

Decision No. 92185 SEP 3 - 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FARREL LARSEN, SHERRY LARSEN,
JACK COLLIE, ROSE COLLIE,
JAMES LASTER, MARY LASTER,
CHARLES MEYER, JANE MEYER,
RICHARD PRICE, and PAULINE PRICE,

Complainants,

v.

SAN JOSE WATER WORKS,

Defendant.

Case No. 10771
(Filed August 20, 1979)

Dunbar, Maddigan & Coward, by Horace E. Dunbar, Jr.,
Attorney at Law, for Farrel Larsen, et al.,
complainants.

McCutchen, Doyle, Brown & Enersen, by A. Crawford
Greene, Attorney at Law, for San Jose Water Works,
defendant.

O P I N I O N

Statement of Facts

The Almaden Canyon is situated south of, and at a right angle, to what today is generally considered the Almaden Valley area of San Jose. The upper canyon defile, with which we are here to be concerned, is narrow and tortuous. It begins at the Almaden Reservoir, and follows the course of the Alamitos Creek as the creek cuts its way northeastwardly through the descending foothills, and ends where the creek, emerging from the foothills into one of the flat fingers of land which form the Santa Clara Valley floor, turns northward to its union with the Guadalupe River. From the spillway on the eastern rim

of the reservoir, it is about three-quarters of a mile down the canyon defile to the old village of Almaden (sometimes known as Hacienda) which bottles up the eastern end of the canyon. Alamitos Road, two lanes and paved, follows alongside, crossing and recrossing Alamitos Creek to the western end of the rectangular-shaped village. There the road divides into two parallel streets running the length of the village and then reuniting on the eastern side of the village as Almaden Road. The northern fork is called Almaden Road; the southern fork is called Bertram Road. The village, rustic in nature and heavily wooded along Bertram Road, is split by the creek. A relic of earlier more pretentious aspirations, today it consists of year-round modest habitations interspaced with summer resort cabins.

From about 1902 a private water system distributed free water to the area. From 1927 to mid-1949 David and Bernard Black operated the system. In 1948 they supplied water to about 100 customers in the canyon and another 65 down Almaden Road toward Robertsville. By Decision No. 41765 dated June 22, 1948 in Application No. 29225 the Blacks were denied a certificate of public convenience and necessity when they sought public utility status in order to charge for their service. It developed that many of the 65 customers in the valley end of the system were unhappy with water quality and service from the Blacks, and preferred to be served by San Jose Water Works (SJWW), a public utility which had expanded up Almaden Road from San Jose. These customers switched to SJWW, leaving the Blacks supplying about 100 connections in the Almaden Canyon defile along a strip of land 7,000 feet long and averaging between 800 and 1,000 feet wide, covering some 160 acres. The utility's service area was largely subdivided into lots facing Alamitos, Almaden, and Bertram Roads, respectively known as Almaden Manor Block B, Almaden Manor Block C,

and Lake Almaden Properties Block C. The Blacks again applied to the Commission for certification, and by Decision No. 42921 dated May 24, 1949 in Application No. 29873 they were accorded public utility status, authorized to serve the area set forth in the map (Appendix A) attached, rates were established, and certain improvements, including addition of a 25,000-gallon storage tank, were ordered.

Meanwhile, SJWW had extended its service to certain lots north and east of the junction of Almaden and Bertram Roads on the east end of Almaden Village. Accordingly, in Decision No. 42921 the Commission drew a dividing line between the two utilities, with the territory north and east of this junction to be SJWW territory, and the territory west to be Blacks' territory. While SJWW was then interested in acquiring the 880,000-gallon per day drawing rights to Alamitos Creek held by the Blacks, the price set by the Blacks for their system, and the investment necessary for SJWW to improve Blacks' system were deemed too high at that time by SJWW. There for years matters rested.

SJWW for the past 113 years has been providing public utility water service to large portions of Santa Clara County. At present it serves a population of 635,000 people through 175,000 domestic and industrial services over approximately 130 square miles of the county. It serves in San Jose, Los Gatos, Monte Sereno, Saratoga, Campbell, Cupertino, and Santa Clara, as well as in adjacent unincorporated portions of the county. The central portion of its service area is a relatively flat plain which on the southwest and northeast slopes upwards into the adjacent foothills. Three-quarters of its water is obtained from wells with the remainder either purchased from the Santa Clara Valley Water District (Water District), or obtained from diversion and storage of runoff from the watersheds of the Los Gatos, Saratoga, and Almaden Creeks.

Following the death of Bernard Black, the Blacks' water system, part of his assets, on March 25, 1952 had been distributed by the Superior Court, and had come to be owned and operated by David Black, Celia Black, Estelle Mosk, Abby Gittlesohn, Cecily Perazzi, David Black, and Phillip Black. It was then known as Black's Almaden Water System. In 1957 SJWW determined to acquire the system, and citing its familiarity "with the territory and needs of the present and prospective customers", joined with the owners of Black's system in making application to this Commission for a transfer. The sale price from Black's heirs was \$15,000, and by Decision No. 54712 dated March 26, 1957 in Application No. 38782 the transfer was authorized and SJWW took over the system, thereafter merging it into its own.

About a third of a mile west of Almaden Village, an unimproved one-lane dirt side roadway branches out of Alamitos Road, and proceeds southeastwardly up a draw in precipitous hillside terrain south of the Almaden Canyon defile. Several hundred feet in, it quickly becomes impassable as a result of deep cuts, chuckholes, and washouts, to other than 4-wheel drive vehicles. This dirt roadway is called Alram Road. It rises about 400 feet above Alamitos Road to the 800-900-foot elevation level, and then follows a generally northeast-erly direction for less than a mile along a contour route roughly parallel to both Alamitos and Bertram Roads before descending, switch-back fashion, down to Almaden Village where it emerges into Bertram Road. In effect, Alram Road makes a big loop, a sort of rough parallelogram with Alamitos and Bertram Roads. At present there are eleven homes located off Alram Road; four are clustered at the western entry from Alamitos Road, and another seven are generally clustered along the eastern side up from Bertram Road. (See map, Appendix B.)

On the north side of Alamitos Road, just west of the Alram Road entry, there are three homes. These occupy what were lots 64 to 80 in the old Almaden Manor Block B subdivision. West to east, respectively, they are inhabited by Frank Fuller, Roy Lush, and William Poelle. When the Blacks operated the water system, a 6-inch water main went down the canyon parallel to Alamitos Road from near Almaden Reservoir spillway to the western side of Almaden Village. There it divided into two parallel mains extending through and serving the village; one a 4-inch main down Almaden Road, and the other a 2-inch main extending down Bertram Road. These three homes (Fuller, Lush, and Poelle) received service from this 6-inch main along Alamitos Road. In 1967, after SJWW had taken over the Black system it replaced the 6-inch main with an 8-inch main in Alamitos Road. At the same time SJWW also installed two fire hydrants on Alamitos Road; one on lot 69 of the old Almaden Manor Block B subdivision (now the Lush home), just west of the Alram Road turnoff from Alamitos Road, and the second just west of the Almaden Bridge as Alamitos Road approaches the western side of Almaden Village. The 8-inch main in Alamitos Road carries water the full length of the canyon from two water storage tanks (with a combined capacity of 125,000 gallons) located just below the reservoir spillway on the upper Alamitos Road about 1,000 feet above where Alram Road branches off Alamitos Road. Today the Fuller, Lush, and Poelle homes continue to receive public utility water service from SJWW's 8-inch Alamitos Road water main.

In recent years interest has developed in locating homes up along the beautiful hillside acres above Alamitos and Bertram Roads, with particular interest along the two ends of Alram Road (the Appendix B map shows where this interest lies). While some of the individuals who earlier built high up on this hillside, such as the Farrets ✓

(parcel No. 7) and the Greens (parcel No. 9), were able to develop springs or wells to provide individual water systems, the more recent home builders and would-be home builders have learned that local high mercury content makes this unfeasible for them. Accordingly they have turned to SJWW for water, and until recently SJWW has not been unreceptive.

Along the eastern slopes John Reader (parcel No. 6) allegedly obtained temporary service from SJWW in 1972, making it permanent in 1979 after his home was built. He draws his water from his meter on SJWW's 2-inch Bertram Road main in the village down below and pumps it up the steep hillside to his homesite. In similar fashion Don Ball (parcel No. 8) reportedly also received service in 1978 from the same 2-inch Bertram Road main and pumps it up to his homesite. Ball reportedly has since expanded his service to include subdelivery to two other sites he owns on the same hillside. Both the Reader and Ball sites are near the 800-foot elevation.

On the western slopes above Alamitos, where Alram Road begins, John Marden (parcel No. 5) has four dwellings. Marden reportedly applied to SJWW in 1979 and was given a commitment letter providing that he could obtain service from a meter to be located on Bertram Road (although no connection has been made). Similarly, the Farrel Larsens (parcel No. 4) who plan four homesites on their substantial hillside acreage, were told by SJWW that they could take service from that same 2-inch Bertram Road main. Charles Meyer (parcel No. 2) was also told by SJWW that he could have service for his projected home. More recently, James Laster (parcel No. 3) plans three homes. Allegedly he purchased his acres with the understanding

that SJWW would furnish water. Jack Collie, with 35 acres, plans three homesites.^{1/} Reportedly these western Alram Road homes are to be in the \$350,000 range, and would involve multi-acre sites.

Recently it developed that the county tightened requirements for new building permits in the unincorporated areas. In this instance, when the Larsens applied for permits the Santa Clara County fire marshal's office determined that more than individually metered pumping systems to each building site would be required since such systems would not provide adequate reserve water storage for fire protection. The additional cost of individual water storage tanks on each site would serve to make the cost prohibitive. Therefore the fire marshal took the position that he wanted SJWW to extend water service to the hillside Alram Road area. Accordingly the Larsens, and the other complainants hereto, loosely organized as the Alram Property Association, approached SJWW for a main extension from SJWW's 8-inch Alamitos Road up Alram Road. SJWW advised them that there would be no feasible way to extend its service up Alram Road to serve the projected eleven homesites; that such a main extension would involve providing a standard 300-foot lift and storage tank facilities at an estimated cost of roughly \$450,000, or approximately \$45,000 per homesite!

^{1/} Collie, apart from his interests in parcel No. 1, is an investor with a group that owns another 100 acres further up in the hills above parcels Nos. 1, 3, and 7. Together with others, they represent 1,528 acres, and are eager to do an assessment tax district and run houses up on whatever minimum size lots they could. At this stage, however, this is merely a potential future development.

The complainants, unwilling to give up their plans and lose their investments,^{2/} thereupon decided to proceed, adopting a mutual water company approach as the only feasible means of attaining their objective. They employed Thad Binkley and Associates (recommended to them by the county authorities and by Messrs. Dunton and Spitz of SJWW as a very adequate choice) to design a mutual water system. Binkley's system provides for service through a 2-inch master meter from SJWW's 8-inch main on Alamitos Road at the junction point with Alram Road. This meter would pass water to a sump system (allegedly designed from SJWW's standards). From the sump a 125-gallon pumping system would pump water up a 6-inch main in Alram Road to a booster at the 700-foot elevation (provided with a backflow line and appropriate gate and pressure regulator) which in turn would lift the water to a 35,000-gallon reservoir at the 1,030-foot elevation. Fire hydrants would be provided at those locations designated by the fire marshal. The Binkley firm estimates this system would cost approximately \$125,000, or about \$12,000 per building site. As designed the system is interim,^{3/} but with a larger reservoir and larger pumping facilities, the 6-inch main is designed to be adequate for the entire hillside above Bertram Road.

^{2/} Complainants have substantial investments involved. Apart from their investments in the land (for example, Mrs. Larsen's June 1973 acquisition cost was \$70,000), they allegedly have incurred approximately \$45,000 in development costs, including those for civil engineering and archeological and aerial surveys.

^{3/} Complainants acknowledge that their proposed mutual system, as designed, is limited to a possible 30 services.

A later requirement by the county will be that the home builders must also upgrade Alram Road to a 20-foot paved road with shoulders. They plan an assessment district to improve and maintain the road, as the cost is estimated to be between \$150,000-200,000.

The fire marshal's office has indicated if it cannot have a SJWW main extension to serve the area, it would accept a mutual system so long as it provides fire protection and the source of water is SJWW. The complainants herein believe that the Binkley proposal would be reasonable under the circumstances and are prepared to meet it and also to arrange the road improvement. They submitted Binkley's plans to the fire marshal and on March 27, 1979 were advised that the concept meets the county's standard for a mutual water service.

After numerous but assertedly fruitless negotiations with Mr. Dunton of SJWW, on March 28, 1979 the complainants represented by Mr. Larsen sent SJWW a letter requesting service to the proposed mutual system from a 2-inch master meter to be located off the 8-inch water main on Alamitos Road at the junction with Alram Road. In response on April 6, 1979 SJWW informed the complainants that they are not within SJWW's service territory, relying upon a service territory map filed by SJWW as part of the 1957 acquisition application, either as to the area proposed to be served or as to the point of proposed connection. They were told that SJWW was refusing such service in order to prevent formation of "additional small systems on our perimeter" and "the inevitable problems which they create". However, SJWW does offer service under the terms and conditions of its Rule 15-Main Extensions.

This impasse reached, the complainants on August 20, 1979 filed this formal complaint with the Commission seeking an order from the Commission instructing SJWW to make available when the mutual is formed a 2-inch service meter at the junction of Alram and Alamitos Roads, said connection point assertedly being within SJWW's service boundary. On December 13, 1979 at San Francisco a duly noticed public

hearing was held before Administrative Law Judge John B. Weiss (ALJ). Following the hearing the record was held open for delivery by SJWW to the ALJ of certain information and documents. Upon receipt of these on January 3, 1980 by the ALJ the matter was submitted. At the hearing evidence was presented on behalf of the complainants by Sherry Larsen and Jack W. Collie, and on behalf of SJWW by its Vice President, L. F. Dunton. SJWW's position was that for years its policy had been to refuse service into the hills, but to furnish water to mutuals who might serve those areas. But the result had been installation of substandard systems which provided inadequate service and problems. Assertedly it therefore in 1970 adopted a policy of refusing to take on additional resale customers outside its service area, and pushed by the Commission to seek appropriate solutions to existing situations, it had purchased mutuals where the facilities would be brought up to SJWW standards before an acquisition. Since adoption of the policy allegedly no new mutuals have been connected. The company's position now is that (1) it would serve the Larsens' four sites through individual meters from Alamitos and Almaden Roads, (2) it is unwilling to sell for resale, and (3) it is willing to extend service to the Alram Road area pursuant to a standard main extension agreement. The complainants contend that SJWW's so-called policy is elastic, citing two instances where knowingly it is not followed: (1) the Jim Sims-Graystone Water Company (where since 1972 thirteen homes are served through a 2-inch master meter) and (2) the Hunters Hills (where since 1974 a number of homes are served through a 1-inch master meter). Complainants further assert that their proposed connection point at the intersection of Alram Road with Alamitos Road is within SJWW's service territory.

Discussion

Initially in the instant case, we are faced with the question whether or not the point of service, the proposed master meter location, at which the proposed mutual would take service, is within the service area of SJWW. The utility argues that it is not, while complainants insist that it is. It is settled law that if the point of service is not within the service area that SJWW and its facilities are dedicated to serve, there is no jurisdiction vested in this Commission to compel any service. The dedication concept is still valid in California public utility law (Cal. Community Television Assoc. v Gen. Tel. Co. (1970) 71 CPUC 123), and a public utility cannot be compelled to render service or use its facilities where it has not dedicated itself or its facilities (Cal. Water & Tel. Co. v PUC (1959) 51 C 2d 489). But while the decision whether or not to serve or extend to a new area is discretionary for a water utility, once it decides and does provide service to an area, or holds itself out, either expressly or impliedly, to serve the public or a portion of the public in that area, there has been the requisite dedication. Furthermore, a successor water utility has no right to unilaterally abandon or cease service instituted by a predecessor to all or part of a service area, irrespective of how desirable such a change might be (Southern Cal. Mountain Water Co. (1912) 1 CRC 520), and any attempt to have done so through the instrumentality of filing new tariff maps which delete that area or part of an area is a nullity. Once a public utility has undertaken rendition of public utility service, it cannot discontinue such service, or any part of it at will, but is under a duty to continue service until it has sought and obtained relief from that obligation by an order of the Commission (Western Canal v Railroad Commission (1932) 216 C 639, 647; cert. denied, 289 US 742 (1933)). In addition, a public utility seeking to be relieved of all or part of a service obligation has a burden of affirmatively showing to the Commission that discontinuance of that obligation would not be against the public interest.

In the situation before us, by Decision No. 42921 dated May 24, 1949 in Application No. 29873, the Commission granted public utility status to David and Bernard Black's Almaden water utility, after finding as a fact that public convenience and necessity required construction, operation, and maintenance of a public utility water system in the area "set forth on a map marked Exhibit B attached to the application but excluding therefrom the area facing Almaden Road north and east from the intersection of Bertram Way". That map clearly outlines the service area sought in green. That map shows almost 80 lots facing Alamitos Road on the western or upper end of Alamitos Road. Included among these 80 lots are those where the Fuller, Lush, and Poelle homes stand today, and lot No. 69 upon which SJWW installed its fire hydrant in 1967. These 80 lots are identified on that map as Almaden Manor Block B. Elsewhere in Decision No. 42921 the service territory is further described as "a strip of land 7,000 feet long in a canyon which averages between 800 and 1,000 feet wide, covering some 160 acres subdivided into lots facing Alamitos and Almaden Roads and Bertram Avenue". From these facts it is clearly evident that Black's service territory extended from the Almaden Reservoir spillway down the canyon to the eastern side of Almaden Village, embracing the lands to either side of Alamitos Road from the spillway through the village.

In 1957, in an ex parte proceeding SJWW purchased the Black's water system, in the process obtaining Commission approval of the transfer. While the map labeled "Service Area-Black's Almaden System" (a SJWW drawing) attached to Application No. 38782 as Exhibit A showed only a truncated portion of the Black's service area, there was no mention in the application itself of any proposed divestment of half of the actual recorded service territory, or that SJWW intended to

acquire only part of the system. Nonetheless, only the eastern half of the Black's service area, the Almaden Village area, was depicted on the map exhibit. All of the western half of the service territory, including all 80 lots of the Almaden Manor Block B subdivision, the three occupied homes (Fuller, Lush, and Poelle) served by the utility (and still served today), the 6-inch water main alongside Alamitos Road, and the 28,000-gallon water storage tank supplying the entire system were all deleted from the depicted system. Certainly SJWW's familiarity with the territory and needs of the present and prospective customers indicates knowledge of the facts as they plainly existed. But there was not one iota of an affirmative showing that dropping half of the service territory, if such was intended, would in any way be in the public interest. Acquisition of Black's water rights was the primary objective in the acquisition, but diversion of this water away from Black's service territory to other SJWW territory to the detriment of Black's area would not necessarily be in the public interest. Any future expansion of any consequence necessarily had to include those lots in Almaden Manor Section B along and facing Alamitos Road. The local area could not be fettered in favor of expansion elsewhere, at least not without full disclosure and discussion beforehand. That no one noted the difference in the service territory outlined on the map filed and the actual more extensive area on the map long since filed, when the transfer proceeding was ex parte, does not serve to make the unmentioned, unexplained attempted paper divestment of over half the territory official and binding today. Dropping over 80 acres when it constitutes half the service territory and includes homes actually served is not a minor matter. It is well settled that a filed service area map is not a final and conclusive determination of the area a utility

is obligated to service (Woodworth v Cal. Water Serv. Co. (1956) 55 CPUC 285). SJWW obtained what Black's Almaden system had, no more and no less. Furthermore, it is obvious that even SJWW treated the upper half of the canyon defile as its service territory after the acquisition. It continued to serve the three homes in Almaden Manor Block B. And in 1967 it replaced the 6-inch cross-country main running the length of the defile with an 8-inch main relocated in Alamitos Road. It also added two fire hydrants in the area, one halfway up Alamitos Road in front of one of the three homes in Almaden Manor Block B subdivision and the second substantially more than 50 feet west of Almaden Road on Alamitos Road (outside of the village area depicted as the service area). Even were we to find the attempted 1957 divestment effective - and we do not - where a public utility water company has been and is presently rendering public utility water service outside its claimed service territory, the utility has dedicated its facilities to serve the outside area, and it may be ordered to supply water to property contiguous to such areas (San Jose Water Works (1972) 73 CPUC 358). Accordingly, as to the initial question posed by the instant proceeding, we conclude that the point of service, the proposed location of the 2-inch master meter at the junction of Alram and Alamitos Roads, is within SJWW's service territory.

The final issue raised by this complaint is whether complainants, if in fact they do organize and legally associate themselves into a mutual water company under the provisions of California's new Nonprofit Mutual Benefit Corporations Law (Sections 7110 et seq. Corporations Code) would be entitled to demand and receive water at the junction of Alram and Alamitos Roads from SJWW.

Here we start with recognition of the fact that while this Commission has jurisdiction over public utility water systems (Section 2701 of the Public Utilities Code), a mutual water company legally is not a public utility, and as such is specifically excluded from our jurisdiction under provisions of Section 2705 of the Public Utilities Code (Christensen & Harpold v Branger Mut. Water Co. (1965) 65 CPUC 26, 30). The unique status of a mutual water company was years ago succinctly set forth in Suburban Mut. Water Co. (1926) 27 CRC 823, 826-827, where the Commission stated:

"The legal recognition which has been extended to those corporations or associations organized solely for delivering water to their stockholders or members at cost, i.e., the true mutual companies, has been but the natural development of the recognized right that inheres in any individual to acquire water to be used on his own land. It was early recognized by the courts that with such a right existing in the individual there could be no objection in law to several individuals associating themselves together in corporate form to acquire water to be used on their own lands. (McFadden v Los Angeles, 74 C 571.) This principle was predicated upon the theory that, the water itself being owned by several individuals, the corporation formed by them became simply their agent for the purpose of more conveniently diverting and distributing the water among themselves. And since they were the only contributors to the corporate funds, the only owners of the property, and the only persons to receive the benefits and share the burdens of the system, they were deemed to be the logical judges of the management and control of the company and the only proper persons to determine the rates they should pay to maintain and operate the system. It is upon this theory that the courts and the legislature have declared, in effect, that, the general public having no interest in the rates or service of such an organization, the ordinary regulatory bodies possess no jurisdiction over them."

From the above it is clear that this Commission has no jurisdiction over the design and capabilities, or lack of them, of a prospective mutual system. Those matters are for the local authorities, such as the fire marshal, to determine. Here the fire marshal will accept Binkley's design. We are only concerned with the prospective mutual company as a would-be customer to a public utility under our regulation, and the law in this regard is clear. A public water utility has an obligation to maintain and extend an adequate water service to all users in its service territory (Citizens Util. Co. v Superior Court (1963) 59 C 2d 805). It cannot discriminate between customers (see Public Utilities Code Section 453). In addressing the posture held by a mutual vis-a-vis the public utility serving it, the Supreme Court of California stated:

"The fact that it is a mutual water company supplying the water it obtains to its stockholders to be used on their lands does not make it any the less a consumer with the rights and subject to the obligations of the other customers. It occupies the same position precisely as does a single individual taking water from the utility for the irrigation of his lands, and the fact that it represents a combination of several persons is immaterial here. It is one of 'the public' that is being served by the public utility." (Limoneira Co. v Railroad Commission (1917) 174 C 232, 237.)

We note SJWW's protestations that pressure problems might arise if the proposed mutual is allowed the requested 2-inch service connection to SJWW's 8-inch Alamitos Road main at the Alram Road junction.^{4/} But we also observe that SJWW was perfectly willing to

^{4/} However, it must be noted that there would be a sump between SJWW's pressurized system and the Alram Mutual System (an air gap), so that SJWW's 40 pounds of pressure would not be needed in order to supply the Alram sump at either the Alamitos Road or the Bertram Road locations.

allow individual connections for Marden and Meyer, and four individual connections for Larsen, from the 2-inch main on Bertram Road near Almaden Way. Yet that 2-inch main basically is served from the same 8-inch Alamitos Road main.^{5/} The 8-inch main in turn normally draws its water from the 125,000-gallon water storage tanks at the reservoir spillway a short distance up Alamitos Road. The elevations at the Alram Road connection point and at the Bertram Road-Almaden Road connection point are not substantially different. We also find it difficult to accept that SJWW would knowingly place two new fire hydrants on Alamitos Road, one in front of the three homes located there and at the Alram Road junction, were there is not sufficient pressure to adequately serve them. We are not impressed with these protestations and are more inclined to credit the testimony of Mr. Dunton, SJWW's vice president, on this subject, when on cross-examination he stated:

"Well, I -- I think this problem of pressure is really maybe blown out of proportion."

Accordingly we conclude that should complainants form a mutual water company based upon their Almaden Canyon properties, such mutual water company would be entitled to receive, and upon demand and application SJWW must furnish service, at the junction of Alram and Alamitos Roads.^{6/}

^{5/} And the 2-inch Bertram Road main is a legacy from the Black era. Even then it was somewhat occluded and as early as 1950 replacement had been recommended (see Application No. 29873).

^{6/} This would mean the addition of another mutual water company to the 38 others that SJWW has as customers today.

Findings of Fact

1. From about 1902 until 1949, private water systems furnished and distributed free water to the environs of the Almaden Canyon, including the village of Almaden.

2. Over the past 113 years SJWW has been providing public utility water service to increasingly large portions of the Santa Clara Valley.

3. By Decision No. 42921 dated May 24, 1949 in Application No. 29873, David and Bertram Black received authorization from this Commission to provide public utility water service in the Almaden Canyon in a service area described as being of approximately 160 acres, extending in a strip 7,000 feet long and averaging between 800 and 1,000 feet wide. This service area was further depicted graphically by means of a map attached to the application and referenced in the decision. That map displayed the service area as extending down the canyon defile from the Almaden Reservoir spillway to the eastern side of Almaden Village, embracing most of the lots in three subdivisions known as Almaden Manor, Blocks A and B, and Lake Almaden Properties, Block C.

4. Today this 7,000-foot strip comprising the service area is roughly bisected lengthwise by an improved paved road known as Alamos Road west of Almaden Village, and as Almaden Road through and east of the village.

5. To secure Black's water rights, by Decision No. 54712 dated March 26, 1957 in Application No. 38782, in an ex parte proceeding, SJWW for \$15,000 purchased Black's water system, and thereafter merged it into its own system.

6. Although Application No. 38782 contained no mention of any proposed change in the service territory which was being acquired from the Blacks by SJWW, a map attached to that application and indirectly referenced in Decision No. 54712, inexplicably depicted the service territory resulting from the acquisition as including only the eastern half of the actual service territory making up the Black system.

7. The western half of Black's service territory, omitted from the map attached to Application No. 38782, contained the utility's water storage facilities, its major water main in or near Alamitos Road serving all the service territory, and at least three customers receiving service in that subdivision known as Almaden Manor Block B, as well as numerous unimproved lots in that subdivision.

8. Since acquisition of the Black system in 1957, SJWW has continued to serve the three homes in Almaden Manor Block B subdivision.

9. In 1967 SJWW replaced the 6-inch water main in or near Alamitos Road with an 8-inch water main in the road, and added two fire hydrants on Alamitos Road. All these facilities are in the western half of the service territory acquired from the Blacks.

10. In recent years SJWW has provided individual service connections off its 2-inch Bertram Road main in the village of Almaden to several homeowners, each of whom pumped the water obtained up the southern slopes of the canyon defile from Bertram Road to each multi-acre homesite located off Alram Road.

11. Alram Road is an unimproved dirt road, at present in a large part passable only to 4-wheel drive vehicles. Alram Road forms a loop, running along the 800-900-foot contour, south, east, and north from Alamitos Road on the west, back to Almaden Road (via Bertram Road) on the east.

12. In recent years SJWW also agreed to provide individual service connections off its 2-inch Bertram Road main in the village of Almaden (similar to those set forth in Finding No. 10) to other property owners, including some of the complainants hereto, who plan multi-acre homesites on the western half of Alram Road on the southern slopes of the canyon defile. Other property owners are interested in service to their properties on the same road.

13. Newly tightened county fire requirements now make it impossible for these later property owners to obtain building permits without installation of prohibitively expensive individual water storage facilities.

14. SJWW is willing to provide a main extension, under terms of its Rule 15-Main Extensions, up Alram Road to serve these individuals, but the \$450,000 estimated cost to serve eleven homes makes this unfeasible.

15. Accordingly complainants propose to form a mutual water company to serve western Alram Road. They have obtained engineering and plans from Thad Binkley and Associates for a water system which would draw its water from a 2-inch master meter connection to SJWW's 8-inch Alamitos Road main at the junction of Alram Road, pump it up to a reservoir at the thousand-foot elevation, and thence make distribution and provide fire protection.

16. The Santa Clara County fire marshal's office has approved the plans as an acceptable alternate to SJWW's main extension, and would designate fire hydrant locations.

17. As designed the mutual system has immediate capacity to accommodate approximately nineteen additional members, and is capable of further expansion by addition of heavier pumping and larger storage facilities.

18. SJWW declines to provide service from the proposed master meter location at the junction of Alamitos and Alram Roads, and declines service to a mutual water company customer.

19. The Alamitos-Alram Road junction location on the 8-inch main would be a superior location for a 2-inch master meter to serve the mutual than a location on Bertram Road's 2-inch main.

Conclusions of Law

1. In 1957 Black's Almaden Water System was obligated to provide public utility water service throughout a 160-acre, 7,000-foot long, 800-1,000-foot wide service area strip in the Almaden canyon.

2. In the absence of an affirmative showing to the Commission that discontinuance of a part of that obligation, or abandonment of a portion of that service area would not be against the public interest, any covert attempt to divest or abandon any part by the instrumentality of filing a truncated service area map in an ex parte transfer proceeding is a nullity.

3. By the transfer authorized in Decision No. 54712 dated March 26, 1957 in Application No. 38782, SJWW acquired no less than the full service territory and service obligations held before the transfer by Black's Almaden Water System.

4. Further, by continuing to serve the three homes in Almaden Manor Block B subdivision after acquisition of Black's Almaden Water System, and by installing fire hydrants on Alamitos Road in 1967, one in that subdivision, SJWW took steps which served to rededicate itself to serve all of Black's service territory, inasmuch as that territory reflected logical natural boundaries which avoided small unserved enclaves or peninsulas, and was not gerrymandered to exclude customers or potential customers.

5. SJWW's tariff service area map for the Almaden Canyon area must be refiled, with the effective date retroactive to the filing date of its Statement of Completion of Transfer, to reflect the entire service area transferred to SJWW from Black's Almaden Water System in 1957.

6. Portions of the Larsen, Meyer, Marden, and Collie properties extend into SJWW's service area, and they are entitled to water service on an equal basis with other properties presently served.

7. Should complainants legally form a mutual water company under provisions of California's Nonprofit Mutual Benefit Corporations Law, and in that capacity request service from SJWW at a meter connection location to be within SJWW's service area, including at the junction of Alram Road with Alamitos Road, as a mutual they would enjoy the same rights, privileges, and obligations as any other customer of SJWW.

8. Denial of service to a mutual so constituted would be discrimination in violation of the provisions of Section 453 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

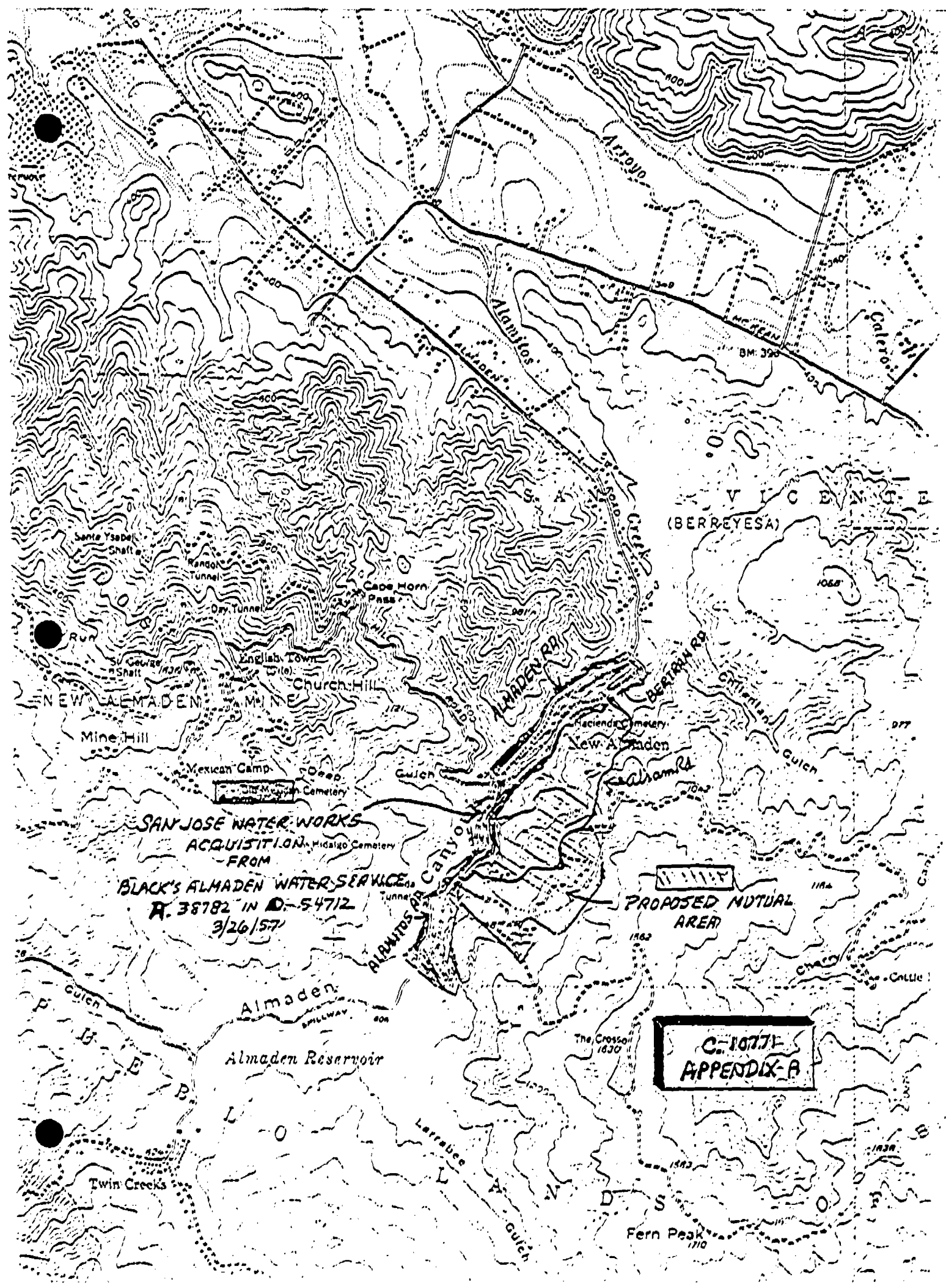
1. San Jose Water Works, within thirty days after the effective date of this order, shall file with this Commission a revised tariff service area map in accordance with the provisions prescribed by General Order No. 96-A. That map shall include all of the service area formerly authorized to and served by Black's Almaden Water System as set forth in Exhibit B to Application No. 29873, and the tariff map shall be backdated to May 31, 1957, the filing date of the Statement of Completion of Transfer of Black's Almaden Water System to San Jose Water Works, as filed in compliance with the provisions of Decision No. 54712 dated March 26, 1957 in Application No. 38782.

2. Should complainants Farrel Larsen, Sherry Larsen, Jack Collie, Rose Collie, James Laster, Mary Laster, Charles Meyer, Jane Meyer, Richard Price, and Pauline Price, form a mutual water company in compliance with the laws of this State, and present evidence thereof to San Jose Water Works, San Jose Water Works shall thereafter cease denial of water service to such mutual to serve the properties of the mutual's members.

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

Dated SEP 3 - 1980, at San Francisco, California.

John E. Byron
President
Thomas L. Sturgeon
Richard D. Havelle
Clair T. Daniels
James W. [unclear]
Commissioners



SAN JOSE WATER WORKS
ACQUISITION FROM
BLACK'S ALMADEN WATER SERVICE
A. 38782 IN D. 54712
3/26/57

PROPOSED MUTUAL
AREA

C-1077
APPENDIX-A

VICENTE
(BERREYESA)

Almaden Reservoir

Fern Peak
1710

Twin Creeks

The Cross
1830

Santa Ysabel
Shaft

English Town
(site)

Cape Horn
Pass

New Almaden
Cemetery

Mexican Camp

Old Mexican
Cemetery

Hidalgo Cemetery

Chico
Cattle

Chico
Guich

Almaden

Guich

Mine Hill

NEW ALMADEN

Church Hill

Reason
Tunnel

Dry Tunnel

Run

SAN JOSE WATER WORKS

ACQUISITION FROM

BLACK'S ALMADEN WATER SERVICE

A. 38782 IN D. 54712

3/26/57

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Church Hill

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SAN JOSE WATER WORKS

ACQUISITION FROM

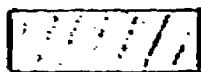
BLACK'S ALMADEN WATER SERVICE

A. 38782 IN D. 54712

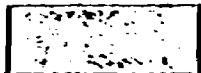
3/26/57

PROPOSED MUTUAL
AREA

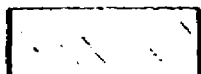
C-1077
APPENDIX-A



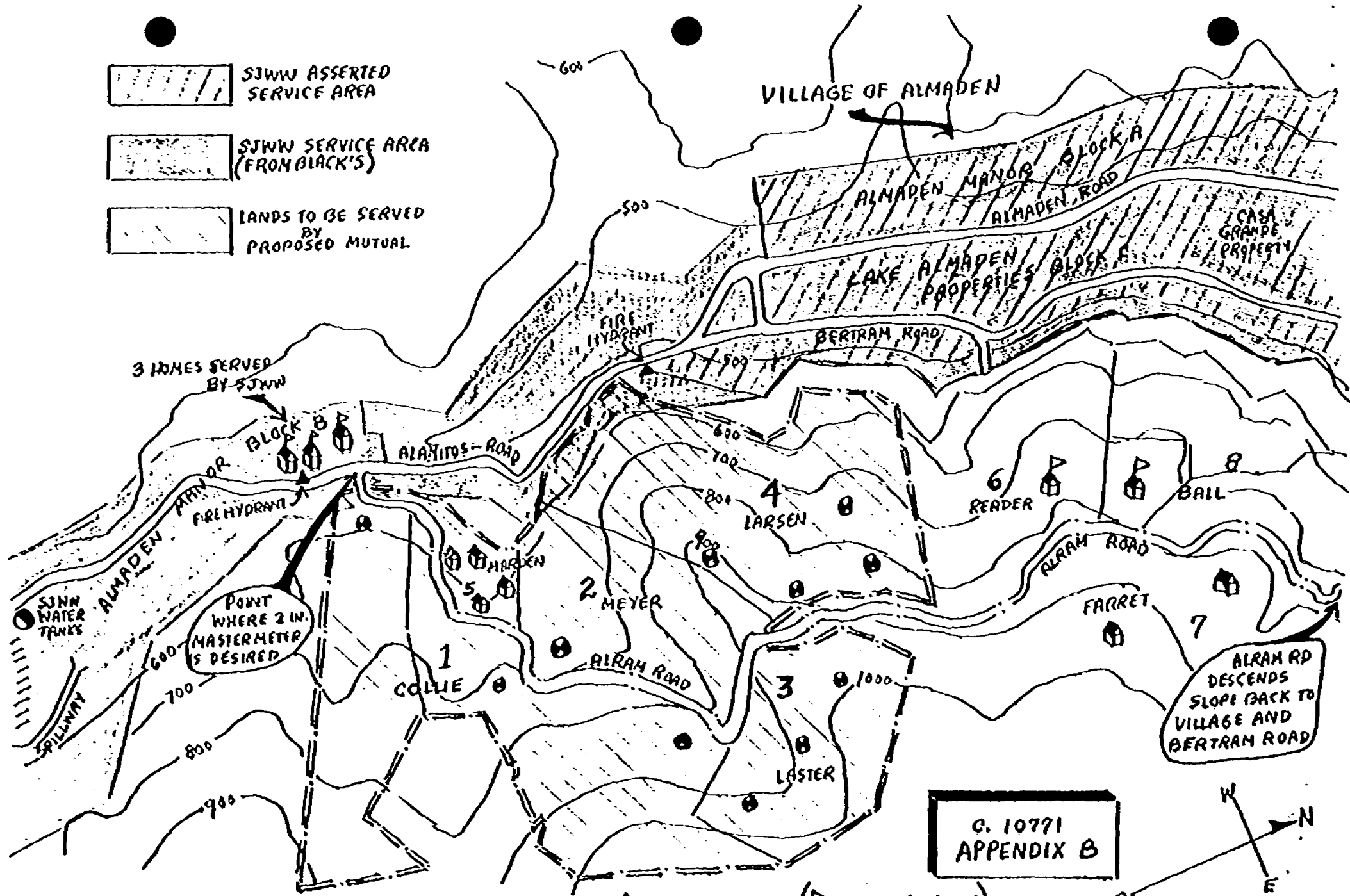
SJWW ASSERTED SERVICE AREA



SJWW SERVICE AREA (FROM BLACK'S)



LANDS TO BE SERVED BY PROPOSED MUTUAL



EXISTING HOMES (P SERVED BY SJWW)

HOMESITES IN MUTUAL'S AREA