

ORIGINAL

Decision No. 41440

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE MUIR BEACH IMPROVEMENT ASSOCIATION,

Complainant,

vs

Case No. 4905

THE MUIR BEACH COMPANY, INC.,

Defendant.

Freitas, Keating and Freitas, by  
Walter F. Freitas, for Complainants.

R. C. Ramsay, for Muir Beach Company, Defendant.

O P I N I O N

Muir Beach Improvement Association, an organization composed of property owners and residents of Muir Beach, in Marin County, filed a formal complaint against Muir Beach Company, a corporation, the owner of a water system supplying the subdivision of Muir Beach. Complainants allege that Muir Beach Company is and has been a public utility for twenty years last past; that this company has been serving water that is unfit to drink because of contamination; that the water is dirty and cannot be used for cooking or laundering purposes; that the water service has been very irregular and residents have been unable to flush toilets for periods running from several days to several consecutive weeks. The Commission is requested to require Muir Beach Company to deliver a continuous, safe and decent water supply to its consumers.

Muir Beach Company, by way of answer, entered a general denial of the allegations in the above complaint and alleges that it is not a public utility and is not under the control and jurisdiction of this Commission and upon these grounds asks that the complaint be dismissed.

A public hearing in this matter was held at Muir Beach, Marin County, before Examiner Stava.

From the evidence it appears that about the year 1923 Antone Bello subdivided a tract of about 20 acres which he called "Bello Beach." A water system was installed and lots were placed upon the market for sale to the general public. On the 15th of June, 1933, Muir Beach Company was incorporated and immediately thereafter acquired approximately 133 acres of land in Marin County, including the unsold lots in Bello Beach, and also 8 or 9 acres of land now the property of the United States Government. The subdivision now is generally known and referred to as Muir Beach.

The original water supply was obtained from shallow wells near the creek. In 1933 Muir Beach Company drilled a deep well to a depth of 415 feet which well soon sanded up and later was abandoned. Thereafter, one of the shallow wells drilled near Frank Valley Creek was rehabilitated and now is the only source of supply. From this well a booster pump lifts the water from a receiving cump into a 20,000-gallon storage tank, located on a hillside at an elevation of 275 feet above the pumping plant. The distribution system consists of 5,975 feet of mains, varying from 1" to 6" in diameter.

The evidence presented in this proceeding does not show that any charges ever were made for water during the time the system was owned and operated by Antone Bello. However, since acquisition of properties by Muir Beach Company, the consumers have been charged and money has been collected by this company for water service. The rates

charged and paid varied from 75¢ to \$1.00 per month, according to the size of the premises served.

During the war years the United States Navy located a small detachment at Muir Beach and immediately took over the operation of the water system, spending approximately \$8,000 for improvements and operation and maintenance of the water plant during this period. Nothing was paid by the Navy to Muir Beach Company for the use of these facilities, the company, however, continued to pay all power bills. Water was supplied by the Navy to the consumers without charge. On or about the end of 1946 the Navy relinquished control and possession of the water system and for a few months thereafter representatives of Muir Beach Company resumed operation of the pumping plant. The service soon became so undependable and so frequently interrupted that members of the community took over the duties of operating and maintaining the pumping plant. The cost of electric power and minor system repairs was borne by Muir Beach Company. At the present time various consumers, members of the Muir Beach Improvement Association, continue to operate the system under this arrangement. No substantial repairs have been made recently but the cost of power to operate the well pump and the booster pump is still being paid by defendant corporation. There are 22 consumers, practically all of which contribute to Muir Beach Improvement Association \$1.00 per month, for upkeep and operation of the system. One of the consumers, Dr. J. P. O'Brien, owns and operates a tavern and camp on the beach and contributes \$2.00 per month to the Association.

The testimony shows that prior to the time the United States Navy took over the operation of this water system charges had been made and collected by the Muir Beach Company for water service. It further appears that by reason of the interrupted service and poor quality of the water delivered, many of the consumers from time to

time had refused to pay Muir Beach Company for water and even since operation of the pumping plant by resident members of the Muir Beach Improvement Association, some consumers still have refused to pay because of the poor quality of the water and the undependable and interrupted service.

It is clear that Muir Beach Company has delivered water for compensation to water users in Muir Beach from on or about the time it acquired the properties in 1933, at least up to the date the system was taken over and operated by a detachment of the United States Navy. Thereafter for a period of a few months Muir Beach Company resumed operations through its employees or representatives. The physical operation of the plant was then taken over by a group of the consumers as a last resort in order to try to maintain a continuous supply of water to their homes. Under these circumstances it is clear that Muir Beach Company dedicated this water supply and service to the public generally in Muir Beach from the time in 1933 that it commenced delivering water to and charging the consumers for water service. This dedication could not be terminated either by the act of the United States Navy in temporarily taking over operation of the system, nor by the acts of the consumers in practically being forced to operate the pumping plant in order to get water for their homes and prevent abandonment of their living quarters.

John D. Reader, one of the Commission's engineers, testified that he estimated the original cost of the properties now used to serve the public, including improvements made by the United States Navy, to be \$8,424 and further testified that the yearly cost of operation will amount to \$806, allowing \$30 per month as compensation for a part-time pump operator and caretaker, assumed to be a local resident.

Testimony presented by the secretary of Muir Beach Company shows that the corporation had offered to give a one-half interest in the water system to the consumers and permit them to operate the properties as a mutual water company. During the public hearing held herein defendant company through its secretary offered to give the entire water system to the consumers upon the same basis. The consumers again refused to accept and insisted that defendant be directed to improve the water supply, repair present leaking mains and replace a large amount of pipe throughout the service area.

One of the more serious problems complicating the operation of this water system is the necessity for improving the quality of the water. Unquestionably the water from the present well is subject to surface pollution and discoloration. Without chlorination this water is considered to be unsafe for household uses, although the recent water samples tested by the County Board of Health showed no B-Coli present. The percolating water flowing into the shallow well leaches vegetable matter permanently staining clothes washed in this water. The complainants urge that the company either clean out the present deep well or obtain another source of supply from a new well to be drilled in a protected and safe area.

The record shows that most of the distribution mains are worn out and need immediate replacement. Some of the leaking pipes could be repaired and put into serviceable condition without great expense. Cleaning out the deep well might be less costly than a new well but the yield and quality of the water is problematical. In light of the public utility character of this waterworks and the obligation and duty of the owners thereof to provide an adequate and proper water service to the members of the public served no course is open to this Commission other than to direct Muir Beach Company to install without delay whatever improvements are reasonably necessary.

to provide their water users with a safe and satisfactory water service."

The essential improvements and costs of operation obviously cannot be justified by the revenues which can be realized under present rates. Defendant, therefore, should apply to this Commission for establishment of a proper schedule of rates as soon as the improvements have been completed and in operation. By reason of the small number of consumers involved, the water charges necessarily will be rather high at the outset, but the record herein quite conclusively shows that while all lots in Muir Beach Subdivision have been sold, new home construction has been practically prohibited by lack of water.

A dependable water supply will result in new home construction throughout the subdivision and furthermore will permit development of defendant's adjoining acreage, not otherwise possible. The ultimate result will be a reasonable rate for water service to all concerned.

#### O R D E R

Complaint as entitled above having been filed with this Commission, a public hearing having been held thereon, the matter having been duly submitted and the Commission having been fully advised in the premises, and basing its Order upon the foregoing findings of fact,

IT IS HEREBY FOUND AS A FACT that the water system owned by Muir Beach Company, supplying water for domestic purposes at Muir Beach, Marin County, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California, therefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That Muir Beach Company shall file in quadruplicate with this Commission, within thirty (30) days from

the effective date of this Order, a schedule of just and reasonable rates for water service rendered by said company to consumers in Muir Beach, Marin County;

2. That Muir Beach Company, within twenty (20) days from the effective date of this Order shall file with this Commission detailed plans for the rehabilitation of the distribution system and for the development of source of water supply which will produce safe and potable water in adequate quantities to meet the reasonable requirements of the consumers; said plans are to be subject to the approval of this Commission and upon approval thereof said improvements shall be installed and in operation in a manner satisfactory to this Commission on or before the first day of June, 1948;
3. That Muir Beach Company, within twenty (20) days from the effective date of this Order, shall submit to this Commission for its approval four sets of rules and regulations governing relations with its consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet  $8\frac{1}{2}$  x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the present service area, and the location thereof with reference to the immediate 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;
4. That Muir Beach Company within sixty (60) days from the effective date of this Order, shall file with this Commission four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated by appropriate markings the territory presently served. 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 property 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.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 6<sup>th</sup> day of April, 1948.

A. J. Anderson  
Justice J. Calver  
James H. Howell  
Harold P. Kila  
Winnette Potter  
Commissioners.