

ORIGINAL

Decision No. 91734 MAY 6 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Maxwell D. Millard  
for a variance from Decision  
No. 89195 and for an order  
authorizing water service from  
California-American Water  
Company.

Application No. 58935  
(Filed June 12, 1979)

In the Matter of the Application  
of ANTONE MERCURIO, an individual,  
for annexation to the Service  
Area of the Monterey Division of  
the California-American Water  
Company.

Application No. 58984  
(Filed July 9, 1979)

Chickering & Gregory, by David R. Pigott  
and Allen J. Thompson, Attorneys at Law,  
for Maxwell D. Millard, and Carl L. Hooper,  
for Antone Mercurio, applicants.

Dinkelspiel, Pelavin, Steefel & Levitt, by  
David M. Wilson, Attorney at Law, for  
California-American Water Company,  
respondent.

O P I N I O N

Allegations of Applicants

In Application No. 58935 filed June 12, 1979, Maxwell D. Millard (Millard) states that California-American Water Company (Cal-Am) refuses to provide water service to his 32-acre area site on the basis that it is outside of Cal-Am's service area. The application alleges that (1) the area in question is a part of a parcel identified as the Airway Tract, (2) the Airway Tract presently contains some 20 residences that were served by a small mutual water company owned by one Byington Ford (Ford), (3) in

1977 some of the Airway Tract was purchased from Ford by one Fred Horne (Horne), (4) the 32-acre parcel was included in Ford's mutual water company, (5) in 1945 or 1946 Ford's water company was purchased by the California Water and Telephone Company, (6) the California Water and Telephone Company was subsequently purchased by Cal-Am, and (7) Cal-Am deleted the property in question from its service area without advising the owner.

In Application No. 58984 filed July 9, 1979, Antone Mercurio (Mercurio) states that he is the owner of a 28-acre parcel of land in Monterey County, that on September 19, 1978 the parcel was approved by the Monterey County Board of Supervisors as a tentative subdivision of 17 lots for single-family homes, and that the county approval authorized water service by either Cal-Am or, in the alternative, a mutual water company to be formed by Mercurio. The application also states that Lots 1, 2, and 17 lie within Cal-Am's certificated service area and that Lots 3 through 16, which range in elevation from 330 feet to 580 feet, lie outside Cal-Am's service area. The application further states that Cal-Am rejected Mercurio's request that the higher elevation lots, i.e., Lots 3 through 16, be annexed to Cal-Am's service area because Ordering Paragraph 6 of Decision No. 89195 states: "Cal-Am shall not extend water service beyond the boundaries of its present service area in the Monterey Peninsula District without prior Commission approval."

In support of annexation, Mercurio states in the application that (1) anticipated future growth within the Carmel Valley area, as shown on Exhibit No. R-1 of Decision No. 89195, was to be 3,473 dwelling units; (2) this estimate was based on the current one-acre minimum zoning of undeveloped acreage inside the Cal-Am service area; (3) after three years' effort by a Citizens Committee (Committee), the County of Monterey is presently

considering adoption of a Carmel Valley General Plan Amendment; (4) the Committee amendment would limit future growth within the next 20 years to 2,500 dwelling units; (5) much of the undeveloped acreage within Cal-Am's service area is designated by the Committee's plan to be undevelopable in that it is either subject to flooding, lies within the riparian corridor of the river, is prime agricultural land, or is earmarked for recreational or other open space uses; (6) the resultant probable number of future dwellings within the present Cal-Am service area is considerably less than 2,000 units, probably closer to 1,000; and (7) the addition of Mercurio's 14 dwelling sites to the service area would not be an addition in excess of the number of homes anticipated by Decision No. 89195.

The application further states that action toward formation of a mutual was initiated by Mercurio with wells drilled and test pumped and the water analyzed. Because the chemical content of the water from the test wells would be outside acceptable limits for domestic water, it would be necessary to construct a treatment facility to reduce the mineral content. It is alleged that a preliminary design study for the construction of a treatment facility utilizing reverse osmosis equipment and pre-treatment, including rapid sand filters and softeners, was completed. Due to the high cost of producing demineralized water in small facilities, the study envisioned the use of separate storage and distribution systems for fire protection and irrigation using raw water and for domestic consumption within homes using treated water, each meeting the requirements of the County of Monterey. The estimated cost of the two systems was \$167,600 or \$9,858 per customer.

Finally, Mercurio alleges that Cal-Am provides service to the Tierra Grande subdivision which abuts his subdivision on the east and lies wholly within Cal-Am's certified service area, that

the service provided Tierra Grande is in several zones of elevation and could satisfactorily serve all 17 of his lots, that easements exist in Tierra Grande which would permit extension of mains of the several pressure zones and thereby provide service without additional pumping and possibly without additional storage, and that annexation to the Cal-Am service area would preclude the development of a separate mutual company with its inherent operational problems for residents as well as its extremely high consumer cost.

Evidence Presented at Public Hearing

Because each application involved interrelated issues, the two proceedings were consolidated for hearing. A duly noticed public hearing was held in San Francisco on October 9, 1979 on both applications. Testimony and evidence was presented by Carl L. Hooper for Mercurio, Millard for himself, and Richard T. Sullivan for Cal-Am.

On September 18, 1979 a letter in support of Mercurio's application was received from Sam Farr, chairman for the Monterey County Board of Supervisors. In his letter Mr. Farr stated:

"The Monterey County Board of Supervisors is in favor of the applicant, Antone Mercurio, being permitted annexation to the California American Water Service area, because it is an existing 17 lot subdivision within the Carmel Valley Master Plan boundary. Three of the lots fall within the Cal Am district boundary lines, with the remaining fourteen lots outside. Annexation of this development would eliminate the development of another private water company, in addition with severe water quality problems."

At the hearing counsel for Cal-Am stated that since 1973 various Commission decisions have prevented the expansion of Cal-Am's service area, the most recent being Decision No. 89195 dated August 8, 1978. He stated that Cal-Am, with existing facilities,

has the capacity to deliver 18,000 acre-feet per year to its existing service area, that with the construction of four new wells projected for the lower Carmel Valley a total of 22,000 acre-feet per year would be available from Cal-Am's facilities, that normalized consumption is 16,000 acre-feet, and that with a 100 percent build-out in Cal-Am's existing service area under existing zoning restrictions the total requirements for the area would be 22,415 acre-feet per year. He stated that Cal-Am did not want to be in the position of violating Decision No. 89195, nor to be in a position of seeming to prejudice service to existing customers by an unwise expansion of the service area.

Just prior to the hearing, the Commission received letters from Bruce Buel, general manager of the Monterey Peninsula Water Management District (District), and David L. Hughes, a Carmel resident interested in assuring present customers of Cal-Am a firm water supply, as well as the possible effects on the Monterey Peninsula water supply and demand.

By letter dated October 17, 1979 Mr. Buel stated that the District, at its meeting of October 15, 1979, supported the application of Mercurio, finding that:

"(1) the County of Monterey has imposed a moratorium on the approval of new subdivisions in the Carmel Valley, (2) the Mercurio Subdivision was the only subdivision which had been approved partially inside and partially outside the Cal Am Service Area, (3) the District has enabling legislation (Section 363 of the MPWMD Law) which gives it power to review and approve the extension or expansion of water distribution systems, (4) the District is considering the adoption of an ordinance which would allocate the amount of water to each city and to Monterey County, beyond which future connections to Cal Am would be denied, (5) said ordinance should be effective prior to the lifting of the moratorium by Monterey County concerning the formation of new subdivisions, (6) said

ordinance would prevent the overcommitment of water resources to new service territory to the detriment of existing customers or land owners within the existing service territory, and (7) the District was formed to achieve integrated water management and the proliferation of new mutuals is not in the best interests of integrated water management."

With respect to Millard's application, Mr. Buel stated that the District reviewed the application and took no position of support or protest but did wish to go on record as interested in protecting the rights of customers presently located within the Cal-Am service area.

Mr. Hughes' letter dated October 19, 1979 commented on the District's position on both applications. Mr. Hughes stated that the area's demand and supply projections contained in the District's "Final Report to the Coastal Commission re Available Water Supply and Demand" of March 1979 was apparently the basis for findings and policy contained in the October 9, 1979 Interpretive Guidelines for Development within the California-American Water Company, Monterey Peninsula District Service Area, as prepared by the Central Coast Regional Commission staff. He stated that there are substantial differences between the District's report and the projections adopted earlier by this Commission in Decision No. 89195 dated August 8, 1978 in Case No. 9530. Mr. Hughes' letter did not state what the differences in projections were but suggested that "because of these differences" this Commission should determine, after hearing, which of the projections is valid. Mr. Hughes made no comment with respect to whether the applications should be granted.

Millard testified at the hearing that the 32 acres he purchased from Harold O. Sand (Sand) in 1971 are part of a 122-acre parcel that Sand had taken over by agreement with his partner Horne and that Horne had been assured of water service to Cal-Am's

predecessor, Ford.<sup>1/</sup> To support his testimony Millard introduced into evidence Exhibits Nos. 1-13. Exhibit No. 1 is a schematic showing that Millard's 32 acres are part of a 1,543-acre parcel to which Ford had been providing water service. Exhibits Nos. 2, 3, and 4 are copies of agreements to sell and purchase parcels of land including Millard's 32 acres. Exhibit No. 5 is a copy of the 1941 agreement between Ford and one Frank Porter for the purchase of 670 acres and of Porter's water company. Exhibit No. 6 is a copy of a letter dated October 5, 1979 to Millard from Horne which states:

"You have asked me to write a letter about water supply for your 32-acre plot adjoining my property in Parcel No. 4 of Rancho Los Laureles, Monterey County, Ca.

"In April 1944, I made a contract with Frank Porter to purchase approximately 122 acres of land in Parcel No. 4, later covered by a deed recorded in 1952. Your land is part of this 122 acres.

"Before my contract with Porter he had sold land and his private water company to Byington Ford. His sale agreement with Ford contained the provision that Ford would honor Porter's obligation to furnish water to purchasers of any part of Porter's property which he had purchased from Marion Hollins in March 1936. Byington Ford gave me his assurance that he would provide water to the property I had purchased from Porter. At this point your property was included in this commitment.

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<sup>1/</sup> Cal-Am's predecessor was California Water and Telephone Company which had purchased the company from Ford who had purchased the water company from Frank and Jet Porter.

"Sometime later Byington Ford sold his water company to California Water and Telephone Company, later renamed California-American Water Company. I do not know the terms of the agreement between Byington Ford and the California Water and Telephone Company but they have supplied water to all of the remainder of my property and I would think they would be obligated to provide water to you."

Exhibit No. 7 is a map of Cal-Am's service area which contains the statement that service in Carmel Valley will be furnished under Cal-Am's rules and regulations on file with the Commission to properties that can be served by gravity flows from existing facilities without the installation of additional booster pump or storage facilities. Exhibit No. 8 is a section of Cal-Am's service area and shows Millard's property as contiguous to and below existing storage tanks. Exhibit No. 9 is a letter dated January 14, 1969 from Cal-Am's division engineer Wayne Millington to Town and County Properties, Carmel Valley, with estimates of the cost to extend water facilities to "AP-187-611-36 located near Airway Ranch." AP-187-611-36 is Millard's property.

Exhibit No. 10 is an aerial photograph of Cal-Am's service area and Millard's 32 acres which shows that Millard's property lies between a Cal-Am water tank on the uphill side and a ravine on the downhill side. Exhibit No. 11 is a topographical map showing a Cal-Am water tower situated at an elevation of approximately 1,130 feet and Millard's property at an elevation ranging from approximately 800 to 1,100 feet.

Richard T. Sullivan, vice president of Cal-Am, testified that all service to customers bordering Millard's property was installed prior to the Commission's order instituting a moratorium on further hookups and that he was unsure whether the existing tank capacity was sufficient to serve Millard's property.



Carl L. Hooper, president of Bestor Engineers, Inc., testified on behalf of Mercurio. Mr. Hooper stated that if the application were granted to serve Mercurio's additional 17 lots not in Cal-Am's service area, in 20 years there would only be 2,500 dwelling units in Carmel Valley which is considerably less than the 3,473 potential dwelling units as anticipated by the Commission in Decision No. 89195. Further, Mr. Hooper stated that the cost of developing a mutual water system to serve Mercurio's lots was so exorbitant that the cost would exceed \$50 per month contrasted to the monthly cost for service from Cal-Am of about \$12. With respect to the possibility of the creation of a mutual system, he stated that the Monterey County Health Department had rejected the dual system proposed and inferred, he believed, from the notice of rejection that the county would prefer annexation by Cal-Am.

Discussion

Fourteen of Mercurio's lots are admittedly outside Cal-Am's filed or declared service area. However, as we stated in Decision No. 90262<sup>2/</sup> dated May 8, 1979 in Applications Nos. 58345 and 58464, when making a determination of the new service boundaries created by a main extension, the Commission will be guided by the rule of reasonableness and that such extended service area should be, to the extent possible, defined by logical boundaries, avoiding small unserved enclaves or peninsulas. They may not be gerrymandered to exclude customers or potential customers. In Mercurio's case, three of the lots in the subdivision are presently within Cal-Am's service area. The remaining 14 are contiguous to the service area and would be a logical extension of the service area. The subdivision has been approved by the Monterey County Planning Commission, and

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<sup>2/</sup> See, also, Decision No. 90376 dated June 5, 1979 in Application No. 58450.

the lots can be served by gravity flow from Cal-Am's existing storage tanks serving the adjacent area. The development would be compatible with Monterey County's Carmel Valley General Plan and would not be an addition in excess of the number of homes anticipated by Decision No. 89195. Further, the construction and installation plus the cost of operating a mutual water system of the size to serve this small number of customers would be unreasonable when compared to the cost of annexation by Cal-Am. Mercurio also has the support of the Monterey County Board of Supervisors. For these reasons, we believe the Mercurio application should be granted.

In the case of Millard the issue is whether Millard's parcel is within the service area of Cal-Am's predecessor and thereby entitled to service. The evidence shows that Millard's 32-acre parcel of land was originally a part of the holdings of Frank and Jet Porter (Exhibits Nos. 2, 3, and 4). In 1941 the Porters sold to Ford 670 acres of land and a private water company (Exhibit No. 5) which, through a series of transfers, is now part of Cal-Am (see Exhibit No. 1). The agreement between the Porters and Ford provided that Ford's water company would assume any enforceable legal obligation to serve water to the land owned by the Porters.

In 1944 the Porters sold 873 acres to Horne and Sand (Exhibit No. 2). At the time of this transfer Ford obligated himself to provide water service to the Horne property (Exhibit No. 6, transcript page 19). A portion of the Horne property was sold to Mr. and Mrs. Sand (Exhibit No. 3) in 1965, and in 1975 a portion of that parcel was later purchased by Millard (Exhibit No. 4). Ford's water company and its successors, including Cal-Am, have continued to serve the property owned by Horne which is contiguous to the Millard property. However, Millard's property (as part of the original Sand property) is subject to a dedicated public utility service obligation from the water company previously

owned by Ford, for which Commission authorization to abandon was never obtained, and is a part of the Cal-Am Monterey Peninsula District. From the evidence in the record it appears that the obligation to serve Millard's parcel has continued and remains in effect to this day.

With respect to the issue of water supply, Ordering Paragraph 6 of Decision No. 89195 states that Cal-Am shall not extend water service beyond the boundaries of its present service area in its Monterey Peninsula District without prior Commission approval. That decision also found that the total supply of water available to the Monterey Peninsula District of Cal-Am annually on a continuing basis is 22,000 acre-feet, that the maximum total amount of water that could be prudently produced by Cal-Am's existing facilities was 18,000 acre-feet, that Cal-Am is in the process of constructing four additional wells which would develop approximately 5,000 acre-feet annually, and that the 18,000 acre-feet would be adequate to serve all customers in a normal year until approximately 1983. Finding 17 of that decision states:

"The rate and nature of growth in the Monterey Peninsula, like the management of water resources, is an area-wide concern. Because Cal-Am's water supply is sufficient to accommodate growth within its Monterey Peninsula District service area, the extent and nature of the growth can most appropriately and effectively be determined by the responsible local government agencies and not by either Cal-Am or by this Commission through restrictions on water service connections and extensions."

The record herein, as testified to by Cal-Am's witness, is that Cal-Am has the present capacity to deliver 18,000 acre-feet per year with its existing facilities. With the addition of the four new wells it will be able to deliver over 22,000 acre-feet per year. Based on the current building restrictions in Monterey County, the addition of Mercurio's 14 lots and Millard's 32 acres to Cal-Am's service area will not reduce existing customers' level of service.

Cal-Am should file a new service area map which will include Mercurio's 14 lots and the 32 acres owned by Millard.

Findings of Fact

1. Millard seeks an order requiring Cal-Am to extend water service to 32 acres of land contiguous to Cal-Am's present service area.

2. Cal-Am refuses to provide, without Commission approval, service alleging that the parcel is outside its service area.

3. Millard purchased the 32 acres in 1971 from Sand. The 32 acres were part of a 122-acre parcel which Sand had acquired from his partner Horne.

4. Millard's 32 acres were part of a tract owned by Frank and Jet Porter. The Porters had purchased some 1,543 acres from one Marion Hollins in 1936. After purchasing the 1,543 acres, the Porters founded a private water company to serve the area.

5. In 1941 the Porters sold 670 acres to Ford. The purchase included Porters' private water company. The agreement provided that the water company would assume any enforceable agreement to provide water to Porters' land.

6. In 1944 Horne and Sand purchased 873 acres from the Porters. This purchase included a commitment from Ford to furnish water to the 873 acres.

7. Ford sold his water company to Cal-Am's predecessor, California Water and Telephone Company, which continued to serve Horne's property.

8. In 1965 Horne sold to his partner Sand 122 acres. This 122-acre parcel included Millard's 32 acres.

9. Ford's water company and its successors, including Cal-Am, have served and continue to serve the property retained by Horne. The property now owned by Horne is contiguous to Millard's 32 acres.

10. Millard's 32-acre tract is presently surrounded on three sides by Cal-Am's service area.

11. The present zoning and topography of the area would preclude a build-out of more than 16 units and would be compatible with Monterey County's Carmel Valley Plan.

12. Millard's 32 acres are located at an elevation wherein they could be served by gravity flow from existing storage tanks.

13. The District is not opposed to Millard's application.

14. Mercurio has requested water service from Cal-Am for a 17-lot subdivision. Three of the 17 lots are in Cal-Am's service area but 14 are outside but contiguous to Cal-Am's service area. Cal-Am refuses to provide service to 14 of the 17 lots without Commission approval.

15. Mercurio's subdivision has been approved by the Monterey County Planning Commission. The 14 lots are located at an elevation wherein they can be served by gravity flow from existing storage tanks.

16. Mercurio's proposed development is compatible with the Monterey County's Carmel Valley Plan. The development would not result in more dwelling units than were anticipated in Decision No. 89195.

17. Mercurio's application for service is supported by the Monterey County Board of Supervisors and the District.

18. Formation of a mutual water system to serve Mercurio's 14 lots would not be economically feasible and, thus, would not be in the public interest.

19. The presently existing water supplies of Cal-Am's Monterey District, coupled with the development of four new wells, are adequate to meet the extension of service to Millard's 32 acres and Mercurio's 14 lots.

#### Conclusion of Law

The applications should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. California-American Water Company, within thirty days after the effective date of this order, shall file with this Commission a revised service area map indicating service area boundaries to include Maxwell D. Millard's 32-acre parcel.

2. California-American Water Company is authorized to deviate from Decision No. 89195 and provide service to Antone Mercurio's 28-acre parcel. Within thirty days after providing service authorized herein, California-American Water Company shall file a revised service area map indicating this new service area boundary.

3. California-American Water Company shall provide water service within its revised service area boundaries pursuant to its filed tariffs.

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

Dated     MAY 6 1980    , at San Francisco, California.

John E. Guyon  
President  
Richard D. Howell  
Edward T. DeWitt  
Lawrence J. Quinn  
Commissioners