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ORIGINAL

Decision No. 92370 November 4, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of F. M. SCOTT, III, and MARGARET F. SCOTT to receive water service from the CALIFORNIA-AMERICAN WATER COMPANY for their property in Rancho Los Laureles, Carmel Valley, Monterey County.

Application No. 59341
(Filed December 17, 1979)

Francis Marion Scott, III, for Margaret F. Scott and himself, applicant.
Dinkelspiel, Pelavin, Steefel & Levitt, by Lenard G. Weiss, Attorney at Law, for California-American Water Company, respondent.
Monterey Peninsula Water Management District, by Bruce Buel, interested party. ✓

O P I N I O N

Statement of Facts

High on a windswept, sun-drenched knoll substantially encircled by Cammito Road (also known as Caminito Road) above picturesque Carmel Valley, are four one-acre homesites. One, Parcel No. 3, bears a residential building typical of this very affluent area. The other three homesites (Parcels Nos. 1, 2, and 4) are owned by Mr. and Mrs. Francis Marion Scott, III, and according to the Planning Commission of Monterey County, are legal building sites. Commanding superb 360-degree panoramic vistas stretching all the way to the Pacific Ocean 13 miles down the Carmel Valley to the west, the four sites constitute the knoll. Originally part of Parcel 4 of the old Los Laureles Rancho subdivided by Byington Ford, a subdivider-broker previously associated with Del Monte Properties, the three sites were purchased in July 1961 by the Scotts from Doctor Charles M. Shaw through Porter Marquard Realty. Nancy M. Strathmeyer was the agent who handled the transaction at that time. Earlier, Dr. Shaw in April of 1961 had purchased the knoll from Byington Ford.

In developing the upper reaches of the Los Laureles Sub-division, Mr. Ford had put in substantial paved roads. Cammito Road was one of these. After circling two-thirds of the knoll here in issue, Cammito Road terminates in a circular turnaround cul-de-sac, at the northernmost point of the knoll, in a saddle between the knoll and the adjacent hillside above. When the area was developed, the California Water and Telephone Company, predecessor to our respondent, brought its water system up the hillside slopes to serve the subdivision areas, and installed a water storage tank on a tank site (Site No. 3) located adjacent to the lower westernmost corner of Scott's Parcel No. 2, at the foot of the knoll, just off Cammito Road.

At the time Byington Ford subdivided, his surveyor, Clayton Neill, provided for a pumping site easement and easements for underground utility purposes to serve the various knoll properties, including water from California Water and Telephone Company's water storage tank, it being contemplated at the time that that utility would supply water to all the knoll lots. These easements were written into the respective deeds from Ford. It was understood at the time that while water would be available from the utility to the knoll lots, it would not be under pressure and each parcel owner when he desired water service would, at his own expense, have to install and maintain a pump and pipe to bring the water from the water company's tank to his own residence.

There for years matters rested. On March 8, 1966 California Water and Telephone Company was acquired by California-American Water Company (Cal-Am) (See Decision No. 70418 in Application No. 48170). And on June 18, 1975 Cal-Am provided water service to Parcel No. 3 on the knoll.

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In March 1977 Mr. Scott wrote Cal-Am regarding what his situation as a member of LOWBLOW^{1/} would be should he seek water hookup to his Parcels Nos. 1, 2 or 4 on the knoll. Cal-Am on March 28, 1977 responded, stating that the parcels in question were located outside of the utility's service area and that accordingly water service would be denied. On the map accompanying the Cal-Am letter there was a shaded area purporting to show the "approximate service area boundary." It excluded the knoll. It appears to reflect the service boundary shown on CPUC Sheet No. 767-W on file with the Commission, a small scale map depicting the "Service Area and Pumping Lifts - Carmel Valley, date 3-7-61; Rev. 6-8-72," in very approximate terms. This latter filed map bears the following legend:

"Service in the Carmel Valley will be furnished under the Company's rules and regulations as on file with the Public Utilities Commission of the State of California to properties that can be served by gravity flows from existing facilities without the installation of additional booster pump or storage facilities. The service area boundaries as shown hereon for the Carmel Valley are approximate only."

Seeking assistance from the Hydraulic Branch of the Utilities Division staff of the Commission, Mr. Scott was told that Cal-Am had been ordered by Commission Decision No. 89195 dated August 8, 1978 in Case No. 9530 not to provide water service outside the utility's service area without prior Commission approval. In response Mr. Scott filed the instant application.

A duly noticed public hearing was held before Administrative Law Judge John B. Weiss in Monterey on April 2, 1980. Mr. Scott testified on his own behalf of the 1961 understanding regarding water

1/ LOWBLOW is an acronym for LOT OWNERS WITHOUT BENEFIT OF WATER, an association of property owners arising out of the Carmel Valley drought problems of the mid-1970 period.

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service for his properties, and presented corroborating evidence ✓ through his witness Nancy Strathmeyer, the real estate agent who had handled the sale of the property to him in 1961.^{2/} Cal-Am presented no witnesses, asserting that the knoll properties were outside of its service territory. However, Cal-Am's counsel did admit that there were several services in the area outside of the proposed service territory, including Parcel No. 3 on the knoll. Finally, the General Manager of the Monterey Peninsula Water Management District testified that while the District's Board seeks ultimately to become the reviewing body for individual applications ✓ for local service, the Board had here chosen not to support or to oppose the Scott application. At conclusion of the hearing the matter was submitted subject to receipt on April 25, 1980 of certain information from Cal-Am pertaining to extended service to specific properties outside the asserted service territory of the utility.

Discussion

The threshold issue is jurisdiction. The question is whether or not the lands involved in this proceeding are within or without the service area Cal-Am has dedicated itself and its facilities to serve. The dedication concept applies to California public utilities law. (Cal. Community T.V. Assn. v Gen. Tel. Co. (1970) 71 CPUC 123). If the lands are outside Cal-Am dedicated service area, we have no jurisdiction and cannot compel it to render service. (Cal. Water & Tel. Co. v PUC (1959) 51 C 2d 489.)

In the instant proceeding, however, the evidence strongly tends to show that Cal-Am's predecessor, California Water and Telephone Company, intended to serve all the properties in Parcel 4 of the Los Laureles Rancho Subdivision developed by Mr. Ford. The four knoll top parcels were the outermost and uppermost portions of that subdivision, being listed as Parcels 1, 2, 3, and 4 of Parcel 4,

^{2/} Mrs. Strathmeyer is a prominent local realtor, a member of the Carmel Board of Realtors, of the California Association of Realtors, the National Association of Realtors, and is listed in Who's Who in American Business, Who's Who in the West, and Who's Who in American Finance and Industry.

Rancho Los Laureles, Monterey County, in a survey done for Doctor Shaw and recorded in Volume 6, Map of Surveys, Page 109, Monterey County records. The parcels across Cammito Road below the knoll in good time have come to be served by the utility. The utility erected a large water storage tank at the foot of the knoll adjacent to Cammito Road and the base of Parcel No. 2 on the knoll. Cammito Road itself was put in by Ford as part of the subdivision. It is unlikely that Ford would have gone to the expense of extending a paved two-lane road around most of the knoll and constructing a turn-around had it not been very well understood that the four knoll sites served by the road were part of the subdivision and intended water recipients. There is no other feasible water service. Without water the four knoll sites would be worthless as prospective homesites. Yet they sold (three of them) for \$20,000 in 1961. And developers of Byington Ford's experience do not gratuitously extend expensive paved roads to serve worthless land. Furthermore, at the same time that the development was done easements were surveyed, written into deeds and recorded to establish pumping facility sites and piping easements from the utility's water tank to each of the four knoll homesites, it being also provided that the installation and maintenance of these facilities would be the responsibility of individual parcel owners. Thus the right of access to the water supply seems amply demonstrated.

It is now asserted that the knoll properties are outside of Cal-Am's service boundary. But the map filed by Cal-Am as its CPUC Sheet No. 767-W with this Commission, a map first prepared March 7, 1961 (the most recent edition being dated June 8, 1972), itself concedes that the service boundaries thereupon set forth are only "approximate." And the map returned to Mr. Scott by Cal-Am on March 28, 1977 when he was advised he would be denied service, also shows a line (drawn just across the base of the knoll adjacent to the utility's water tank) marked "Approximate Service Area Boundary."

The utility's ambivalent attitude regarding the boundary line in this area is also apparent (as Mr. Scott remarked at the hearing: ✓ "those boundaries must be like a rubber band."), for in June 1975 the utility extended service to a new home erected on one of the four knoll sites, Parcel No. 3, using the easements across Parcel No. 2 that run from the water tank. Thus the utility itself recognized its obligation to serve the knoll properties, or else it elected to voluntarily extend its boundary. (See map Appendix A.)

We cannot accept that Cal-Am, after its takeover of the predecessor utility, apparently subsequently attempted to limit its service area and exclude these knoll properties by filing revised maps with the Commission bearing a restrictive stamped legend purporting to limit service to "properties that can be served by gravity flows from existing facilities without the installation of additional booster pumps or storage facilities." This Commission has exclusive jurisdiction to make boundary determinations (Radisavljevic v Cal-Am Water Co., Decision No. 90262 dated May 8, 1979 in Applications Nos. 58345 and 58464), and in making such determinations it will be guided by the rule of reasonableness. To here exclude the three remaining knoll sites would be unnatural and unreasonable. A logical natural boundary would embrace the entire knoll. The evidence introduced by Mrs. Strathmeyer, the agent who in 1961 was thoroughly familiar with Byington Ford's efforts and the cooperative activities of California Water and Telephone Company as regards this subdivision, supports this conclusion. We could not accept a gerrymandered result which would exclude part of the knoll, particularly where, as here, such result would render worthless prime homesites crowning the entire subdivision area and served by a good road, all developed years ago in the understanding that water would be provided when needed. (See photo of knoll Parcel 3, Appendix B.)

Finally, even were we able to accept Cal-Am's asserted service boundary line as reasonable and valid, it is the rule that

when a public utility voluntarily determines to extend its service into an area outside its recognized or declared service area boundaries, the utility concurrently must accept an obligation to serve all customers in that area as it has then dedicated its service to said new area (Di Liberto v Park Water Co. (1956) 54 CPUC 639).

Here, by extending service in 1975 voluntarily to Parcel No. 3, a contiguous area outside of the utility's asserted service territory (but inextricably and inherently part of a land projection defined by logical and natural boundaries), Cal-Am accepted an obligation not to discriminate by denying service to Parcels 1, 2, and 4 on the knoll (See Section 453 of the Public Utilities Code.).

Findings of Fact

1. When Parcel No. 4 of Los Laureles Rancho Subdivision was developed on the slopes above Carmel Village by Byington Ford, a local well-reputed broker and developer, California Water and Telephone Company concurrently coextended its water utility service territory up the slopes to provide the new subdivision with water service.

2. Parcels 1, 2, 3, and 4 of the Los Laureles Rancho Subdivision, crowning a knoll near the top of the slopes, were within the natural and logical boundaries of the extended service territory of the utility, and were intended to be served by the water utility. Accordingly, easements were created and recorded to provide for delivery of water to those parcels from the utility's water storage tank at the foot of the knoll.

3. In 1961 the Scotts purchased Parcels 1, 2, and 4 on the knoll with the understanding and assurance that water service would be available upon application.

4. In 1966 California American Water Company succeeded to California Water and Telephone Company's interest in the water utility.

5. The service territory map filed by Cal-Am with this Commission applicable to this area refers to "approximate" service territory boundaries and is of a scale too large to make exact reference possible.

6. In 1975 Cal-Am voluntarily extended water service to Parcel No. 3 on the knoll.

7. In 1977, in response to an inquiry about service from Mr. Scott, Cal-Am advised that Scott's Parcels Nos. 1, 2, and 4, were outside Cal-Am's service territory and that service could not be provided.

Conclusions of Law

1. Parcels Nos. 1, 2, 3, and 4 on the knoll are part of the Parcel No. 4 Los Laureles Rancho Subdivision, and are all within Cal-Am's service territory.

2. Service should be provided to Parcels Nos. 1, 2, and 4 upon application.

O R D E R

IT IS ORDERED that:

1. California-American Water Company, within thirty days after the effective date of this order, shall file with this Commission a revised service area map indicating service area boundaries for the Cammito Road, Parcels Nos. 1, 2, 3, and 4 of Los Laureles Rancho Subdivision, area of its Monterey Peninsula District in conformance with this opinion and order.

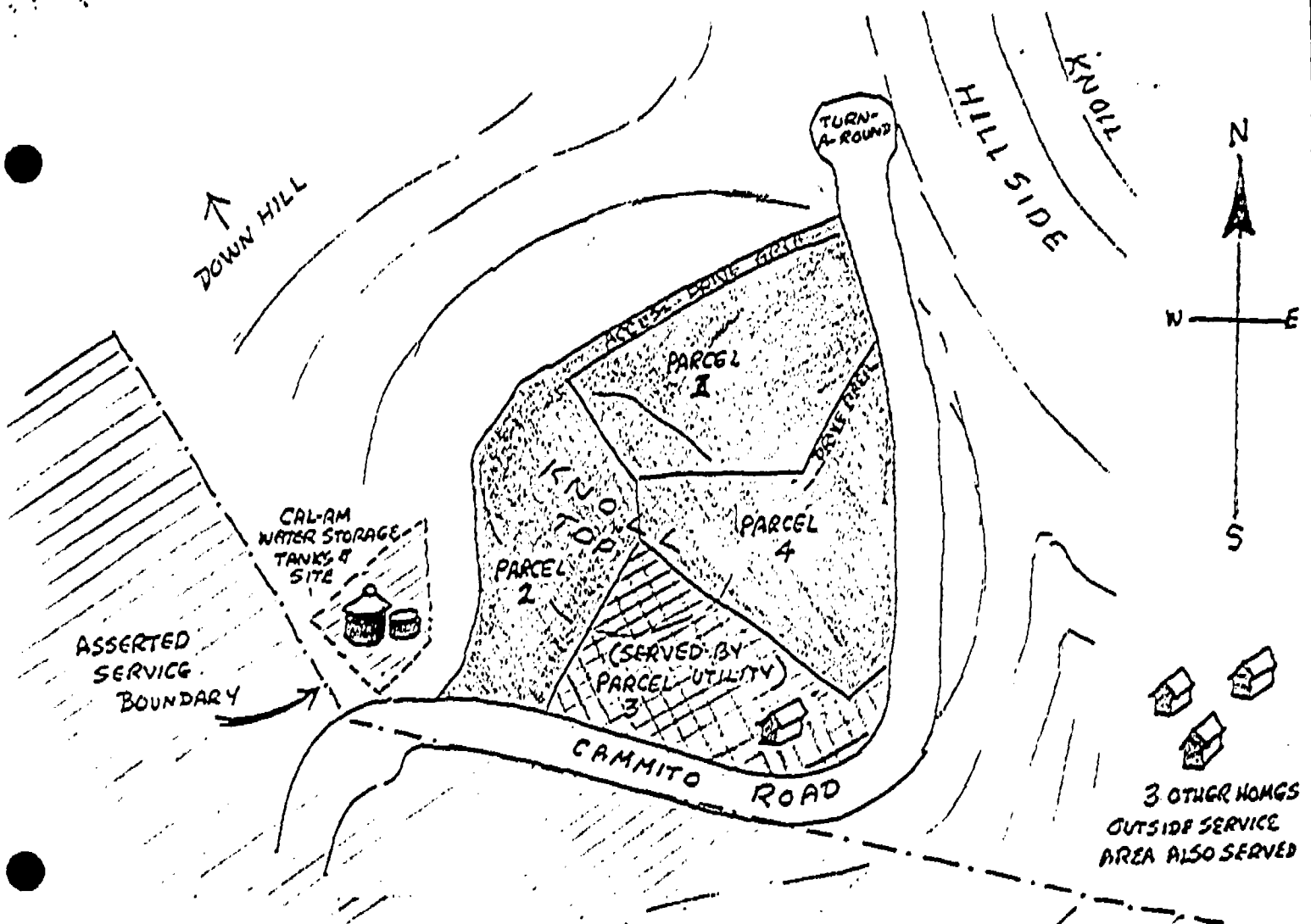
A.59341 ALJ/nb

2. California-American Water Company shall cease denial of water service to Parcels Nos. 1, 2, and 4 of Los Laureles Rancho subdivision, parcels presently owned by Mr. and Mrs. F. M. Scott, III.

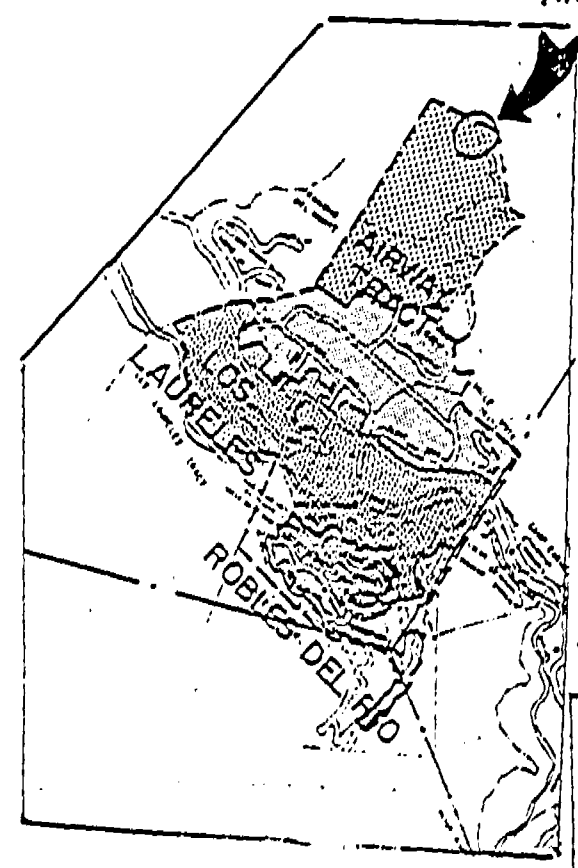
The effective date of this order shall be thirty days after the date hereof.


Dated NOV 4 1980, at San Francisco, California.

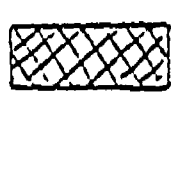
John E. Byrne
President
Herbert L. Stinson
Richard D. Howell
Alvin J. DeWitt
Lawrence J. ...
Commissioners



AREA IN ISSUE

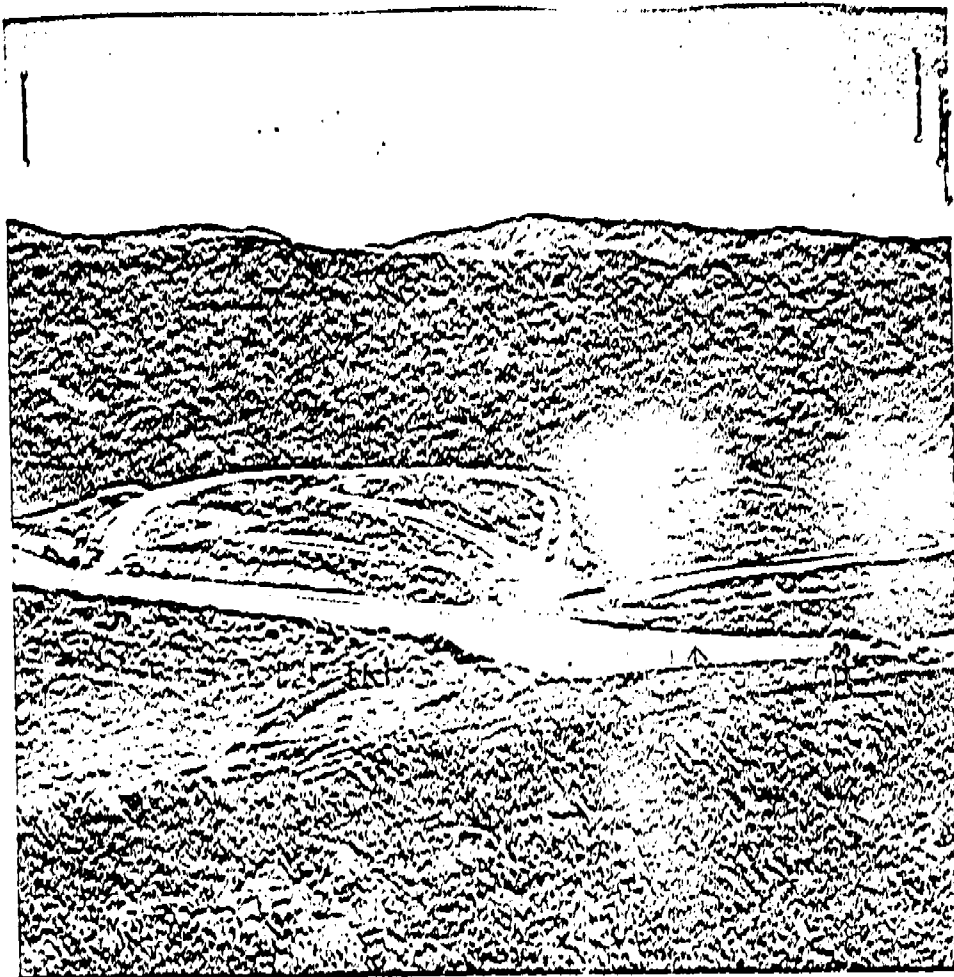


SCOTT'S 3 PARCELS 

4TH PARCEL SERVED BY UTILITY BUT OUTSIDE ASSERTED SERVICE AREA 

APPENDIX A
A. 59341

INSERT FROM
9-3-57
CAL WATER & TEL. CO
SERVICE AREA &
PUMPING & LIFTS
MAP



FROM HILLSIDE ABOVE
CAMMITO ROAD TURN-A-ROUND
VIEW OF
PARCEL NO. 1 (IN CENTER)
CARMEL VALLEY IN BACKGROUND

APPENDIX B
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