

ORIGINAL

Decision 93264 JUL 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of OAKLEY HALL and BARBARA HALL to)
obtain metered services from)
California-American Water Company,)
Monterey Division.)

Application 60140
(Filed December 12, 1980)

Susan Dauphine, Attorney at Law, for Mr. and Mrs.
Oakley Hall, applicants.
Staeffel, Levitt & Weiss, by Lenard G. Weiss,
Attorney at Law, for California-American
Water Company, respondent.
Bruce Buel, for Monterey Peninsula Water
Management District, interested party.

O P I N I O N

Statement of Facts

Just south of Point Lobos Reserve State Park near Carmel, scenic State Highway 1, en route to Big Sur, passes through a handsome residential area known as Carmel Highlands. Penned in between the craggy escarpment of the Santa Lucia Range and the rugged, surf-swept seacoast, the Highlands afford beautifully wooded hillside sites for expensive summer and year-round homes, most of which provide magnificent vistas of the Pacific.

Midway between China Cove and Yankee Point in the Highlands, the turbulent waters of Wildcat Creek have curved a deep gorge extending back from the sea into the base of the escarpment. High on a hillside plateau on the southern side of this gorge, with a splendid view of China Cove and Point Lobos beyond, and hundreds of feet above the sea, Oakley and Barbara Hall (the Halls) for many years have owned 17.2 acres of undeveloped property. Earlier, in 1966, the Halls sold a 3.22-acre parcel adjoining to the west of their present 17.2 acres to Mr. and Mrs. K. Z. Sadeghi (the Sadeghis).

The Sadeghi property abuts on, and their driveway debouches onto, Peter Pan Road, a macadamized, county-maintained road which meanders downhill in turn to State Highway 1. Peter Pan Road ends in front of the Sadeghi property, although the roadway itself extends, in rough-graded, unimproved form, a short distance upward beyond the Sadeghi property before petering out after it enters upon the Hall property.

The public utility providing water service to the Highlands is California-American Water Company (Cal-Am). Its service territory of long standing in this area generally coincides with the extent of the Highlands. The utility has a main in Peter Pan Road terminating at (and serving) the Sadeghi property. All the Sadeghi property and a narrow strip of the Hall property extending along most of the common Sadeghi-Hall border are within Cal-Am's service territory. The balance of the Hall property, and the larger portion, lies outside of the Cal-Am service territory (see Appendix A map). At about the same or slightly higher contour level, situated off a spur of Upper Crest Road (which intersects with Peter Pan Road) and a short distance to the south, is a Cal-Am 100,000-gallon water storage tank (Tank No. 5).

The Halls now wish to either sell or develop their 17.2-acre land parcel. While under applicable Monterey County zoning ordinances the property could theoretically be subdivided into 17 single-family residential sites, in practical terms, considering the terrain, two sites are the most feasible. Years ago it was graded to establish two spacious residential sites and the Halls today propose to divide the property so that each of the two resulting parcels would include a portion within Cal-Am's existing service territory. Therefore, water service could be provided to each parcel without necessity of placing facilities outside of the utility's service area, although this would necessitate a service line extending from the existing main on Peter Pan Road over an easement on the Sadeghi property. To further

their objective, the Halls point out that their land is in a residential area and partially surrounded by other single-family dwellings. The highest, best, and only practical use of this property today would be for residential use, and there is a substantial shortage of housing on the Monterey Peninsula.

Accordingly, the Halls made application for Cal-Am service. Given the unusual straddling location of the Hall property, partially within, but mostly without, the Cal-Am service territory and considering (1) Ordering Paragraph 6 of Decision (D.) 89195 dated August 8, 1976 in Case (C.) 9530,^{1/} (2) Interim Municipal Allotments Resolution (No. 80-1) of the Monterey Peninsula Water Management District (District),^{2/} and (3) the rules and regulations contained in District's Ordinance No. 1,^{3/} Cal-Am hedged and requested clarification from this Commission prior to providing service.

A duly noticed public hearing was held in Monterey, California on February 11, 1981 before Administrative Law Judge (ALJ) John B. Weiss. In order to assure the fullest participation and to expedite a complete resolution of all issues involved, the ALJ had asked the District to participate in the hearing. Extending full cooperation, the District entered an appearance and its manager offered testimony and evidence as an interested party. Cal-Am's vice president-manager of its Monterey District provided testimony for the utility.

^{1/} Ordering Paragraph 6 of D.89195 reads:

"Cal-Am shall not extend water service beyond the boundaries of its present service area in the Monterey Peninsula District without prior Commission approval."

- ^{2/} The District set up an annual acre-feet interim allotment for each of the municipal member units and the unincorporated area of the county, based on a proration of 1975 water use and assuming a total water resource of 20,000 acre-feet.
- ^{3/} Inter alia, the rules and regulations include the application procedure adopted by the District for permits to obtain service connections.

Preliminary to the hearing, the ALJ conducted an informal prehearing conference to explore the possibility of reaching a basic understanding among the parties so that a stipulation might be reached which could serve as the basis for a decision.

During that preliminary conference the ALJ, after ascertaining the exact location of the property in issue on the utility's service area map, noted that the proposed points of connection for service to the 17.2-acre parcel unquestionably were within Cal-Am's existing service territory, and that under existing case law,^{4/} the Halls would be entitled to at least a single-service connection.

The District, concerned with protecting the rights of existing customers within Cal-Am's territory, advised that it had adopted a policy that, given the continued limited supply of water available in the area,^{5/} Cal-Am should not expand its service territory since to do so might deprive property already within the territory of future service. The District does not want "wholesale annexations" and is concerned that its component city or county "member units" not dedicate more of each's limited water

^{4/} A public utility water company is obligated by law to maintain and extend an adequate water service to all users in the district served by it (California Water & Tel. Co. v Public Utilities Commission (1959) 51 C.2d 478, 493), and it cannot make or grant any preference or advantage to anyone (PU Code § 453).

^{5/} Earlier cases before this Commission (beginning with C.9530), established the normal year acre-footage of water resources available in Cal-Am's Monterey District to be 20,000. In addition to that, there will be approximately 4,000 to 5,000 acre-feet made available upon completion of four new wells and augmentation to the Begonia Iron Removal Plant. Cal-Am's vice president testified that as of January 16, 1981 the company had secured the last of the necessary use permits and local permits necessary to proceed. Design work is being completed and it is anticipated that the project will be under construction by early summer with completion a year from then. The District, in determining the water resources available for its allocation, has included the 4,000 acre-feet expected from the four new wells, but has held in reserve 2,000 acre-feet, leaving a 20,000-acre-foot bank for allocation.

allotment than needed to develop its existing area. However, in the instant situation, the District had no qualms in accepting extension of service to the Hall property as a single entity since at least a portion of the 17.2-acre parcel appeared to be within the Cal-Am service territory. But the District was concerned that, if this 17.2-acre property were to be subdivided, it might be setting a precedent where service to be extended to the resulting parcels, a precedent which the District was not presently prepared to accept.

In its turn Cal-Am determined that, inasmuch as the proposed point of service was within its existing service territory, it would have no objection to granting residential service to no more than two residential sites, provided that the partitioning of the 17.2-acre property to two parcels were accomplished through the formal county subdivision process.

The District accepted this last condition with the further proviso that the main extension, or extensions, to the resulting two parcels would run entirely through the existing Cal-Am service territory (in effect necessitating an easement over the intervening Sadeghi property from the existing main in Peter Pan Road).

During the formal hearing which followed, the understandings reached during the informal prehearing conference were summarized for the record by the ALJ. Thereafter the parties presented background and corroborative evidence and then outlined a proposed stipulation which they had worked out to embody the understandings. The preliminary draft of the proposed stipulation was acceptable to the ALJ, and the parties were directed to prepare and file a formal stipulation at their pleasure following the hearing. The matter was submitted on March 27, 1981 upon receipt of the formal stipulation signed by all three parties.

The formal stipulation filed provides in essence that:

1. A portion of the Halls' property here at issue is within Cal-Am's service territory and would be entitled to one service connection under existing rules of both the Commission and the District;
2. The Halls are willing to limit subdivision and development to two single-family residential units with a water connection not to exceed $1\frac{1}{2}$ inch to each parcel;
3. Both Cal-Am and the District have no objection to two water services if, and only if:
 - a. The Halls obtain formal county approval of a minor subdivision so that each of the two resulting parcels lies partially within Cal-Am's present service area.
 - b. The Halls formally record a restrictive instrument limiting the Halls or anyone else to no more than two residential units.
 - c. All facilities installed by Cal-Am (such as mains, service lines, and meters) to serve the two resulting parcels must be inside Cal-Am's present service area.
 - d. The Halls obtain all governmental approvals needed to develop the properties.
4. All the restrictions apply equally to any successors in interest.
5. The parties agreed that the Commission should authorize two service connections subject to terms and conditions specified.

Discussion

In the instant proceeding, in association with the ALJ, the parties have essentially worked out their differences to arrive at a workable resolution. The details are set forth in their stipulation. While a stipulation is an agreement legally binding

upon the signatory parties and, unless contrary to law or policy, is also usually binding upon a court, the parties to a proceeding cannot by stipulation arrogate to themselves the jurisdiction given exclusively to the forum to finally resolve the issues (Los Angeles v Harper (1935) 8 CA 2d 552, 555). Similarly, here too it remains the responsibility of this Commission to determine if authorization of the proposed services would serve to extend water service beyond the boundaries of the presently existing Cal-Am service area, and therefore necessitate an exception to Ordering Paragraph 6 of D.89195.

However, in this instance the resolution of the issues by the parties as set forth in their stipulation does not require that we grant an exception. Their solution is entirely in accord with our resolution of the same fundamental question in earlier cases. In D.92369 dated November 4, 1980 in Application 59202 (Kane v Cal-Am) we found that such a service configuration would not require extension of the existing service territory; that the property was already contemplated as being within the existing service territory; and that it was therefore entitled to service on an equal basis with any other legally established parcel within the territory.^{6/} We reached a similar result in D.92185 dated September 3, 1980 in C.10771 (Larsen et al. v San Jose Water Works) wherein under the 6th Conclusion of Law we stated:

"Portions of the Larsen, Meyer, Marden, and Collie properties extend into SJWW's service

^{6/} In the Discussion part of the Opinion in Kane we stated:

"And in addition [the utility undertook an obligation that it] would serve contiguous properties when the dotted boundary line was on their side of the boundary road, even though the bulk of such a property was outside the boundary line, when such service could be effected by means of a meter installation placed on the property line which is also the boundary line, and service could be provided without the need of additional booster pumps or storage facilities."

area, and they are entitled to water service on an equal basis with other properties presently served."

It should be noted, however, that the above-referenced cases dealt with requests for water service to parcels of land which were already established as recorded sites for residential construction. Here we are dealing with a proposed minor subdivision of land which may or may not receive sanction from appropriate authorities. Furthermore, in this geographic area the allocation of water resources is a local responsibility, although to some respect we have a shared responsibility with the District. The exact parameters of this shared responsibility need not be ascertained in this limited proceeding in view of the results attained and memorialized in the stipulation.

The District, a local instrumentality created in 1978 by the Legislature (Statutes of 1977, Chapter 527, found at West's California Water Code, Appendix §§ 118-1 et seq.), was organized to give local control of the allocation of water in the Monterey Peninsula area. Each year the District determines how much water will be available and then allocates it to its member units, the cities and the unincorporated area of the county. The District also audits actual consumption to assure that no member unit exceeds its allocation. The policy of the District is to prevent further annexation where a member unit has dedicated more of its allotment than is available to support buildout on existing vacant lots in the unit's borders. Within this structure each member unit is delegated responsibility through use of its planning processes to determine where, when, and to what it will dedicate its allocation. In situations where a lot of record is adjacent to, or has a portion of its property inside the Cal-Am service territory, the District will support annexation, or connection of that

bifurcated lot, and will allocate one metered service^{7/}. Where that lot requires some discretionary approval from the member unit, the District will ask that such approval be obtained before service is provided.

In the instant situation the District asks that the Halls be required to obtain from the county a use permit to accomplish a minor subdivision of their 17.2 acres into two parcels, and that each resulting parcel be required to have a portion of its land within the Cal-Am service area. It further asks that the Halls be required to record a deed restricting development on the 17.2 acres to two residential units. The utility asks that the Commission direct it to provide two 1½-inch water service connections to the Halls' property, conditioned upon the Halls' meeting the foregoing District requirements (more fully set forth in the stipulation which is incorporated herein by reference), as well as any other requirements which might be imposed by the county, the Coastal Commission, or other governmental agency. The utility also asks that each of the above-referenced service connections be made within its existing service territory. The Halls having agreed to these conditions, and there being nothing contrary to our existing policy or case law, we will fashion our order authorizing Cal-Am to extend service to the two proposed parcels of the Halls, keeping in mind the terms of the stipulation.

^{7/} At this point in time the District does not support or seek a lifting of the restriction contained in Ordering Paragraph 6 of D.89195. Last year the Carmel Valley Master Plan was set aside by judicial process for lack of an Environmental Impact Report (EIR). Preparation of an EIR to support a plan is now in progress, and it is anticipated that late this year a Master Plan for the unincorporated areas will be enacted. At that time the District, in conjunction with Cal-Am, will approach this Commission to seek establishment of an informal process whereby the District would act as the review agency to accomplish local water allocation determinations and some annexations.

Findings of Fact

1. Cal-Am is the public utility certificated by this Commission to provide water service in the Carmel Highlands area of the Monterey Peninsula.

2. The Halls' 17.2-acre parcel of land located in the Carmel Highlands lies astride the utility's service border with part of the property within and part without Cal-Am's existing service territory.

3. The Halls desire to subdivide the 17.2-acre parcel into two parcels, intending to either sell or develop the resulting two parcels for residential use.

4. Under existing case law the Halls would be entitled to one service connection to their 17.2-acre parcel.

5. The District, a local governmental agency created by the Legislature, was organized to give local control of allocation of limited water resources in this geographic area.

6. The District has no objection to Cal-Am's providing two water services to the Halls' property, one to each of the resulting two parcels after subdivision, provided (1) the Halls first obtain a use permit to accomplish a minor subdivision of their 17.2-acre parcel to two parcels for residential use, and (2) record a deed restricting development on the 17.2 acres to two residential units.

7. Provided the Halls meet the conditions set forth in Finding 6, as well as the requirements which may be set forth by any other governmental agency involved, Cal-Am has no objection to being directed to provide a 1½-inch water service connection to each resulting parcel provided such connection is made on land within its existing service territory.

8. The Halls, the District, and Cal-Am have entered into a stipulation setting forth the foregoing and ask that it be the

foundation for an order by this Commission authorizing the requested two services to the Halls' property.

9. Nothing in the stipulation referred to in Finding 8 is contrary to existing Commission policy or case law.

Conclusion of Law

Cal-Am should be authorized to provide water service to each of the applicants' two building sites in the Carmel Highlands subject to the conditions outlined in the following order.

O R D E R

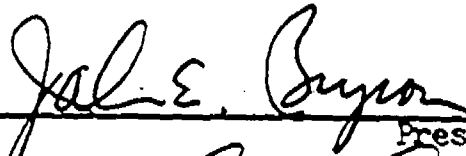
IT IS ORDERED that California-American Water Company, within 30 days after application for service is made, shall provide a water service connection not to exceed 1½-inch to serve a single-family residential unit to be located on each of two parcels resulting from a minor subdivision of the Carmel Highlands 17.2-acre property presently owned by Oakley and Barbara Hall (the Halls), provided:

- a. The Halls, or their successors in interest, have obtained from the County of Monterey appropriate minor subdivision approval to subdivide the entire 17.2 acres into two parcels, with each of the resulting parcels having a portion within the existing service area of California-American Water Company, and
- b. The Halls, or their successors in interest, obtain such other governmental approvals as may be necessary in order to develop the parcels, and
- c. The Halls, or their successors in interest, have recorded a deed containing restrictions limiting development on the entire 17.2 acres to not more than two residential units, and

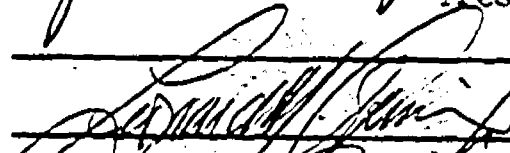
- d. Any main extension which might be required in order to serve the two residential units would have to be installed entirely within the existing service area of California American Water Company.

This order becomes effective 30 days from today.

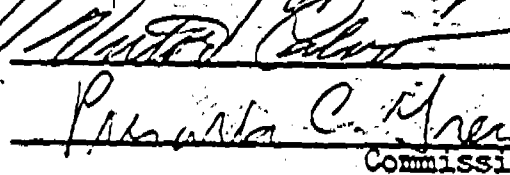
Dated BUL 7 1981 , at San Francisco, California.



President



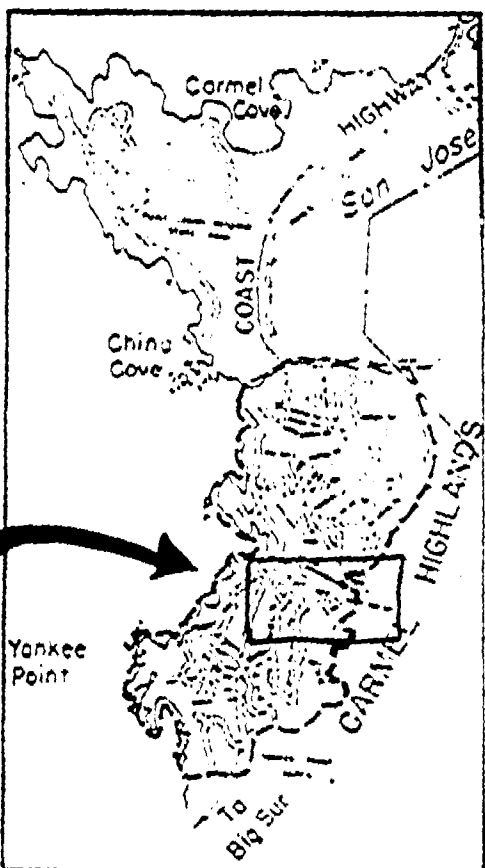
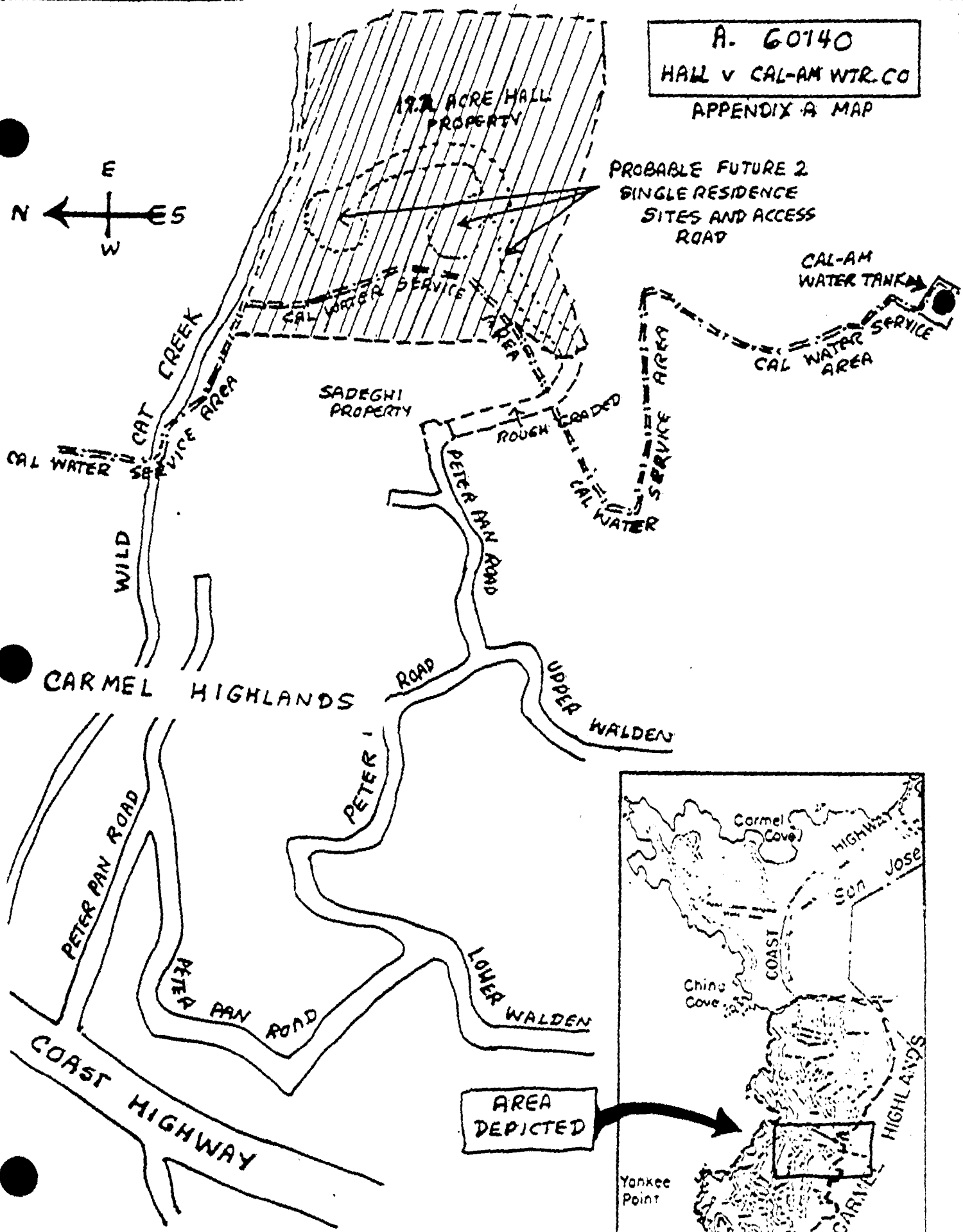
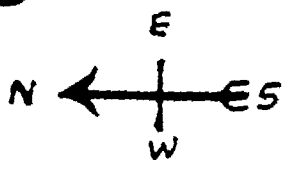
Commissioner



Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

A. 60140
HALL V CAL-AM WTR. CO
APPENDIX A MAP



AREA DEPICTED