

Decision No. 12680

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

JAMES MARWICK,

Complainant,

-VS-

LAGUNA BLANCA WATER COMPANY,

Defendant.

ORIGINAL

Case No. 1330.

In the matter of the applica-
tion of LAGUNA BLANCA WATER
COMPANY, a corporation, to
abandon public utility service

Application No. 7365.

Thompson & Robertson, for James Marwick.

Johnson & DeLigne, by Archibald M. Johnson; and
Devlin & Brookman, by Frank R. Devlin and
Douglas Brookman, for Laguna Blanca Water
Company.

Richards, Heaney & Price, by J. W. Heaney, for
protestants Arthur G. Orena, Julia W. Warfield
(formerly Julia W. Horne), and Mrs. A. A. Kimball.

John M. Curran, for protestants Benedict Kimber,
Sidney Kimber and Mrs. Vernon McCune.

James B. Rickard, for Calvary Cemetery Association;
protestant.

Miss Lucy Dennison, Trustee of the Public School
District, protesting on behalf of the School
District.

MARTIN, Commissioner:

O P I N I O N

The essential facts involved in Case No. 1330, above named, are stated in our original opinion in that case (Decision No. 9429, August 30, 1921; 20 C.R.C. 456). In brief, they are that defendant had refused water service upon certain lands of complainant which he declares are within the area to which defendant's water is dedicated. Defendant claimed as a reason for such refusal inadequacy of facilities, insufficiency of supply and abandonment of the service pipe to these premises by agreement with complainant's predecessor.

Public hearings were held, and in our said decision we held that complainant was entitled to the desired water service. In view of the deteriorated condition of defendant's pipes, however, defendant was not ordered to resume the gravity service formerly rendered, but was ordered to supply water at the foot of a steep slope below complainant's lands, and to provide complainant with necessary easements and rights of way to enable him

to pump the water up to his lands at his own expense. Defendant prayed for a rehearing on the ground that this order directed it to furnish complainant with property not owned by it, and rehearing was granted, but before it could be heard defendant filed Application No. 7365 above named, asking leave to abandon its public utility service, and declaring that the "Hope Ranch," to which its waters are primarily dedicated, had need for all its supply, that it is operating at a loss, and that all its consumers possess an alternative supply. Applicant states that it does not consider itself a public utility, but that since jurisdiction over it has been assumed by this Commission it does not feel justified in discontinuing service without requesting authority so to do.

Case No. 1330 on rehearing and Application No. 7365 were consolidated for hearing, and a public hearing was held before Commissioner Martin at Santa Barbara on May 9, 1922. The new evidence concerned chiefly the company's claims of inadequate supply; financial loss; availability of alternative sources, and consent to abandonment of public utility service by what it terms its "primary consumers." Written protests against the proposed abandonment were filed by the Calvary Cemetery Association, Maria A. Lane, Benedict Kimber, Sidney Kimber and Mrs. Vernon McCune. The company asserted that service to all consumers outside its "Hope Ranch" was of non-public utility character.

In view of the nature of the issues involved in these matters, and of the mass of testimony before us, it may be useful to trace somewhat carefully the history of this utility. A corporation called the Pacific Improvement Company owned a large amount of real estate in Santa Barbara County, including certain tracts known as the "Hope," "Barton" and "Ontare" ranches (usually referred to collectively as the "Hope Ranch") comprising more than 2000 acres together with land and water rights in the neighboring San Rafael (or Santa Ynez) mountains. On the "Hope Ranch" was located a natural lake known as the "Laguna Blanca," which constitutes a

valuable storage reservoir. In connection with the development of its lands and for the purpose of obtaining water for use thereon, the Pacific Improvement Company, about 1902, drove a tunnel some 3600 feet in length into the western slope of the San Rafael mountains at an elevation of approximately 1500 feet. This tunnel was sealed some distance from its mouth, and a valve installed, a pipe line being run therefrom some 5 miles to a reservoir on the Hope Ranch near the Laguna Blanca, the reservoir being at some 370 feet elevation.

As a part of a general scheme for the exploitation of its lands, the Pacific Improvement Company, in 1906, subdivided a large portion of the Hope Ranch into tracts of several acres each, with the intent of creating a high class residential park adjacent to the City of Santa Barbara.

Presumably for greater convenience of management, the Pacific Improvement Company, on August 21, 1906, conveyed to a newly formed corporation, the Laguna Blanca Water Company, defendant and applicant herein, a large amount of real property and water rights, including the said tunnel, pipe line, reservoir, and lake. The deed expressly reserved all the water that the Pacific Improvement Company, its successors or assigns, might need or demand for use upon the Hope Ranch, with right to take the same, and it was expressly provided that, as part of the consideration of the deed, such water should be delivered to the Pacific Improvement Company, its successors and assigns, free of charge. By the terms of the deed, the water reserved for the ranch property was made appurtenant to the land. But notwithstanding this fact, the deed further provided that any "grantee" to whom the Pacific Improvement Company conveyed all or part of the lands, could be required to pay for water service by the water company at such rates as might be agreed upon between the consumer and the company or established by the company, "or by proper authority." The owners

of said Hope Ranch, or the grantees of any portion thereof, are also given a prior right to such water, all to share pro rata in periods of water shortage.

In determining the public utility character of the Laguna Blanca Water Company, not only is the above mentioned provision regarding the possible fixing of the rates "by proper authority" important, but it should be noted that by this deed the Water Company took and accepted, as a part of the property so transferred to it, "All franchises and privileges granted by the Board of Supervisors * * * * for laying pipe lines in any road, avenue or street in said County of Santa Barbara."

The plan to create a residential suburb was a failure. Only five of the tracts in "Hope Ranch Park No. 1" were sold, and three of these were subsequently repurchased by the Pacific Improvement Company. One of the tracts sold and not repurchased, was granted to James McNulty, 2nd, predecessor of complainant Marwick, by deed dated January 24, 1913. This tract of approximately eight acres, included lots 66 and 67 and a portion of lot 69 of said "Hope Ranch Park No. 1," upon which McNulty erected a residence and made it his home. By special agreement, dated February 27, 1913, the Water Company undertook, so long as it should have sufficient water, and pro rata in times of shortage, to supply water to McNulty at a specified rate, "subject to any change that may be made therein by any action of the Board of Supervisors of Santa Barbara County, or other public officer or body having jurisdiction to regulate water rates in the said Santa Barbara County." - a further fact of particular significance in determining the public utility character of this water company.

For some time water was actually supplied to McNulty under this agreement, and as this property is at a higher elevation than the reservoir or lake, the method used was to close the valves at those points and back water up along the tunnel pipe line until it was forced by gravity into a tank erected by the Water Company on an

eminence adjoining the McNulty property. Later, McNulty and the company's representatives negotiated for a change in method, by which the company would deliver the water at the foot of the steep slope below McNulty's house, he to attend to pumping it up to his premises. These negotiations were never completed, for McNulty's house burned down and he left the property, later selling to one Rutherford, to whom the water company, at least once, delivered water by the above-mentioned gravity process. The company later refused to deliver water and, after negotiations for a sale by Rutherford to Marwick had begun, the company disconnected its pipe from the tank and took up several hundred feet of pipe which connected the tank to its general system. Later, after Marwick had purchased the property, while his claim for service was pending before this Commission, the company tore up the rest of the connecting pipe.

The record shows that the water company took on a number of consumers along its pipe line from the water tunnel all outside of the boundaries of the Hope Ranch. With most of these consumers written contracts were executed, each of which contains the following language:

"It is clearly understood that the company furnish water only when it has a surplus that is not required on the Hope Ranch, and it reserves the privilege of discontinuing the service when it sees fit."

These contracts were presumably entered into at the time the company began rendering service. However, as to several consumers outside the area of the Hope Ranch, the record fails to show that any such contracts were executed, and of these consumers the devisees of Virginia Kimber have protested against the discontinuance of the present service, and have filed a brief in support of their protest.

We conclude from the foregoing facts that this water company is, and from its inception has been, a public utility

as to some of its consumers, and that the complainant, Marwick, was and is one of those to whom the service of water was undertaken by the company as a public utility, and as such is entitled to share in the supply available for this service.

Whether or not any order can now be made by this Commission requiring future service to complainant, Marwick, depends, of necessity, upon the determination of the issues raised by the utility's application to abandon service. In support of its application the company introduced evidence to show that all of the available supply of water was needed by the Hope Ranch, and it was contended that under the provisions of the original deed there was reserved to the Ranch the right to use this water whenever it became necessary to do so. However, in view of the further showing made of the operation of the public utility service at a loss, it becomes unnecessary to pass upon the legal rights of the Hope Ranch to now claim the use of all of the water pursuant to the terms of the deed.

There was introduced in evidence a number of exhibits supported by the testimony of a certified public accountant, indicating that for the two years, 1920-1921, the operating and general expenses of the Laguna Blanca Water Company greatly exceeded the gross operative revenues for that period. This was shown by the following statement:

<u>YEAR ENDED DECEMBER</u>			
<u>31.</u>			
	<u>Total</u>	<u>1921</u>	<u>1920</u>
<u>Gross operating revenue</u>	\$ 3,456.97	\$1,848.52	\$ 1,608.45
<u>Operating and General Expenses:</u>			
Distribution	5,461.92	2,236.93	3,224.99
Depreciation of operating properties	14,396.00	7,198.00	7,198.00
General expenses	6,093.24	3,201.07	2,892.17
Taxes	797.69	471.15	326.54
Total - - -	\$26,748.85	\$13,107.15	\$13,641.70
Deficit from operations	23,291.88	11,258.63	12,033.25

In our opinion, this analysis of operating costs and revenues does not correctly show the financial status of the public utility service in question. The item for depreciation in the foregoing table is based on the straight line method instead of the sinking

fund method generally employed by the Commission in rate cases. If the sinking fund method were used, there should be allowed for depreciation the sum of \$6,266 for the two years instead of the sum of \$14,396 shown in the table. It also appears that under the item of general expenses, the company has included the entire costs of litigation incurred in the present proceedings. If these costs were deducted, as we think they should be, the sum of \$134.40 should be allowed for general expenses instead of the figure above shown. The result of these changes is to reduce the total operating and general expenses for the two years to \$12,659.91.

Consideration must also be given in this case to the fact that the system was operated both for private and public service.

As above set forth, there was reserved to the Hope Ranch, by the terms of the deed conveying the water system to the Laguna Blanca Water Company, all water that might be required for use on the ranch to be delivered free of charge. This, in effect, was a reservation of water for the company's private use as distinguished from the public use voluntarily established by the service of water at fixed rates to plaintiff, Marwick, and to certain outside consumers. The water system was operated for both classes of service as a single system. A typical case is presented, therefore, wherein the operating costs of the public utility feature of the service can be properly determined by an allocation of the total operating costs on the percentage of water used by the different classes of service.

The proportionate use of water for the years 1920 and 1921 as between the Los Positas Land Company (successor in interest of the Hope Ranch) receiving free water, and the outside consumers to whom a charge was made, was as follows:

<u>Total Use.</u>	<u>Land Co.</u>	<u>Outside Consumers</u>
1920 - 33,621,000 gals.	27,800,000 gals.	5,821,000 gals.
1921 - <u>30,360,000</u> "	<u>23,500,000</u> "	<u>8,860,000</u> "
63,931,000 "		12,681,000 "
		or 19.9% of total

We find the following statement of the revenues and operating costs revised, and allocated in accordance with the foregoing conclusions to be a correct showing of the public utility feature of the company's business for the biennium 1920-1921:

<u>Revenues</u>	\$ 3,456.97
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<u>Operating Costs and</u>	
<u>General Expenses:</u>	
Distribution	\$5,461.92
Depreciation	6,266.00
General Expenses	134.30
Taxes	797.69
- Total -	\$12,659.91

Amount chargeable to public utility op- erations (20% total)	2,531.80
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Net revenue for the two-year period	1,125.17
Net revenue for one year	562.58

As shown by this analysis, the public utility service of this company has yielded a net revenue above operating costs of \$562.00 per year. It remains to be determined whether this amount constitutes a sufficient return upon a fair valuation of the property devoted to public service, so that an order denying the application to discontinue service would not result in the enforced continuance of confiscatory rates.

The evidence submitted upon valuation of the property shows that the actual cost of the physical structures of the water company, as indicated by its books, represents an investment of \$186,500. A careful check by the Commission's valuation engineers indicates that the costs actually incurred by the company in the acquisition of its property were reasonable, and not the result of extravagant or unnecessary expenditure. The estimated value of the same property at present prices was shown to be \$248,045 or 33% more than the actual cost. Using the actual cost figure of \$186,500 as a proper valuation for a rate base, which is consistent with our allowance of depreciation on the sinking fund basis, and applying to this total valuation figure the same method of allocation

as in the apportionment of operating costs, we find that \$37,300 or 20% of the total is the proper amount attributable to the public utility service of the company. Upon this sum as a rate base, the annual net revenue of \$562 constitutes a return of approximately 1½%. This is clearly a noncompensatory rate, and if service were required to be continued at such rate, confiscation of the company's property would result. (Union Hollywood Water Co. v. Los Angeles, 184 Cal. 535.)

In this, as in all cases of proposed abandonment of public utility service, it is recognized that such abandonment should not be permitted if any possible means can be employed to continue the enterprise without causing a confiscation of the property used for the benefit of the public. In this case, however, it appears that the rates now in effect are not abnormally low as compared with other utilities of similar character. No reasonable increase in these rates would result in an increased revenue sufficient to constitute a fair return. Furthermore, there is nothing in this record to justify the conclusion that the company could effect substantial economies in operations or increase revenues by enlarging its public utility service so that its future operations would be materially more profitable than in the past. Under such circumstances we must conclude, in accordance with the principles laid down both by the United States Supreme Court and the Supreme Court of this State, that the applicant is before us as the owner of property devoted to an unprofitable public service, and is entitled to abandon such service. (Brooks-Scanlon Co. v. R.R. Comm. of La., 251 U.S. 396; Lyon & Hoag v. Railroad Commission, 183 Cal. 145.) The application for abandonment, therefore, will be granted.

In our prior decision in Case No. 1330 specific findings were made that certain property of plaintiff, Marwick, was within the area to which service of water had theretofore been rendered by defendant as a public utility, and these findings we hereby

reaffirm. The evidence shows, however, that in order to re-establish service to Marwick's property, it will be necessary either to reconstruct the pipe line and other facilities which were formerly used, or to provide some alternative means of conveying the water from defendant's present lines to Marwick's land, either of which involves a heavy expenditure of money and considerable delay. Therefore, in view of the conclusions upon the application to abandon all public utility service, any order which might be made for the re-establishment of service to Marwick's land would be ineffective if the company carries out its announced intention and abandons its service pursuant to the authority herein granted. Our prior order in Case No. 1330 will, therefore, be vacated, but the making of any further and final order in that proceeding will be withheld pending the final disposition of the abandonment proceeding.

ORDER

In the case of James Marwick v. Laguna Blanca Water Company, Case No. 1330, the Commission having rendered its decision and order on the 30th day of August, 1921 (Decision No. 9429); application for rehearing therein having been filed by the Laguna Blanca Water Company on the 28th day of October, 1921; said application having been granted and said proceeding in Case No. 1330 having been consolidated for hearing and decision with Application No. 7365, wherein the said Laguna Blanca Water Company sought the authorization of this Commission for the abandonment of its public utility service; a public hearing having been had on said consolidated matters; briefs having been filed, and the matters submitted and being now ready for decision:

IT IS HEREBY ORDERED, that the LAGUNA BLANCA WATER COMPANY be, and it is hereby authorized, within six (6) months from the

effective date of this order, and upon sixty (60) days notice to this Commission and each and all of the consumers of said company, to terminate and discontinue all service of water heretofore maintained by such company as a public utility, and to withdraw entirely from such public service in all territory heretofore served by it as a public utility water company.

IT IS HEREBY FURTHER ORDERED, that the order heretofore made on the 30th day of August, 1921, in Case No. 1330 (Decision No. 9429) be, and the same is hereby vacated.

The effective date of this order is hereby fixed and designated as the 3^d day of October, 1923.

October Dated at San Francisco, California, this 3^d day of ~~September~~, 1923.

C. Seamy

Dwight Martin
Ernest Shore

J. T. Whittier
Commissioners.