

Decision No. 28328

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

John Byrne,

Complainant,

vs.

Wagner Assets Realization Corporation,

Defendant.

**ORIGINAL**

Case No. 2861.

John Byrne, in propria persona.

Benjamin M. Stansbury and Hugh Gordon,  
for defendant.

BY THE COMMISSION:

O P I N I O N

This is a complaint filed by John Byrne, a resident of the town of Darwin, Inyo County, in which he alleges that during the year 1921 or 1922 the Darwin Silver Company, by the acts of its Manager, A.G. Kirby, did abandon the public utility known as the Reddy Pipe Line, supplying water to the town of Darwin; that it failed to keep said pipe line in repair or deliver water to the residents of Darwin, thereby compelling the consumers themselves to repair and operate the system; and that the Reddy Estate had theretofore delivered water through said pipe line to the town of Darwin for forty years prior to the abandonment thereof, which abandonment is alleged to be in violation of the laws of the State of California. It is further alleged by said Byrne

that at the time said Darwin Silver Company abandoned the pipe line it was not the owner thereof but merely had a lease-hold interest therein. The Commission is requested to order the Wagner Assets Realization Corporation, defendant herein, to resume water service to the town of Darwin. Defendant entered a general denial of all essential allegations in the complaint.

A public hearing in this matter was held before Examiner Cannon at Darwin.

From the evidence it appears that during the year 1877 one Patrick Reddy installed a pipe line running from Coso Springs to the town of Darwin, some eight miles distant. The water supply from this source was intended primarily for mining purposes on properties owned, controlled or operated by Patrick Reddy. However, up to and including at least the year of 1917, water was sold by the owners or operators of said pipe line, or by their agents, to consumers in the town of Darwin for domestic, commercial and other mining purposes at the following rates: Three dollars per month for families, one dollar and fifty cents per month for single men, twelve and one-half cents each for watering horses and mules, or twenty-five cents per span, and at the rate of one cent per gallon to consumers who hauled it in tanks and wagons at their own expense for mining purposes in adjacent territory. The record indicates that at some time shortly prior to 1917 the rate for hauled-water was lowered to one-half cent per gallon. Although the primary purpose of the installation of this pipe line was to supply water for mining and milling ore, yet it is conceded by all parties interested in this proceeding that for a great many years water was sold continuously, without interruption or refusal, to the public generally for compensation. There is no

doubt therefore that by such acts the waters and the facilities supplying them were dedicated to the public generally and that the service was public utility in character and therefore subject to the regulatory powers of the State.

The evidence reflecting the actual ownership of the Reddy Pipe Line, as well as the names and the interests of the various mining companies leasing or operating the pipe line, is obscure and conflicting; however, as nearly as can be determined from the evidence and testimony presented, it appears that for several years immediately preceding 1917 water service was supplied by one John Carthery, agent for the Reddy Estate, the then owners of the pipe line, or through parties designated by him, such as a Mr. Long, for instance, who personally looked after the pipe line and made collections for water sales prior to 1918.

About the year 1918 E.W. Wagner, a financier, obtained control of certain mining properties theretofore owned by the Reddy Estate, including the Defiance Mine, to which the Reddy Pipe Line was considered an appurtenance. During 1918 A.G. Kirby took charge of Wagner's interests at Darwin as General Manager and, according to his own testimony, he permitted one Lee, who ran a general merchandise store in Darwin, to operate the pipe line and make and retain any and all collections derived from water sales made to the public generally with no further accounting to him. At the same time, Kirby took from the Reddy Pipe Line whatever water his mining operations required without payment therefor to Lee or to any other person. Later on, in 1923 or 1924, Kirby installed wells and a pumping plant at a place called Darwin Wash and thereafter obtained all water for mining

purposes from this source through a new pipe line about three miles in length, running directly to the mines, discontinuing and abandoning the use of the Reddy Pipe Line and Coso Springs supply. About 1923 Lee gave up the handling of the pipe line and turned it over to one A.A. Ross who testified that he operated it for about seven months after first having received permission from said Kirby to handle the business in the same manner and under the same arrangements as Lee.

Kirby left Darwin in 1924 and was succeeded in 1925 by H.E. Olund, a mining engineer, as Manager of the American Metals Incorporated which then had, and still has, an option or contract to purchase and a lease in bond with the Wagner Assets Realization Corporation covering a group of several mining properties near Darwin including the Defiance Mine. The testimony of Olund indicates that since he took charge of said properties, all water used for mining purposes by his company came from the new Darwin Wash pumping plant and that up to November, 1926, when he left Darwin, no use was made by his company of the Reddy Pipe Line or of Coso Springs subsequent to the completion of the Darwin Wash plant.

After Ross ceased looking after the Reddy Pipe Line in 1924, a committee, composed of Bland, Peterson and Burns, was selected by the citizens of Darwin to repair and operate the pipe line to provide a water supply for the community. Bland was actively in charge of the system and made such collections for water service as he could. During the year 1928 a collection was taken up among the townspeople and sufficient funds thereby obtained to purchase about 1500 feet of second-hand, two-inch

pipe from the Darwin Silver Company. This pipe was used to repair and replace the most seriously worn-out sections of the Reddy Pipe Line, all work and labor being voluntarily furnished by citizens of Darwin.

Under date of June 27, 1929, an agreement was entered into by and between Wagner Assets Realization Corporation and Theo. Petersen and Alex Ruona, the latter named gentlemen being designated as, and acting in the capacity of, trustees for the town of Darwin, wherein it was set forth that the citizens of Darwin were willing to continue the operation of the Reddy Pipe Line and that the said corporation was ready and willing to recognize the rights of said citizens to use, operate and control the pipe line and supply the community with water, provided that by so doing they did not interfere with or diminish the corporation's water supply in the Darwin Wash. This arrangement was consummated by a quitclaim deed to the pipe line granted to said trustees by the Wagner Assets Realization Corporation under date of June 25, 1929, both agreement and deed being accepted by the people of Darwin through a vote taken at a public meeting held for that purpose on July 9, 1929.

The status of affairs at present is that defendant disclaims any ownership in the Reddy Pipe Line, or any responsibility whatsoever, either as a public utility or otherwise, for the delivery of water to any one through said pipe line or from any other source. Complainant John Byrne contends that the trustees had no proper authority to enter into the above agreement with defendant and no right to accept the quitclaim deed to the pipe line, and, furthermore, that the acceptance and approval thereof by the townspeople of Darwin was irregular and therefore not binding upon any

of them. Byrne bases these contentions upon the grounds, first, that the owners and/or operators of the Reddy Pipe Line admittedly were operating a public utility and could not legally discontinue or abandon it or transfer any interest therein without authority from this Commission, and, second, that no such permission ever having been procured, the abandonment of the system in 1924 was therefore illegal and defendant is now still under the legal obligation and duty to resume utility water service.

The situation is certainly most unfortunate. The operation of the pipe line was public utility in character for at least forty years, and quite probably for a much longer period. However, for practically six years the system has been abandoned by its alleged owners and has been operated during that entire period by the citizens of the community. The matter unquestionably should have been brought to the Commission's attention at the time the service was first abandoned. The pipe line is now almost completely worn-out and is deteriorated to such an extent that immediate replacement is absolutely necessary if water is to be made available in the townsite. The evidence shows that such replacement will cost from sixteen to twenty thousand dollars, which amount obviously cannot be raised by the fifteen present consumers. Neither could any rate be established by this Commission which said consumers could afford to pay and which would offer any reasonable return upon such an investment if made by the defendant. Regrettable as it may be in the matter before us, the ~~conditions~~ laws ~~of this State~~ of this State do not permit the Railroad Commission to compel the continued operation of a public utility property which the owner thereof has abandoned and which cannot be operated except at a financial loss under any reasonable rate established

by the Commission and which the consumers could afford to pay. (Lyon & Hoag v. Railroad Commission, 183 Cal. 145) As a matter of fact, for the past few years none of the consumers has paid for water service at all except, perhaps, to the extent that certain of them have contributed labor and money for repairs. Under the circumstances, it is clear that any order issued by this Commission attempting to compel or force defendant to repair the Reddy Pipe Line and resume the service of water to the inhabitants of Darwin would be an idle act, although there undoubtedly exists a moral obligation on the part of defendant to do. We can only suggest that in our opinion the citizens of Darwin are still entitled to at least the average quantity of water heretofore appropriated from Coso Springs and put to reasonable and beneficial use for domestic, commercial and perhaps, also, industrial purposes, irrespective of subsequent water developments in the Darwin Wash made by American Metals Incorporated or any other party. If the former cooperative efforts on the part of the townspeople of Darwin can be continued, it may be possible gradually to patch up and repair the present pipe line sufficiently to provide enough water to satisfy requirements for a few more years.

From the record in this proceeding, it is clear that no course is open to us other than to dismiss the complaint.

#### O R D E R

Complaint having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having

been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 26th day of January, 1931.

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*Leon Sehwitz*  
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*W. A. Cunn*  
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*W. B. Harris*  
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*Fred G. Stewart*  
 Commissioners.