

ORIGINAL

Decision No. 36005

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LESLIE W. EVANS, CHARLES H. DAVENSO,
and O. W. LEWIS, operating under the
name TWENTY-NINE PALMS WATER COMPANY,
for a certificate of public convenience
and necessity authorizing the extension
of the area authorized to be served, by
said Water Company, in and adjacent to
the community of Twenty-Nine Palms,
San Bernardino County.

Application No. 22636,

In the Matter of the Application of
E. B. ABELL for Certificate of Public
Convenience and Necessity, for adjustment
of rates; and for amendment to Rule 19.

Application No. 24743

Investigation on the Commission's own
motion into the operations, etc., of
LESLIE W. EVANS, CHARLES H. DAVENSO and
O. W. LEWIS as individuals and also as
operating under the name of TWENTY-NINE
PALMS WATER COMPANY; E. B. ABELL,
operating under the name of ABELL WATER
COMPANY; FRANK BAGLEY; DESERT ESTATES
MUTUAL WATER COMPANY; DESERT HOMES
MUTUAL WATER COMPANY; ARTHUR E. GRIFFIN;
J. J. McCLANE; J. I. SKLAR; TWENTY-NINE
PALMS MUTUAL WATER COMPANY; TWENTY-NINE
PALMS INN CORPORATION; and ROBERT H.
WYERS, in the distribution and sale of
water in and in the vicinity of the
community of Twenty-Nine Palms, San
Bernardino County, California.

Case No. 4630

Roland T. Williams, for Abell Water Company.
Charles H. Davenport and O. W. Lewis, for
Twenty-Nine Palms Water Company.
F. H. Wyers, for Twenty-Nine Palms Inn Corporation.
J. I. Sklar, for Desert Estates Mutual Water Company.
Trafford Hutson, for Desert Homes Mutual Water Company.
H. J. Watkins, for Twenty-Nine Palms Mutual Water Company.
L. L. Jacobs, for Arthur E. Griffin (deceased).
Frank Bagley.

HAVENNER, COMMISSIONER:

O P I N I O N

Twenty-Nine Palms Water Company is the fictitious firm name of a copartnership composed of Leslie W. Evans, Charles H. Davenso and O. W. Lewis. These copartners were granted a certificate of public convenience and necessity to operate a public utility for the sale and distribution of water in three and a quarter sections* of land in the territory known as Twentynine Palms, in San Bernardino County, by Decision No. 30875 rendered by the Railroad Commission May 18, 1938, in Application No. 21783. Their present application, No. 22636, was filed March 20, 1939, and placed upon the calendar for hearing but removed therefrom by request of applicants and not reset until the Commission, upon its own motion, directed that the matter be heard in connection with the two other instant proceedings, Application No. 24743 and Case No. 4630. Application No. 22636, as originally filed, asked for an extension of the certificated area to embrace an additional territory of approximately fourteen square miles all in San Bernardino County. At the hearing, however, request was made in behalf of the owners of the water system to amend the application to include only two of the additional sections, Nos. 19 and 20, T. 1 N., R. 9 E., S.B.B. & M.

The Railroad Commission in Decision No. 32211 rendered August 1, 1939, in Application No. 22561, granted to E. B. Abell a certificate to operate a water system in Sections 30 and 31, T. 1 N., R. 9 E., S.B.B. & M., excepting therefrom the $W\frac{1}{2}$ and the $E\frac{1}{2}$ of the $E\frac{1}{2}$ of the $SE\frac{1}{4}$ of said Section 31. In the present application, (No. 24743, as amended, E. B. Abell asks for a certificate of public convenience and necessity to supply water for domestic and other purposes in territory comprising about 1,320 acres located adjacent to and

Note: (*) Sections 28, 29, 32 and 33, T. 1 N., R. 9 E., S.B.B. & M., excepting therefrom the $N\frac{1}{2}$ and the $SE\frac{1}{4}$ of Section 33.

adjoining his present service area, which additional territory is described as the SE $\frac{1}{4}$ of Section 19, all of Section 20, the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 21, the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 28, the N $\frac{1}{2}$ of Section 29, and the E $\frac{1}{2}$ of the W $\frac{1}{2}$ of Section 31 except the W 500 feet thereof, all in T. 1 N., R. 9 E., S.B.B. & M., in San Bernardino County. Applicant Abell requests the Commission to authorize the establishment of a revised schedule of rates to be effective in the entire territory now being served and to be served with water by his water works and also for authority to amend his Rule and Regulation No. 19 entitled "Water Main Extensions."

For the past two or three years, this Commission has received numerous complaints from individuals, firms and corporations in and in the general vicinity of Twentynine Palms, complaining of irregular practices of various persons and companies supplying water, of poor and inadequate service, and of almost a general refusal to provide extensions of water service upon demand. Investigation by the staff of the Commission revealed quite a chaotic condition of affairs obtaining in water supply matters throughout the entire valley. Section after section of desert lands in the Twentynine Palms district had been exploited some years ago by promoters and real estate operators for winter and general all-year home sites. In most instances, no adequate provision was made for proper water service. In a few of the better class developments, some water was provided by the subdivider through purportedly mutual or co-operative organizations. In other cases, water service was provided without charge by the original selling agencies. In a few instances, there was no complaint about the water service. The scattered location of the various projects and tracts over many square miles of territory made the installation of a single comprehensive water system impracticable without an unwarranted financial outlay. The circumstances and conditions, however, indicated the necessity and advisability of bringing together all interested parties in the Twentynine Palms district to endeavor to eliminate duplication of facilities, and if possible,

to unify and concentrate the water production and distribution facilities into hands of responsible parties whose financial resources are sufficient to insure adequate plant and equipment. It was for this reason that Case No. 4630 was instituted by the Commission upon its own motion to inquire into the water operations of all of the larger and more important distributors of water in and near Twentynine Palms. Some of these concerns were mutual water companies while others were private or public utility in character.

A public hearing in the above entitled matters was held in Twentynine Palms and by stipulation all these proceedings were consolidated for the taking of evidence and for decision.

According to Mr. Abell, he has received numerous requests from a considerable number of owners of properties located adjacent to and adjoining his existing service area for extensions of public utility water service. In all, these various parcels embrace some 1,320 acres, more or less, of additional lands lying in portions of Sections 19, 20, 21, 28, 29 and 31, all in T. 1 N., R. 9 E., S.B.B. & M. However, approximately 380 acres of the above lands lie within the area heretofore certificated to Twenty-Nine Palms Water Company in Decision No. 30275. Of this overlapping area, 320 acres were originally subdivided by J. J. McClane and were supplied with water by Frank Bagley, a pioneer resident and business man of Twentynine Palms. This water system has now been acquired by E. B. Abell, operating under the fictitious firm name and style of Abell Water Company, and is being operated as a part of the company plant. The remaining 60 acres of these lands are owned by John M. Stephens who has indicated that he prefers to take water service for his property from Mr. Abell rather than from the Twenty-Nine Palms Water Company.

There is a further overlapping of the service areas requested by these two utilities, involving about 800 acres of land in Sections 19 and 20, T. 1 N., R. 9 E., S.B.B. & M. This is undeveloped land at the present time, not being supplied now by either utility. The owners of this property likewise

have expressed a preference for water service from the Abell Water Company as soon as conditions permit marketing.

Twenty-Nine Palms Water Company was authorized by Decision No. 30875 to supply water as a public utility in an area particularly described as Sections 28, 29, 32 and 33, T. 1 N., R. 9 E., S.B.B. & M., excepting therefrom the north half and the southeast quarter of Section 33. Twenty-Nine Palms Water Company, in Application No. 22636 herein, in addition to the above three and a quarter sections of land heretofore certificated to it, at first asked for some fourteen more square miles of territory, including many parcels, subdivisions and other properties already being supplied in whole or in part by other waterworks. The greater part, however, embraces vast areas of raw, unoccupied and undeveloped lands with no possible demand for water service for many years to come. At the hearing, Charles H. Davense and O. W. Lewis requested that their application be amended to include only Sections 19 and 20, T. 1 N., R. 9 E., S.B.B. & M. As heretofore indicated, this still leaves certain territory overlapping and conflicting with the operations of Abell Water Company.

The testimony indicates that Twenty-Nine Palms Water Company for several years last past has been and is now experiencing considerable difficulties, both financial and otherwise, in maintaining a proper and adequate water service to the few consumers now supplied by it, about 18 in number, residing in Tract No. 2560 which contains 10 acres and constitutes but a small portion of the service area granted to this company in its original certificate. Tract No. 2560 is located in the southeast portion of Section 19. It appears that this Company's well, pumping plant and storage facilities are neither adequate nor in proper mechanical condition to supply satisfactorily even the present demand. No present or future ability was shown by the owners of this water system to rehabilitate the present plant or to provide for any new and additional service extensions, even in its present certificated service area.

As far as the application of Twenty-Nine Palms Water Company for service in said Sections 19 and 20 is concerned, there is no recourse open to the Commission other than to deny the request.

The evidence reveals that several years ago E. B. Abell installed a water plant primarily for the purpose of supplying his own home and business and certain other lands which he had subdivided and placed upon the market. However, as a result of the insistent requests of adjoining landowners in the immediate vicinity, Mr. Abell found it feasible to install a more comprehensive plant and system and to embark upon the business of supplying water as a utility to the public generally in his district, under the jurisdiction and control of the Railroad Commission, which granted him a certificate of public convenience and necessity by its Decision No. 32211, dated August 1, 1939.

The water supply problem in the Twentynine Palms district has become a difficult and complicated affair. Some of the wells contain deleterious minerals, the most serious being fluorine. Other wells produce an unpotable water, some supply hot water unsuitable for domestic and household uses, and in other instances, the wells fail after a limited operation and cease to yield any water at all. Mr. Abell was called upon from time to time to extend his operations to lands not included in his certificate. Only recently he acquired from Mr. Frank Bagley the water system which the latter had installed and used to supply water in the district immediately adjoining his commercial enterprises in Twentynine Palms. Additional demands for expansion resulted in a large expenditure of funds by Mr. Abell for the development of additional water, storage and other facilities.

A long extended effort had been made generally by business men and the substantial real estate operators in Twentynine Palms and vicinity to form a comprehensive water system for the entire area, consolidating the various mutual, private and public utility plants. Nevertheless difficulties and misunderstandings arose which made it impossible either to finance or combine the existing water properties in one holding, under a water district form of

organization, a public utility, or otherwise. As a result, Mr. Abell has been prevailed upon by a majority group of businessmen, landowners and local residents to extend his operations, and he now appears to have succeeded in raising sufficient funds to take over the general and unified distribution of water in the more uniformly settled portions of the main Twentynine Palms district.

Certain of the mutual water companies and some of the water systems operated by real estate firms have indicated their desire and the present practical necessity of continuing operations under their various existing organizations. It is very probable that some of these so-called mutual water companies are actually public utility in character. A few appeared to have regarded the true mutuality of interests rather lightly. However, the evidence submitted at this hearing was insufficient and not conclusive to the extent necessary to support or warrant a finding that any of them had in fact dedicated the service to the public use.

It is clear that the water operations conducted by Mr. Abell have been the most satisfactory of all concerned herein. Furthermore, his abundant water supply, financial resources, and experience as the owner of this system indicate that he should be given authority to extend his field of operations as hereinafter fixed and determined in the following Order.

In connection with the overlapping of service areas between Abell Water Company and Twenty-Nine Palms Water Company, it is apparent there is no duplication of facilities nor invasion of any operative territories. Twenty-Nine Palms Water Company has no facilities or present ability to extend water service even beyond the small tract to which its water business has been confined. It has at no time made any effort or attempt to do so. The Abell Water Company, on the other hand, not only has the necessary water supply but has installed the mains and other facilities and already is delivering water at the request of certain of the landowners throughout a considerable portion of the area involved. The request of Twenty-Nine Palms Water Company that it

be allowed the exclusive privilege to supply this overlapping area and that E. B. Abell be excluded therefrom is not supported by the evidence and will be denied.

A report was submitted by F. H. Van Hoesen, one of the Commission's hydraulic engineers, in which he estimated the original cost of the properties of the Abell Water Company to be \$20,965, of which \$4,500 was allocated to the Bagley System. The revenues for the Abell system as reported to the Railroad Commission for the year 1941 amounted to \$1,211 while the operating and maintenance expenses for the same period, including depreciation, amounted to \$1,374. It has been estimated that the reasonable costs of operating the combined plants as a single unit should be in the neighborhood of \$2,200 per year, including depreciation, with the probable corresponding annual revenue estimated at \$2,100.

Mr. Abell has asked that the Commission establish a more comprehensive and uniform schedule of rates, in order to cover the many new and different classes of service which he will be called upon to render in the enlarged territory. There has been no objection to this procedure and the rates established in the following Order should provide a fair rate to all parties concerned without any of the existing inequities and discrimination.

A request was made by Mr. Abell for authority to modify his present Rule No. 19, covering main extensions into new territory, particularly in reducing the refund due the depositor to 10 per cent of the gross revenues received from the extension for a period of 10 years. This percentage obviously is inadequate and would result in placing an unfair burden upon the subdivider or depositor, and in many instances would prevent complete and even a fair proportional restitution within the ten-year period of moneys advanced. In this connection Mr. Abell will be required to file a rule similar to the one recently placed in effect through formal order by the Commission in the case of several of the larger water systems in California. This rule provides

for a refund annually upon the basis of 35% of the gross revenue received from the extension involved until the amount is satisfied, or until the expiration of a period of ten years. The Order herein will so provide.

The following form of Order is recommended:

O R D E R

Applications as above entitled having been filed with the Railroad Commission and an investigation having been instituted by the Commission upon its own motion into the sale and distribution of water in and in the vicinity of the community of Twentynine Palms, in San Bernardino County, a public hearing having been held thereon before Commissioner Franck R. Havenner and Examiner Murray R. MacKall, and the matters having been duly submitted and the Commission being now fully advised in the premises, now therefore,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require and will require the construction, operation and maintenance of a public utility water system or systems by E. B. Abell, operating under the fictitious firm name and style of Abell Water Company, in that certain unincorporated territory comprising 1,320 acres, more or less, described as follows:

SE $\frac{1}{2}$ of Section 19;
 all of Section 20;
 SW $\frac{1}{2}$ of SW $\frac{1}{2}$ of Section 21;
 W $\frac{1}{2}$ of NW $\frac{1}{2}$ of NW $\frac{1}{2}$, and the
 NW $\frac{1}{2}$ of SW $\frac{1}{2}$ of Section 28;
 North $\frac{1}{2}$ of Section 29;
 E $\frac{1}{2}$ of W $\frac{1}{2}$ of Section 31 except the W 500 feet thereof;
 all in T. 1 N., R. 9 E., S.B.B. & M., San Bernardino County.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to E. B. Abell, operating under the fictitious firm name and style of Abell Water Company, for the construction, operation and maintenance of a public utility water system or systems within the territory hereinabove described.

IT IS HEREBY FURTHER ORDERED that it is a condition of this Order that E. B. Abell shall never claim before this Commission or any other public body an amount for the certificate of public convenience and necessity granted herein in excess of the actual cost of acquiring it.

IT IS HEREBY FURTHER ORDERED that E. B. Abell, operating under the fictitious firm name and style of Abell Water Company, be and he is hereby authorized and directed to file in quadruplicate with this Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged on and after the first day of January, 1943, for all water service rendered to his consumers throughout the certificated areas herein established and as also heretofore granted to said E. B. Abell in Decision No. 32211, issued by this Commission on August 1, 1939, which said schedule of rates is hereby found to be just and reasonable for the service to be rendered:

METERED RATES

Minimum Monthly Charges:

1/2 to 3/4 inch meter, inclusive	\$2.00
1 inch meter	3.00
1-1/2 inch meter	5.00
2 inch meter	8.00

Each of the foregoing "Minimum Monthly Charges" will entitle the consumer to the quantity of water which that minimum monthly charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates:

For 500 cubic feet or less	\$2.00
From 500 to 1,000 cubic feet, per 100 cubic feet25
From 1,000 to 5,000 cubic feet, per 100 cubic feet20
All over 5,000 cubic feet, per 100 cubic feet15

In the event that more than one housekeeping unit is served through one meter, the additional charges shall be 50 cents for each unit not to exceed five units and 25 cents for each unit in excess of five.

IT IS HEREBY FURTHER ORDERED that E. B. Abell be and he is hereby authorized and directed to file in quadruplicate with this Commission, within

thirty (30) days from the date of this Order, revised rules and regulations covering relations with his consumers, subject to the approval of this Commission, which among other things shall contain substantially the following rules:

Applicants for main extensions to serve subdivisions, tracts, housing projects, and industrial developments shall be required to deposit with the Company before construction is commenced the estimated reasonable costs of the necessary facilities exclusive of service connections and meters. The size, type, and quality of materials and location of the lines shall be specified by the Company and the actual construction will be done by the Company or by a contractor acceptable to it. In case of disagreement over size, type, and location of the pipe lines and the constructing medium, the matter may be referred to the Railroad Commission for settlement. Adjustment of any substantial differences between the estimated and reasonable actual cost thereof shall be made after the completion of the installation, subject to review by the Commission.

For a period not exceeding ten years from the date of completion of the main extension, the Company will refund to the depositor, or other party entitled thereto, annually, 35% of the gross revenues collected from consumer or consumers occupying the property to which the said extension has been made; provided, however, that the total payments thus made by the Company shall not exceed the amount of the original deposit without interest.

IT IS HEREBY FURTHER ORDERED that within sixty (60) days from the date of this Order, E. B. Abell shall file in quadruplicate with this Commission a suitable map or sketch, drawn to an indicated scale upon a sheet approximately 8½ x 11 inches in size, delineating thereupon in distinctive markings the boundaries of his authorized service areas and the location thereof with reference to the surrounding territory; provided, however, that such map or sketch shall not thereby be considered by this Commission, or any other public body, as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.

IT IS HEREBY FURTHER ORDERED that E. B. Abell shall file with this Commission, within sixty (60) days from the date of this Order, four copies of a comprehensive map, drawn to an indicated scale of not less than 400 feet

to the inch, upon which shall be delineated correctly by appropriate markings the various tracts of land in the territory for which a certificate has heretofore and herein been granted. This map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire utility area of service; provided, however, that such map shall not thereby be considered by this Commission, or any other public body, as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.

IT IS HEREBY FURTHER ORDERED that Application No. 22636 of Leslie W. Evans, Charles H. Davenso and O. W. Lewis, operating under the fictitious firm name of Twenty-Nine Palms Water Company, as above entitled and as amended, for a certificate of public convenience and necessity to operate a public utility water system to serve certain additional lands in and in the vicinity of Twentynine Palms, San Bernardino County, be and it is hereby denied.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco California, this 8th day of December, 1942.

Justus J. Gaenen
J. J. Baker
Francis D. Hoveaux
Richard R. Chase
 Commissioners.