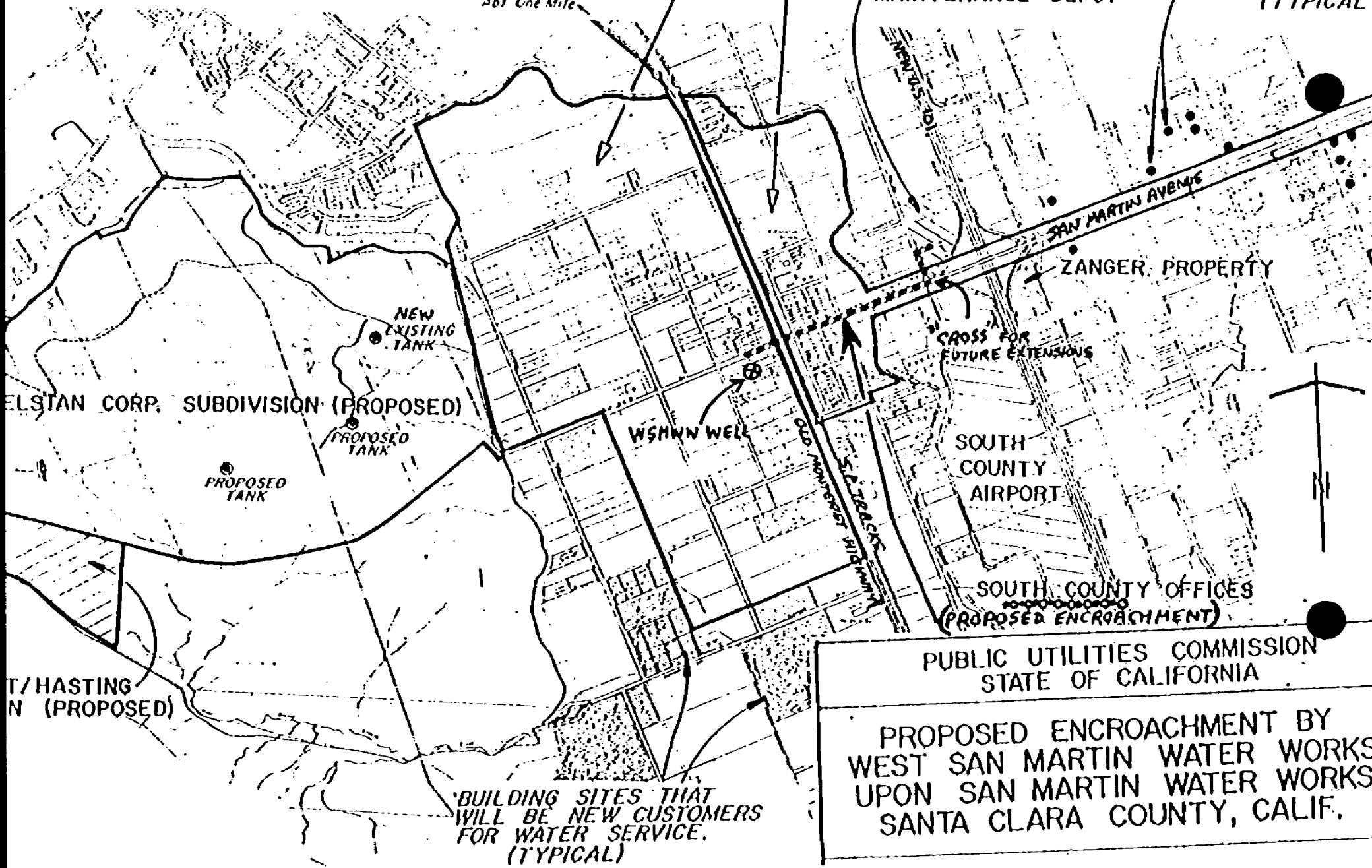
A 58540 ST AL.  
EXHIBIT "A"

## WEST SAN MARTIN WATER WORKS

Morgan Hill  
Abt One Mile

TRANSIT DISTRICT BUS  
MAINTENANCE DEPOT

BUILDING SITE  
WILL BE DRILL  
IN THE NEAR  
(TYPICAL)



ELSTAN CORP. SUBDIVISION (PROPOSED)

NEW EXISTING TANK

PROPOSED TANK

PROPOSED TANK

WSMWW WELL

CROSS FOR FUTURE EXTENSIONS

SAN MARTIN AVENUE

ZANGER PROPERTY

SOUTH COUNTY AIRPORT

SOUTH COUNTY OFFICES  
(PROPOSED ENCROACHMENT)

PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA

PROPOSED ENCROACHMENT BY  
WEST SAN MARTIN WATER WORKS  
UPON SAN MARTIN WATER WORKS  
SANTA CLARA COUNTY, CALIF.

BUILDING SITES THAT  
WILL BE NEW CUSTOMERS  
FOR WATER SERVICE.  
(TYPICAL)

T/HASTING  
N (PROPOSED)



## EXHIBIT "B"

West San Martin Water Works, Inc.

Projected Operating Expenses

	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>	<u>5th Year</u>
<u>Operating Expenses</u>					
Salaries	\$ 5,300	\$ 6,400	\$ 7,290	\$ 7,990	\$ 8,690
Purchased Power	1,730	2,020	2,460	2,670	2,880
O & M-Materials	290	350	390	430	470
O & M-Contract	630	760	870	950	1,030
Office Supplies & Exp.	1,200	1,400	1,580	1,700	1,830
Insurance	490	490	490	490	490
Req. Comm. Expense	670	670	670	670	670
Outside Services	610	710	790	850	910
General Expenses	490	600	680	740	810
Vehicle Expense	690	830	950	1,040	1,130
Rental Allowances	900	900	900	900	900
Total Oper. Expenses	<u>13,000</u>	<u>15,130</u>	<u>17,070</u>	<u>18,430</u>	<u>19,810</u>