

Decision 93673 NOV 3 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Bianca Gambi for)
 authority to (a) transfer the)
 partnership of Jeanne Gambi)
 (deceased) to Bianca Gambi,)
 (b) transfer the partnership)
 of Peter Gambi to Bianca Gambi,)
 (c) authority to increase the)
 water rates to a more equitable)
 amount. }

Application 60462
(Filed April 14, 1981)

O P I N I O N

Statement of Facts

Early this century one Guglielmo Gambi (Guglielmo) owned a substantial tract of land south of Willow Creek on the western bank of the Trinity River south of where it is fed by China Creek. Bisected by a road today known as U. S. Highway 299, the area, known as China Flats, was largely in orchards dedicated to the growth of peaches. Guglielmo held the water rights to the two springs which fed China Creek, and these waters were used to irrigate his orchards. In those days the springs produced a minimum of about 300,000 gallons per day. As the mid-century approached, the elder Gambi transferred much of his property in the China Flats area to his two sons, Mario and Peter.

In 1952, Mario, joined by his brother Peter, and Peter's wife Jeanne, subdivided a portion of the elder Gambi's lands to create a 22-lot subdivision known locally as the Gambi Subdivision. The subdivision lies east of Highway 299, between the road and the banks of the Trinity River. Today there are 16 residential buildings in the subdivision.

The nearest public utility water system was located approximately 35 miles away. In order to supply water to the new subdivision, as well as to a resort area, restaurant, and cabin area owned by the family^{1/} to the west of the road, Mario, Peter, and Jeanne formed a partnership to do business as Willow Creek Water Works (the utility), using as a water source the two springs feeding China Creek. It was arranged to draw this water from China Creek by means of a concrete diversion dam to the west on federal land in the Six Rivers National Forest, and to divert it down a 1,000-foot long wooden flume to a reinforced concrete storage reservoir on Gambi property. From the 43,000-gallon reservoir, the water flows by gravity through a series of 4-, 3-, and 2-inch distribution mains to the subdivision and resort areas. The transmission and distribution system involves approximately 4,100 feet of pipe.

By Decision (D.) 47193 dated May 27, 1952 in Application (A.) 33176, after public hearing at Gambi's Resort, the partnership of Mario, Peter, and Jeanne was granted a certificate of public convenience and necessity to operate a public utility water system to distribute and sell water within the area described. The rates authorized to be charged are set forth in Appendix A attached. They have not been changed since 1952.

1/ The restaurant later was owned by Peter Gambi while the 31-unit trailer park and 14-cabin resort were owned by Mario's wife. In addition, at time of dedication of the system to public service, all water in excess of that actually required by the subdivision was reserved by Mario, Peter, and Jeanne for their own uses, including irrigation of their orchards.

As time went on the family decided to realign their holdings, and accordingly, on November 8, 1960, as part of that adjustment, Peter and Jeanne sold their interest in the utility for \$10 to Mario and Mario's wife Bianca, while reserving for their business, home, and any future buildings they might develop, a water supply at a flat rate of \$2. The applicable period was not specified.^{2/} The bill of sale was notarized. However, this Commission was not advised of this transfer until receipt of the instant application. While he lived, Mario operated the utility.

On March 9, 1976 Mario died, survived by his widow, Bianca Gambi. The Judgment of Final Distribution of Mario's estate, on waiver of accounting under the will, was approved by the Superior Court of Humboldt County on May 17, 1977. While the utility was not named or listed in that distribution, the real property upon which the utility is located was included for distribution to the widow, Bianca, as Item 15,^{3/} and

2/ Peter and Bianca continue to use a portion of the excess water for irrigation of their orchards. Jeanne Gambi died in the early 1960's, and her estate devolved upon one Sue Albrecht (the final accounting and distribution of Jeanne's estate being approved by the Superior Court of Humboldt County on May 29, 1963). We are not informed if today Sue uses any of the excess water.

3/ The item was described as that real property vested in:

"Mario Gambi, an unmarried man by deed dated February 26, 1947, as to an undivided interest; and Mario Gambi and Bianca Gambi, husband and wife as joint tenants, by deed dated October 6, 1960 from Peter Gambi and Jeanne Gambi, husband and wife, recorded November 14, 1960 in Book 610 of Official Records, page 470, as Recorder's File No. 18394, as to the remaining undivided interest."

Excepted were portions previously conveyed to F. J. Bernardi (1926) and Arthur K. Tonkin and wife (1969).

a standard residuary clause named her as the distributee of any other property not specifically itemized. For a period following Mario's death, Peter managed the utility, but more recently Bianca has appointed Walter and Frances Janney, residents of the subdivision, as managers of the system.

In January 1978, following an inspection of the utility facilities by the Humboldt County Health Department, that agency, noting the lack of any treatment to the water delivered by the utility, listed 10 requirements that would have to be met before the utility would be in compliance with California and federal laws and regulations. These requirements included automatic continuous chlorination, filtration, repairs and screening of the storage area, and institution of regular bacteriological testing, record keeping, and reports. The utility estimates compliance would cost \$20,000.

By this application Bianca seeks an ex parte order of this Commission authorizing transfer of the utility operating authority to her as the sole owner.

In addition, she points out that the rates in effect for the water delivered by this utility have remained unchanged since 1952. Alleging that the owners of the utility have realized no return on their investment for many years; she asks that an equitable return be approved by authorizing an increase in the rates to the charges made by another system today operating

nearby, the Willow Creek Community Services District. Contrasting the current rates of the two adjacent systems,^{4/} she asks relief.

Since her husband's death in 1976, Bianca has sold substantial parcels of land adjacent to the utility's facilities, including a 1977 Grant Deed sale to Ralph Holland of the trailer camp and cabin properties west of Highway 299. However, she has carefully reserved nonexclusive water line and maintenance lane easements in these sales, and the flume and reservoir facilities of the utility remain in her exclusive possession. (See Appendix B Map of the area.)

Discussion

Before we address the requests being made by Bianca Gambi in this application, we must first settle the issues raised as a consequence of the purported transfer of the interests held by Peter and Jeanne to Mario and Bianca in 1960.

In 1952 the partnership authorized by this Commission to operate the utility was comprised of three individuals, Mario Gambi, his brother Peter Gambi, and Peter's wife Jeanne Gambi. The annual reports on file with this Commission dating

4/ Comparison of monthly charges:

<u>Willow Creek Community Service District</u>		<u>Willow Creek Water Works</u>	
Meter Charge	\$9.00	Meter Charge	\$2.25
<u>Quantity Charge</u>		<u>Quantity Charge</u>	
First 400 cu.ft. (per 100 cu.ft.)	9.00	First 1,000 cu.ft. (per 100 cu.ft.)	2.25
401 - 2,000 cu.ft.	.50	Next 2,000 cu.ft.	.15
2,001 - 10,000 cu.ft.	.40	Next 3,000 cu.ft.	.10
10,000 and over cu.ft.	.20	Next 6,000 cu.ft.	.075
		Over 12,000 cu.ft.	.05

back to the 1950's show that the listed assets of the utility were limited to items of operating property including a reservoir, distribution mains, and a few meters. The utility owned no real estate, and the operating property was located on land separately owned, but jointly held by the three partners. Until 1960 land sales in the subdivision had been few, and the utility had not prospered. In 1960, Peter and Jeanne Gambi, by a deed recorded November 14, 1960 in Book 610 of the Humboldt County Official Records, page 470, as Recorder's File No. 18394, deeded their undivided interest in the particular tract of land upon which the operating property was located to Mario and his wife Bianca. Concurrently, Peter and Jeanne also sold their interest in the utility for \$10 to Mario and Bianca. Thereafter, Mario separately held an undivided interest, and Mario and Bianca, as joint tenants, held the remaining undivided interest. But this transfer of the utility's operating property and authority was made without reference to, or approval of this Commission.

Then, as now, Public Utilities (PU) Code §§ 851 and 853, as relevant here, respectively provided:

Section 851: "No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its... line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, ...without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. . . ."

Section 853: ". . . The commission may from time to time...exempt any public utility from the provisions of Sections 851...if it finds that the application thereof with respect to such public utility...is not necessary in the public interest."

Annual reports on file with this Commission for the years immediately preceding 1960 show five subdivision customers, and sales to these customers requiring use of the above-listed operating properties. When coupled with the certification granted in 1952 by D.47193, this conclusively demonstrates that the operations constituted public utility water service. In the ordinary situation, any purported transfer of public utility operating property useful in the performance of the utility's duties to the public, and of its operating authority without prior authorization from the Commission, would be void under § 851. But under § 853, when the public interest so requires, the Commission has discretion to exempt a transfer which would otherwise be void under § 851.

In the instant situation it was in the public interest that the transfer be exempted. Intrafamily differences in 1960 made a division of their numerous jointly owned assets desirable. Commission records also show that Mario provided the day-to-day operational guidance, and was the individual most familiar with the facilities. Accordingly, the two brothers had determined upon a division of the assets and had agreed that Mario and his wife Bianca were jointly to have the utility.^{5/}

^{5/} The sale price of \$10 for the utility does not enter our consideration as the Commission does not usually concern itself with the price paid for operating rights, unless the price paid would weaken the ability of the purchaser to render adequate service to the general public (American Transit, Inc. (1970) 70 CPUC 576).

The public's interest was best served by having ownership subject to as few divergent interests as possible. In addition, it does not appear that any benefit to the utility's customers could flow from an exercise of the provisions of § 851. Consequently, we conclude that it would be in the public interest to exempt the 1960 transfer from the provisions of § 851 to the extent necessary to validate the transfer to Mario and Bianca of Peter and Jeanne's interest.

Finally, we turn to the requests directly raised by the instant application. First, there is the request for an ex parte order authorizing the transfer of Mario's several interests in the utility to Bianca to confirm her as solely in control of the utility. Here we are confronted with PU Code § 854 added by the Legislature in 1971, it reads:

"854. No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the commission. Any such acquisition or control without such prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this State shall aid or abet any violation of this section."

The meaning is perfectly clear. It was added to ensure that no acquisition or transfer can be effected without this Commission's first having opportunity to consider whether the acquisition or transfer would be consistent with and promote the public interest. But equally clear is the fact that its provisions cannot be applied literally to acquisitions through inheritance. A certificate of public convenience and necessity to operate a public utility is a right that has value. It has sufficient independent existence to be made the

subject of a bequest in case of death. But the estate of an heir vests in the heir at the time of the testator's death (Probate Code § 300). It would be impossible for the Commission to consider in advance the bequest clauses in each certificate holder's will setting up a potential bequest of an interest in a public utility, or predict the circumstances which might exist at the time of the testator's death. In an unusual situation, the beneficiary might, at the time of testator's death, hold other Commission authority or interest creating overlapping or conflicting authorities inimical to the public interest. Nonetheless, the rights of inheritance and testamentary disposition are statutory and subject to legislative control, and the Legislature, in exercising its plenary power, has adopted a scheme governing the descent of property in this State as set forth in the Probate Code. As we see it, absent evidence that any given devolution results in or creates a situation inconsistent with or adverse to the public interest, our role should be a ministerial one in passing to and affording the beneficiary substantially the same rights and privileges as were held by the predecessor. Should the successor's interest appear to the Commission inconsistent with or prove adverse to the public interest, this Commission always can, after notice and hearing, cancel, revoke, or suspend the inherited interest. Of course, it is always necessary that a beneficiary make application to this Commission to obtain authorization.

Here, the issue of Bianca's acquisition of sole control is now before us. As a consequence of the 1977

decree of distribution in connection with probate of Mario's will, Bianca has succeeded to all of her deceased husband's interests in the utility, and this, when added to her previously confirmed earlier interest, gives her the sole legal title to the utility. There is no indication that the transfer in any way would be inconsistent with or adverse to the public interest. She has since 1976 continued operation of the utility and proposes to continue the operation. She has a local customer manager. Given these circumstances, it appears that this is a matter in which a public hearing on the ministerial transfer is unnecessary.

Accordingly, that part of the application pertaining to the transfer of Mario's interest in the authority to operate to Bianca should be granted.

However, the application thereafter goes on further to request authorization for a general rate increase to the existing utility rates to bring them into parity with a set of rates alleged to be in effect in the service territory of the adjacent public water district. But however meritorious a rate increase might be, the application as submitted is in that regard fatally deficient. It contains no balance sheet or income statement. There is no estimate of the increase in gross revenues which would result were the requested rate increase to be granted. There is no current description of the utility's property or equipment. There is no statement of original cost or statement of the depreciation reserve which might be applicable. There is no operating ratio information in the application, nor is there a rate of return summary on the depreciated rate base for any test year period. There apparently has been no notice to the customers

and county of the proposed increase, nor has there been the requisite publication of the proposed increase in a newspaper of general circulation.

PU Code § 454 provides that no public utility may raise any rate except upon a showing before the Commission and a finding by the Commission that such increase is justified. Without the aforementioned information, we cannot make a determination. Therefore, until there is compliance with the provisions of our Rules of Practice and Procedure,^{6/} and a plan is submitted setting forth in detail the steps the utility proposes to take to meet the requirements of the Health Department, we cannot proceed with consideration of that portion of the instant application pertaining to rate relief. This latter portion of the application must be dismissed without prejudice.^{7/}

6/ Apart from the general requirements for all applications as stated in Rules 2 to 8 and 15 to 17 of our Rules of Practice and Procedure, Article 6 (Rules 23 and 24) Applications for Authority to Increase Rates, sets forth the requirements in detail. It is suggested that applicant contact the Hydraulic Branch of the Commission's Utilities Division for assistance in filing, either by advice letter or formal application for rate relief.

7/ There is some indication that applicant may be considering sale of the utility. Considering the probable costs which would be involved in meeting health requirements, applicant might be well-advised to explore some disposition of the utility to the adjacent water district as a solution.

Findings of Fact

1. By D.47193 dated May 27, 1952 in A.33176, the partnership of Mario, Peter, and Jeanne Gambi was authorized by this Commission to operate a public utility water system known as the Willow Creek Water Works in the Gambi Subdivision area south of Willow Creek in Humboldt County.

2. From 1952 to 1960 the Willow Creek Water Works provided public utility water service to the Gambi Subdivision residents, operating under the supervision of Mario.

3. In 1960 Peter and Jeanne sold their partnership interest in the Willow Creek Water Works to Mario and Mario's wife Bianca, but did not obtain authorization of the Commission prior to the purported transfer.

4. It was in the public interest to have Mario and Bianca in 1960 become the sole owners of the Willow Creek Water Works.

5. During the period after 1960, the Willow Creek Water Works delivered water for compensation to the public in the Gambi Subdivision and such service was not to stockholders or members of a mutual, nor was it surplus, or an accommodation service to neighbors.

6. In 1976, upon Mario's death, his interests in the Willow Creek Water Works devolved by operation of law upon his wife Bianca, leaving her the sole owner of the utility.

7. Since Mario's death, Bianca has continuously operated the utility, using the services of Peter Gambi, and more recently, those of a local customer, to provide day-to-day operational requirements.

8. From 1976 until the instant application, Bianca did not seek Commission authorization to transfer the interests of the deceased Mario to herself so as to leave her the authorized holder of the sole interest.

9. There appears to be no reason of public interest not to grant Commission authorization for a ministerial transfer of the interests of the deceased Mario to Bianca to accord with the probate distribution. The transfer serves to quiet the ownership and control in the distributee, who now holds the sole legal interest in the utility.

10. Insofar as the application seeks authority to increase rates, it utterly fails to comply with the Rules of Practice and Procedure.

Conclusions of Law

1. The purported transfer in 1960 by Peter and Jeanne Gambi of their interest in the Willow Creek Water Works to Mario and Bianca, unless exempted as provided for under PU Code § 853, would be void under § 851 of that code.

2. It would be in the public interest to exempt the 1960 transfer from the provisions of § 851 as provided for under § 853. Accordingly, the 1960 transfer should be exempted.

3. The water services provided for consideration after 1960 to the customers of Willow Creek Water Works in the Gambi Subdivision were public utility services which subject the utility to the continued jurisdiction, control, and regulation of this Commission.

4. A Commission authorization to own, operate, or control a public utility sufficiently partakes of the nature of a property right as to make it capable of being the subject of a bequest in case of death of the holder.

5. Absent evidence that any given devolution arising out of probate results in or creates a position or situation inconsistent with or adverse to the public interest, the

Commission's role should be a ministerial one of, upon proper application, passing to and affording a beneficiary substantially the same rights and privileges as were held by the predecessor holder.

6. In the absence of any indication that a transfer of the interests of the deceased Mario to his distributee, Bianca, would be inconsistent with or adverse to the public interest, the transfer requested in the instant application is a ministerial act and should be granted.

7. There is no need for a public hearing of the transfer issues which result in settling sole ownership and control of the Willow Creek Water Works in Bianca.

8. The request for a general rate increase should be dismissed without prejudice as being deficient.

Bianca Gambi is placed on notice that only the amount originally paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. The transfer of their interest in the Willow Creek Water Works in 1960 from Peter and Jeanne Gambi to Mario Gambi (Mario) and Bianca Gambi (Bianca), as discussed is exempted from the provisions of PU Code § 851 under the authority of § 853 because it is in the public interest and thus is not void.

2. Because it is not against the public interest, the operating authority interests formerly held by the deceased Mario in the Willow Creek Water Works are transferred to applicant Bianca, distributee of the deceased Mario, and present

part owner of the utility, under the probate distribution of Mario's estate, leaving Bianca as the sole holder of the certificate of public convenience and necessity which initially granted authority, in D.47193 on May 27, 1952, to operate a public utility system to distribute and sell water in and around the Gambi Subdivision in the vicinity of Willow Creek in Humboldt County.

3. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

4. Peter Gambi is relieved of his public utility obligations in connection with the utility system transferred.

5. The request for a general rate increase is dismissed without prejudice.

This order becomes effective 30 days from today.

Dated NOV 3 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I certify that this decision was approved by the above Commissioners today.
John E. Bryson
ss

APPENDIX A

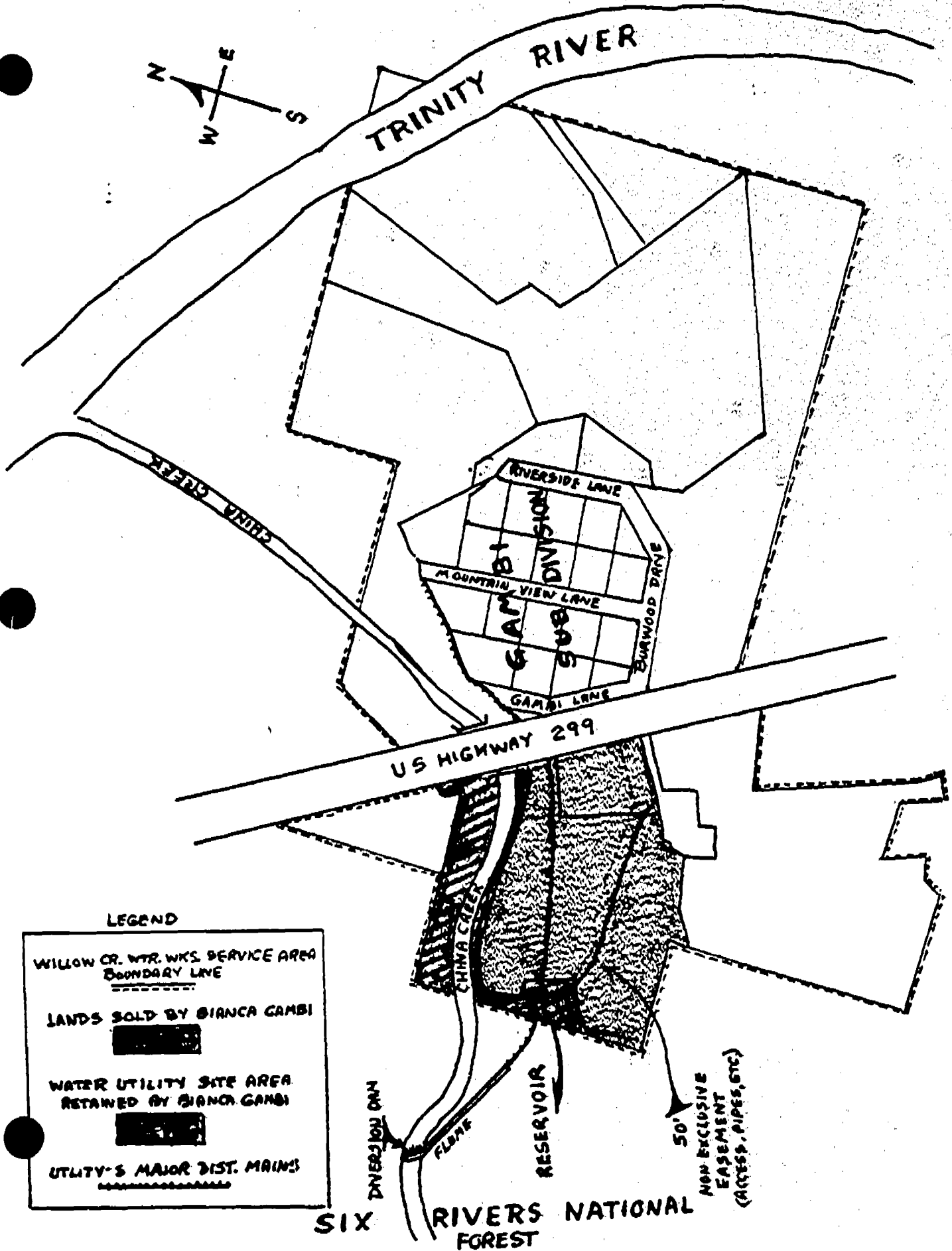
WILLOW CREEK WATER WORKS

METER RATES

Quantity Charge:	<u>Per Meter Per Month</u>
0 to 1,000 cu.ft.	\$2.25
Next 2,000 cu.ft., per 100 cu.ft.15
Next 3,000 cu.ft., per 100 cu.ft.10
Next 6,000 cu.ft., per 100 cu.ft.075
Next 12,000 cu.ft., per 100 cu.ft.05
 Minimum Charge:	
For 5/8 x 3/4-inch meter	\$2.25

FLAT RATES

	<u>Per Month</u>
One-family residence on single lot	\$2.50
Two families residing on single lot	4.50
Each additional family on a single lot	2.00
Each commercial establishment	3.00
Irrigated areas, per 1,000 sq.ft.30



LEGEND

- WILLOW CR. WTR. WKS. SERVICE AREA BOUNDARY LINE
- LANDS SOLD BY BIANCA GAMBI
- WATER UTILITY SITE AREA RETAINED BY BIANCA GAMBI
- UTILITY'S MAJOR DIST. MAINS

SIX RIVERS NATIONAL FOREST