

Decision No. 39291

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the service, rates, contracts, rules, regulations, operations, practices, or any of them, of Albert E. Haney, doing business as Topanga Canyon Public Utility Water System, operating a public utility in Tracts No. 7806 and No. 8910, in Topanga Canyon, Los Angeles County, California.

ORIGINAL

Case No. 4822

Irvin D. Smith, Edison E. Lee and Douglas De Burgh,  
for Topanga Citizens Committee for School and  
Community Improvement.

Mrs. Albert E. Haney for Albert E. Haney.

O P I N I O N

This proceeding was instituted by the Commission on its own motion into all of the operating affairs of Albert E. Haney, doing business as Topanga Canyon Public Utility Water System, for the sale and distribution of water in Topanga Canyon in Los Angeles County. This investigation was ordered as the result of complaints made by the Topanga Citizens Committee for School and Community Improvement. This organization, representing the water users in the instant proceeding, is a voluntary association composed of 350 citizens of Topanga Canyon. This waterworks furnishes water to residents in Tracts No. 7806, No. 8910 and No. 6915, locally known in Topanga Canyon as the Post Office Tract.

The committee alleges that during the year of 1945 defendant's water service was highly unsatisfactory and irregular; that during this period the supply of water was wholly insufficient; that water users were forced to pay full charges for water when most of the time no water was available; and, that demands for refunds were refused. It is further alleged that in spite of all demands and protests, no action has been taken to correct the objectionable conditions.

A public hearing in this proceeding was held in Los Angeles before Examiner Wm. Stava.

Tracts No. 7806 and No. 8910 comprise 140 acres of land subdivided into 194 lots and sold originally as cabin sites for vacation purposes. A water system was installed to aid in the sale of the lots. The original certificate of public convenience and necessity to serve this project was granted Claude F. Smith in Decision No. 27502, dated November 5, 1934. Tract No. 6915 consists of 20 acres located approximately one-quarter of a mile distant from the other two. While this latter tract has never been certificated, it is, however, interconnected with the original utility system and is now served as a part thereof. Water is obtained from two wells and pumped directly into the distribution system. Storage is provided by a single tank having a capacity of 110,000 gallons. There are 22,300 feet of mains, varying from 3/4 to 3-1/2 inches in diameter. The territory involved is located on the eastern slope of Topanga Canyon, four and a half miles from the ocean. The bedrock formation of this section of Topanga Canyon is mainly granite. The houses are built on the steep and precipitous sides of the canyon. The terrain served varies 500 feet in elevation but is supplied nevertheless as a single operating zone. Water is difficult to obtain from underground sources, the only supply being found in fissures and pockets in shattered or faulted formations. An adequate and sustained well source has not as yet been located during the entire operating history of this utility. The general problem of water supply in this case is identical with that obtaining on the adjacent system operated by R. W. Sparling, Inc., an investigation thereof by the Commission on its own motion now being currently before us. (Case No. 4821).

Albert E. Hancy acquired the original system in 1939. Thereafter he has drilled eight wells in various locations in a serious effort to obtain sufficient water. The eighth well was completed but a few weeks ago. These wells are from 8 to 10 inches in diameter and from 175 to 500 feet deep. The water yield has been highly discouraging, ranging from 10 to 20 gallons per minute. At

the present time all wells except two have been abandoned. One of the abandoned wells located near the natural channel of Topanga Creek was condemned by the County Board of Health as contaminated; the others were abandoned because production was exhausted after short periods of pumping. Of the two wells now in operation, the last one drilled has a maximum output of but 20 gallons per minute, or 28,800 gallons per day.

Customers in these three tracts testified that they are not receiving sufficient water to meet their bare household necessities and that they have continuously suffered from daily interruptions in service during the summer months lasting from several hours to several days. Residents located at the lower levels obtain more water than those in the higher elevations, a situation naturally developing from the present ill-advised and unnecessarily expensive method of attempting to supply the entire district without establishing intermediate pressure zones.

The evidence shows that besides the main and original service area, defendant also is now serving water under contract to three other real estate projects. These are Tracts No. 7320, 9287 and 9385, totaling 160 acres, generally referred to collectively as the Bonnell Tract. In this new district there are 64 consumers, 43 being metered. Defendant installed 1.7 miles of pipe line to reach the Bonnell Tract. Unfortunately this extension is entirely inadequate in size, being but 1-1/2 inches in diameter, thereby creating a serious friction loss under an excessively high pressure. Water is delivered against a head of 725 feet into a 25,000-gallon storage tank in Tract No. 9287, three and a half miles from the well. Tract No. 7320 formerly was supplied with water by Topanga Park Mutual Water Company and Tracts No. 9287 and 9385 by Topanga Canyon Mutual Water Company. The water to these properties is furnished by defendant under separate written agreements with each of said mutual companies, entered into in 1943. These agreements are substantially the same and, among other things, provide for a monthly minimum charge of \$3.00 for 3,000 gallons of water and 75¢ per 1,000 gallons for use in excess thereof. These contracts have never been authorized by nor filed with this Commission.

Water users in the contract or mutual water company areas testified that besides turning over their water systems to defendant they also agreed to donate to him \$2,000 toward the construction of the interconnecting pipe line, with the understanding that they were to receive public utility water service. To date only \$1,020 of the subscribed amount has been actually paid in. At present these people are out of water most of the time during the summer and fall months and usually depend upon hauling their own water from Los Angeles or other communities in the county.

Complicating still further the existing confusion confronting this section of Topanga Canyon, the record discloses that defendant has other agreements outstanding to extend service to two more real estate projects in the upper reaches of the Canyon:

Tract No. 3944 - Formerly served by Veteran Springs Mutual Water Company. Area 80 acres. Supplied at present with water from a well on the tract.

Tract No. 6943 - Topanga Oaks - Formerly supplied with water from two wells by Topanga Oaks Mutual Water Company. Area 120 acres.

The testimony of the water users in these latter two tracts uniformly was to the effect that service has been and still is intermittent and insufficient during all of the summer and fall months. The water customers unanimously demand a more adequate and dependable service and that this service be furnished by defendant.

Mr. R. E. Sutherland, one of the Commission's hydraulic engineers, presented a report covering an investigation of the operations of the Hancy systems for the period 1941 to 1945, inclusive. A summary of the operating data filed with the Commission by the utility in its annual reports prepared by the Commission's engineer is set forth below:

<u>Item</u>	<u>1941</u>	<u>1942</u>	<u>1943</u>	<u>1944</u>	<u>1945</u>
Fixed Capital	\$16,068	\$16,843	\$16,843	\$16,993	\$16,993
Operating Revenues	\$2,296	\$2,505	\$4,367	\$3,011	\$3,467
Operating Expenses	<u>1,702</u>	<u>4,233</u>	<u>5,007</u>	<u>4,432</u>	<u>8,086</u>
Net Operating Revenues	\$ 594	\$1,728*	\$ 640*	\$1,421*	\$4,619*

Note: (\*) Operating Loss.

Mr. Sutherland testified that the above figures as filed are wholly unreliable because of the confusion existing in the utility's accounts which combine the private business enterprises of both defendant and his wife and do not permit ready or any satisfactory segregation. This condition is so serious in the revenue and expense accounts that the Commission's engineer was unable to make a fair estimate of the results of operation.

During 1945, 54 metered utility services on the three main tracts used 352,000 cubic feet of water and 43 metered contract services in the three so-called mutual districts used 178,000 cubic feet of water, or approximately one-half of the measured water deliveries. Mr. Sutherland recommended immediate restriction of water to 1,000 cubic feet each month per consumer in order to provide a more fair distribution of water among utility patrons. The Commission's engineer further recommended that the original utility consumers in the certificated area be returned their rights to prior entitlement as regular consumers before any water at all be sold to the other and later consumers taken over by defendant in the mutual and/or contract territories.

Mrs. A. E. Haney testified that when she and her husband first acquired this public utility waterworks, the existing well already was diminishing in flow and not long after failed to produce sufficient water to meet demands. A new well was drilled which first produced an artesian flow of 30 gallons per minute. This quantity of water was considered as more than sufficient to supply the existing requirements and service therefore was extended to Tract No. 6915. However, the artesian well soon began to decrease seriously in yield and new wells were drilled. It was to obtain more sources of revenue to finance well drilling, Mrs. Haney testified, that led to the agreements to serve the various real estate developments in adjacent territory. Mrs. Haney contends, however, that the agreements entered into with the various mutual water companies and other consumer groups are strictly private enterprises and as such in nowise interfere with nor are they any part of their public utility operations.

In this connection it should be pointed out that it was a long time subsequent to the dedication of the original water production and distribution facilities to the public use, that defendant, without legal authorization from this Commission, extended said production and distribution facilities to serve the new consumers under the purported private contracts. The law is well settled that such private uses cannot be carved out of a dedicated public utility water supply and that such contracts create no rights which are not subject to control by the State. Unfortunately the limited water resources of this system make the extension to new consumers an unfair burden upon the regular utility consumers and cannot be permitted.<sup>(1)</sup> (See Decision No. 26529 in Tehachapi Cattle Company vs. Kern Island Canal Company - 39 C.R.C. 78, and Decision No. 27722, dated February 4, 1935; also Hancock vs. East Side Canal Co. 20 C.R.C. 205.)

Section 50a of the Public Utilities Act of the State of California, which requires a certificate of public convenience and necessity from the Railroad Commission before the making of any such an extension of plant or system as has taken place in this instance, was designed specifically to protect the interests of the regular existing consumers against just such a disastrous dilution of water supply as has occurred in this instance. This illegal extension of service to new consumers in non-certificated territory not only has seriously deprived the regular public utility water consumers of the adequate water supply and service to which they legally are entitled, but also has actually resulted in depriving all consumers through the entire system, as extended, of any proper water service and made the rendering of satisfactory water deliveries impossible. The evidence is conclusive that for many years last past it has been common knowledge in

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Note (1): Act for Regulation of Water Companies. Statutes 1913, Chapter 80, Page 84, as amended.

Sec. 5. "Whenever the railroad commission, after a hearing had upon its own motion or upon complaint, shall find that any water company which is a public utility operating within this state has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by such corporation, the railroad commission may order and require that no such corporation shall furnish water to any new or additional consumers until such order is vacated or modified by the said commission."

Topanga Canyon that sustained pumping of the local wells rapidly drained their cones of percolating waters with no compensating replenishment. Such had uniformly been the actual experience of the owners of this utility with the single exception of the condemned well. Mrs. Haney testified that both she and the defendant were well aware that they had insufficient water resources to meet satisfactorily even existing system demands, both before and at the time the various service extension contracts were entered into as well as at present. In the light of this record it is difficult to comprehend and certainly impossible to justify defendant's reckless disregard of the public interest and the rights of his consumers through this irresponsible expansion into such a relatively large acreage of new territory. Under these circumstances no course is open to this Commission other than to order defendant to discontinue further water service from dedicated public utility sources and facilities outside of Tracts No. 7806, 8910 and 6915 as provided in the following order. Such excluded areas, no longer entitled to public utility service, however will be permitted surplus water only, unless and until sufficient additional water is secured by defendant sufficient to supply reasonably the entire area. In view of the manifest hardship which would result in sudden discontinuance of all water service to these outside contract and/or mutual water company areas now served, and, furthermore, in view of the good faith in which these new consumers have dealt with defendant, this restriction will not be placed in effect until December 31st of this year. This should provide ample time for all concerned to provide for proper water supplies.

It appears from the record that service as now rendered in Tract No. 6943, Topanga Oaks Tract, and Tract No. 3944, Veterans Springs Tract, is not public utility in character and as such is not under the jurisdiction and control of the Railroad Commission. Neither tract is now connected with or served by or through the certificated Haney system. Under existing conditions of defendant's water supply, such connection will not be countenanced by this Commission.

In view of the confused state of the record in this proceeding, evidence is wholly insufficient to permit the establishment of a proper schedule of rates

for the certificated public utility service upon the standard practices followed usually by this Commission in such matters. However, in view of the almost identical problems and parallel operating conditions existing within and on the adjacent water system operated by R. W. Sparling, Inc., in Topanga Canyon, it appears that it will be just and reasonable to establish the same schedule of rates fixed for said system by this Commission in Case No. 4821, to remain effective until such time as more certain conditions obtain.

Defendant Hancy has indicated his desire and intent to bring in a Rotary well drilling rig and attempt to bring in water at a greater depth than existing canyon wells. Mr. Hancy is by profession a well-driller and has testified that he believes water can and should be found between present drilled depths in the Canyon and 1,000 feet. The citizens' committee and other consumers under the defendant's various water systems have expressed a willingness to pay the same rates to be established under similar circumstances and conditions on the said R. W. Sparling, Inc., System, provided said defendant will make all reasonable efforts and use due diligence in drilling for and obtaining more water. It therefore appears proper that this proposal be accepted and given a fair trial, subject, of course, to future review whenever conditions so warrant; it will, therefore, be so ordered.

In conclusion, the Railroad Commission desires to point out to all residents of Topanga Canyon that the entire underground geologic structure in this canyon is such that sufficient water cannot be developed economically to meet all necessary present water requirements. Inevitable future growth will demand the importation of water from foreign sources which may best be accomplished through some water-district type of organization. The measures adopted by the Commission in this instance, as well as in the kindred Sparling case, are for temporary relief only and can be of benefit for only a year or two at best.



ORDER

The Commission, on its own motion, having instituted an investigation into the various phases of the operation and practices of Albert E. Haney, doing business as Topanga Canyon Public Utility Water System, 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 FOUND AS A FACT that the rates now charged by Albert E. Haney, doing business as Topanga Canyon Public Utility Water System, for water supplied to his customers in the unincorporated area known as Post Office Tract and consisting of Tracts No. 7806, 8910 and 6915, Topanga Canyon, Los Angeles County, are unjust and unreasonable in so far as they differ from the rates herein established, and that the rates herein established are just and reasonable rates to be charged for the service rendered, and basing its order upon the foregoing findings of fact and upon further statements of fact contained in the Opinion which precedes this Order,

IT IS HEREBY ORDERED that Albert E. Haney, doing business as Topanga Canyon Public Utility Water System, be and he is hereby authorized and directed to file in quadruplicate, in conformity with General Order No. 96 of the Railroad Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged for all water service rendered his customers in Tracts No. 7806, 8910 and 6915, Topanga Canyon, Los Angeles County, on and after the date of this Order:

Schedule No. 1

GENERAL METER SERVICE

Applicability:

This schedule is open to customers applying for continuous service only on a monthly basis.

Territory:

In Tracts No. 7806, 8910 and 6915, Topanga Canyon, Los Angeles County.

Schedule No. 1 - Continued

GENERAL METER SERVICE

Rates:

Per Meter  
Per Month

Minimum Monthly Charges:

5/8 x 3/4-inch meter . . . . .	\$3.00
3/4-inch meter . . . . .	4.00
1-inch meter . . . . .	6.00
1 1/2-inch meter . . . . .	10.00
2-inch meter . . . . .	15.00

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:

First 300 cubic feet, or less . . . . .	\$3.00
All over 300 cubic feet, per 100 cubic feet . . . . .	.75

IT IS HEREBY FURTHER ORDERED that Albert E. Hancy, doing business as Topanga Canyon Public Utility Water System, be and he is hereby directed to file with this Commission, within thirty (30) days from and after the date of this Order, a specific program setting forth the plans proposed to be inaugurated for the development of additional water supplies and plans for the improvement in the general distribution of water throughout his system, including plans for the establishment of pressure or service zones and larger feeder mains. A statement also shall be included showing the estimated date of completion of the said program of improvements.

IT IS HEREBY FURTHER ORDERED that said Albert E. Hancy shall file with this Commission on the first day of each month, commencing with the first day of September, 1946, a detailed report in writing, setting forth as of the date thereof the progress made in compliance with the terms of this Order, said reports to continue until water development and distribution projects are completed, subject to approval of this Commission.

IT IS HEREBY FURTHER ORDERED AS FOLLOWS:

1. On and after December 31, 1946, Albert E. Haney shall discontinue all public utility water service to consumers outside of the boundaries of Tracts No. 7806, 8910 and 6915, Los Angeles County, unless and until said Albert E. Haney has been granted by this Commission a certificate of public convenience and necessity authorizing such service.
2. Within thirty (30) days from and after the date of this Order, Albert E. Haney shall notify in writing all consumers served by him outside said Tracts No. 7806, 8910 and 6915 of the terms of Paragraph 1 above, and, within forty (40) days from and after the date of this Order, shall file a written statement with this Commission showing the action taken by him in giving the notice required herein.
3. This Commission may, on and after December 31, 1946, by supplemental order herein, direct further that all water service be discontinued by Albert E. Haney in Tract No. 6915, Los Angeles County, unless and until said Albert E. Haney obtains a certificate of public convenience and necessity authorizing such service, and/or, unless and until said Albert E. Haney makes proper showing before this Commission that he has obtained an additional water supply sufficient in the judgment of this Commission to justify the continuation of water service in said tract.
4. Within thirty (30) days from and after the date of this Order, Albert E. Haney shall notify all consumers served by him in Tract No. 6915, Los Angeles County, of the terms of Paragraph 3 above, and, within forty (40) days from and after the date of this Order shall file a written statement with this Commission showing the action taken by him in giving the notice required herein.

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

Dated at San Francisco, California, this 30 day of July, 1946.

Harold Anderson  
Justus F. Carrion  
Francis D. ...  
... ..  
Harold P. ...

Commissioners.