

ORIGINAL

Decision 93537 SEP 15 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROY B. WINDLE and
ALICE M. WINDLE,

Complainants,

vs

MR. ROBERT STREBEL,
MR. MICHAEL RUFFOLO and
SEVERAL JOHN DOES,

Defendants.

Case 10159
(Filed August 13, 1976;
amended September 13, 1977)

Alice M. Windle, for herself and Roy B.
Windle, complainants.
Robert F. Strebel, for himself, defendant.
William R. Ray and H. P. Williams, for
themselves, interested parties.

O P I N I O N

Statement of Facts

The Ryan Water System (the System), the subject of this complaint, first came to the attention of the Commission in 1919. Located on the former Ryan Ranch property in the Santa Cruz mountains south of Los Gatos in Santa Clara County, midway between Summit Road and Holy City on the Old Santa Cruz Highway, it straddles the latter near its junction with Melody Lane.

The System is a rudimentary gravity-flow arrangement, drawing water from a canyon draw fed by three springs. An intake box at the 1,500-foot elevation just above the highway collects water which is then carried downhill about 920 feet to a 21,000-gallon storage reservoir (a former wine tank) at the 1,480-foot

level. A valve controls outflow through a 2-inch line further downhill some 800 feet to a 2,500-gallon tank at the 1,380-foot level. Thereafter it is transported through 800 feet of 2-inch pipe to a half dozen or so cabins in the Call-Of-The-Wild Subdivision (see Exhibit A).

In 1964 Mrs. Ryan sold the utility to Alexander J. Went and Robert F. Strebel. Subsequently, Went transferred his interest to Strebel. The utility has never filed a tariff with the Commission, nor has it filed for any rate relief over the years, although in the past it has charged the subdivision people for water.

During the 1960s problems arose over the unprotected source and the storage facilities. Purportedly the County Health Department later recommended continuous chlorination and other improvements. Subsequently, Strebel ceased any maintenance by reason of orders allegedly issued by the Department of Health and the Superior Court to the effect that he deliver no additional water unless he first met certain conditions. Because of the expense Strebel determined not to meet these conditions and thereafter in effect abandoned the System to its own operation.

Approximately in 1972, Michael Ruffolo purchased a segment of the former Ryan Ranch. Although Ruffolo had his own domestic water source, he later came to require a fire protection source. The larger upper level water storage tank of the System was sited on part of the land Ruffolo had purchased, and the System's pipes to and from this tank crossed his property. As time had gone on, overflow spillage from the tank, and water leaking from the corroded inlet and outlet pipes lying on top of the ground had been causing damage. Apparently with the tacit consent of Strebel, Ruffolo had installed underground by-pass pipes and, installing a new top, had appropriated the larger tank to store water for fire protection purposes. Ruffolo installed a hydrant connected

to the tank. Ruffolo subsequently sold all or part of his property to Robert Miller. Miller considers his land to be clear of any easements. Nonetheless, in response to pressure from the fire marshal, Miller from time to time had filled the lower tank by means of hoses.

In 1976 the Windles, long-time owners of one of the subdivision cabins, brought this action to have the pipes restored.

A prehearing conference was convened on January 7, 1977 in Los Gatos by Administrative Law Judge (ALJ) Jack E. Thompson. Strebel, complainants, and staff from our Hydraulic Branch participated. After review of the situation the participants determined it would be in their best interests were they able to arrive at a satisfactory resolution of the problems among themselves. Accordingly, the matter was not calendared further. Thereafter three other cabin owners of the Call-Of-The-Wild subdivision, Donald H. Christensen, Betty Normandin, and the H. Perry Williams family indicated their desire to participate. During meetings of the participants, Strebel indicated that while he wished to withdraw from operation of the utility his records were sketchy and included no apparent documentation of water rights.

In September 1977 the complainants amended their complaint to identify one Ralph Newcomb as a defendant, asserting that Newcomb had removed some of the water pipes connecting the two storage tanks. Newcomb, having purchased land north of Call-Of-The-Wild Road, between the road and the lower tank, had bulldozed the pipes out while building a house on his property. Without water inflow, the lower 2,500-gallon water storage tank rapidly deteriorated, and no longer exists. Newcomb has since sold the property to persons unknown to complainants.

In 1978 it was learned that Strebel had suffered a stroke, and for a period had lost ability to speak and read. Happily, he has since recovered. Thereafter, Strebel had divorced and moved from the Ryan Ranch property, abandoning among the papers he left behind the deed and meager records of the utility. When contacted by the staff attorney, Strebel advised that he had no funds to rehabilitate the utility, and that he had no intention of doing anything further about the utility.

During the interval to the present, complainants intermittently, but unsuccessfully, have been trying to interest certain of the longer term summer cabin owners to form an association to take over the moribund utility, perhaps to operate it as a mutual. Meanwhile, whenever they use the cabins they have had to bring in the water they need. At the same time, one Jaegger, a more recent subdivision owner, possessed of a number of parcels in the subdivision, has built three year-round homes for himself, his father, and a friend on Highland Way between Pine Ridge and Mineral Spring Way in the subdivision. In cooperation with two other subdivision residents, this group has installed a well, pump, and water storage tank of their own to meet their needs apart from the utility (see Exhibit B).

On July 20, 1981 a duly noticed public hearing was held in Los Gatos in the city council chambers before ALJ John B. Weiss. Apart from complainants and defendant Strebel, two other cabin owners from the subdivision participated as interested parties. At the conclusion of the hearing complainants submitted a written request to the ALJ to withdraw their complaint and to have the matter dismissed with prejudice.

Discussion

As the hearing progressed it became clear that without a substantial infusion of money to replace the removed pipes and lower tank, repair the inlet facilities, and provide chlorination equipment satisfactory to the Health Department, the utility cannot function. But today there are just too few customers to realistically anticipate being able to raise the funds needed. Most of the subdivision lots have no buildings. There is no immediate anticipation of a build-out. Most lots are held for investment. Today it would be less costly were the complainants and their neighbors to band together, as did the Jaeggens, and install their own well, pump, and storage tank. There is water available in the area and most of the homes along Call-Of-The-Wild Road have their own well, pump, and storage tank.^{1/}

As an appreciation of the current choices realistically available to them developed during the hearing, the complainants elected to make the obvious choice for this point in time, and asked that their complaint be withdrawn and the matter be dismissed. The two interested parties present and participating, when asked by the ALJ, concurred. Accordingly, complainants were asked to sign a written request to dismiss with prejudice, and did so. We will therefore dismiss the complaint.

We would be remiss, however, in consideration of our policy statement relative to certification of small water companies set forth in Commission Resolution M-4708 adopted August 28, 1980,

^{1/} Only in some of the areas lower down does sulphur present a problem. The upper level waters are good.

were we not to consider possible cancellation of the System's certificate of convenience and necessity, and declare the System abandoned. But while today it is evident that this subdivision, and the utility intended to serve it, were premature ventures, it is by no means evident that the utility cannot and will not in the not distant future possibly serve a most useful purpose. Latent as it is today, the utility nonetheless possesses very valuable water rights affirmed to it years ago by the courts, as well as easements which would be difficult, if not impossible to obtain today, much less tomorrow. All the System needs are rehabilitation and customers. Rehabilitation means an infusion of capital, and customers means more homes.

As is evident by driving down Call-Of-The-Wild Road, there are a surprising number of new homes, some very extensive, which were recently built, or are being built. In the subdivision itself there are new homes. Almost all are of the year-round class. Many people are electing to leave the crowded urban valley floor in favor of seeking a better and different life style up in the smog-free air of the ravines, plateaus, and knolls of the Santa Cruz mountains. This area east of Highway 17 along the old Santa Cruz Highway above Los Gatos for a century has been a summer vacation cabin area with a few year round ranches. It is rapidly changing. While the terrain is frequently rugged, there are substantial multi-acre open tracts of flat pastureland, meadows, and hillside orchards, all encompassed by the big evergreens of the coastal range. The commute is short into either San Jose, the lower peninsula, or Santa Cruz. This is an area whose time is arriving and the subdivision's open meadows make it a prime development area for tomorrow. It is merely a matter of a short while before a developer will enter. Funds would then be available to rehabilitate the System cheaply and customers will follow.

Without a water system the alternative is individual wells, pumps, and storage tanks. The proven century-old water source, and connecting easements, make us pause. Immediate revocation of the System's certificate and an abandonment decree mean the end of the easements and loss of the water source above. To put another system together would be not only very expensive but also problematic. Therefore, in this instance we believe it would be better to allow the utility shell, with its latent assets, to slumber on awhile longer. We can always break the egg, but it is hard to put it back into the shell once broken.

ORDER OF DISMISSAL

Upon written request of complainants,
IT IS ORDERED that Case 10159 is dismissed with
prejudice.

This order becomes effective 30 days from today.

Dated SEP 15 1981, at San Francisco,
California.

John E. Boyan
President
Richard W. ...
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...
...
Commissioners

C.10159

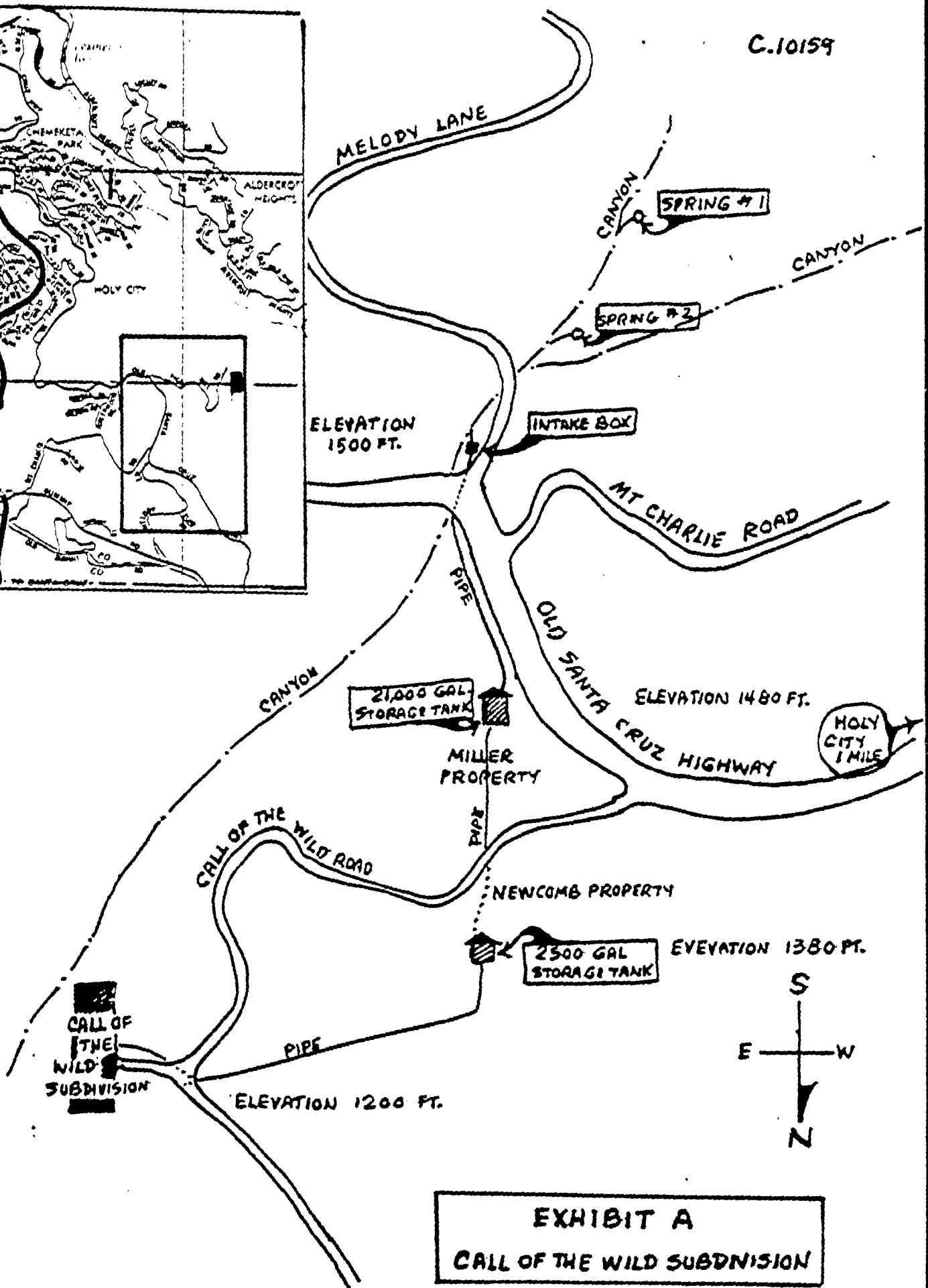
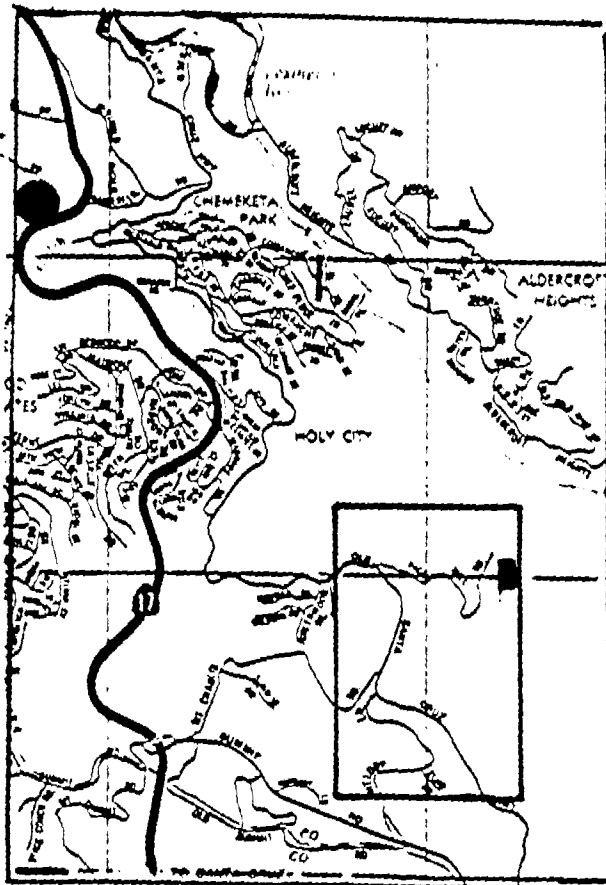
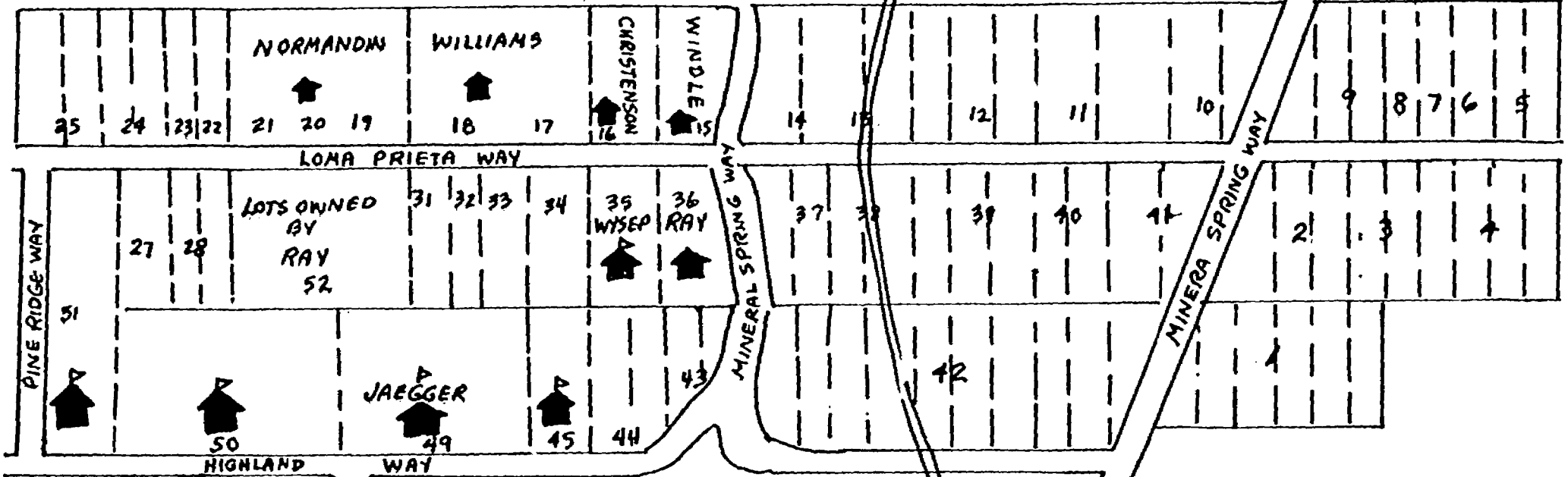
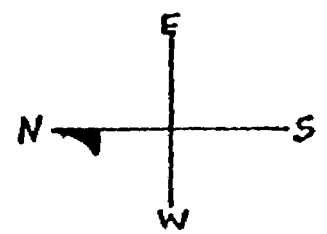
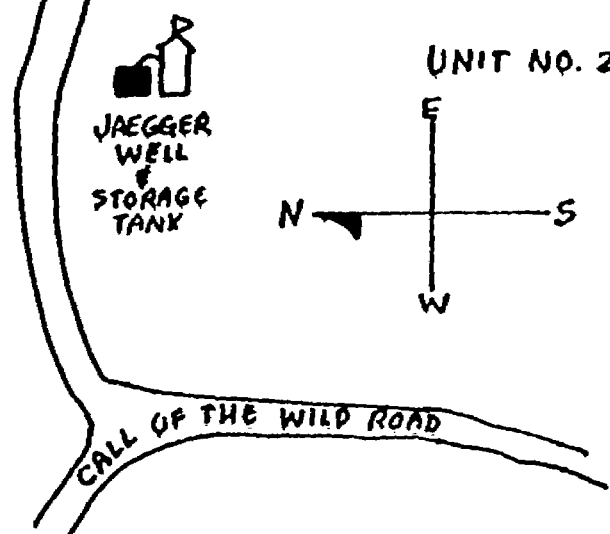


EXHIBIT A
CALL OF THE WILD SUBDIVISION

UNIT NO. 1 AREA



UNIT NO. 2 AREA



CALL OF THE WILD SUBDIVISION
UNIT NO. 1

LOTS WITH HOMES
 HOMES SERVED BY JAEGER WELL

LOTS AS OF 3/1/78

EXHIBIT B

C. 10159