

ORIGINAL

Decision No. 43045

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations of
 DUCOR LAND CO., F. NORMAN PETERS, PETER J.
 DIVIZICH and DUCOR WATER COMPANY, in
 connection with a water system at Ducor,
 Tulare County.

Case No. 5002

C. E. GARLOCK, et al.,
 Complainants,

v.

Case No. 4884

DUCOR LAND CO., a corporation, et al.,
 Defendants

J. A. Chase, for complainants in Case No. 4884;
Gaylord Hubler, for defendants in Case No. 4884
 and for respondent Ducor Land Co. in Case No. 5002;
A. O. Hunter, for respondents Peter J. Divizich
 and Ducor Water Company in Case No. 5002.

O P I N I O N

By Decision No. 42042, issued September 14, 1948, in Case No. 4884, the Commission found the water system serving portions of the town of Ducor, Tulare County, to be a public utility and directed Peter J. Divizich, the owner of a large fruit packing and cold storage plant in Ducor and operator of the water system, to file rates and a map of the service area. ^{1/} Divizich had acquired the properties in 1947 from Ducor Land Company, which subdivided the townsite about

^{1/} The time for compliance with Decision No. 42042 was later extended to January 15, 1949. Meanwhile, Divizich and his engineer, Irvin H. Althouse, endeavored to gather the information to be used as a basis for the required filings. On March 17, 1949, following institution of the investigation in Case No. 5002, Althouse was advised by a staff letter that, in view of the pending investigation, "it would appear unnecessary to do anything further in connection with the making of maps and the filings requested in the former order of the Commission."

1907 and installed the original system to supply water to purchasers of lots. On June 14, 1948, four days before the hearing in Case No. 4884, Divizich purported to convey the water system to Ducor Water Company, a mutual water company formed by him and his associates and incorporated under California law on May 19, 1948. Sometime during the summer of 1947, however, and while a portion of the distribution system and a number of lots were in the hands of F. Norman Peters, Divizich's grantee, the well supplying the system started to dry up. Divizich then took the distribution lines and lots over from Peters, who was in poor health, and, when the well finally went dry, connected the system to his own well on nearby land, used in supplying water to his farm and fruit packing plant, and has since furnished water to residents of the town. Although the foregoing facts were brought out in a general way at the 1948 hearing, there was no documentary evidence introduced to show the various transfers of title to the water system, other than the deed of a new well site and assignment of interest in the distribution system from Divizich to the mutual water company. This circumstance, together with Divizich's failure to file the rates and map required by Decision No. 42042, prompted the Commission to commence the investigation in Case No. 5002 and to reopen the former complaint case.

The two proceedings were heard on a consolidated record before Examiner Gregory at Ducor on April 7, 1949. Copies of the various conveyances in the chain of title from Ducor Land Company to Divizich were placed in evidence, as were also a report and map prepared by Irvin H. Althouse, an engineer employed by Divizich. Testimony was also received from C. E. Carlock, D. E. McNabb, O. J. Blackman and O. M. Anderson, complaining water users, and from Mrs. Daisy M. Evans, who since November, 1947, had collected water bills at Divizich's direction but had kept the money in her personal custody, also under Divizich's orders.

The evidence established that the water supply, as presently constituted, is inadequate to serve both the consumers in the town of Ducor and the packing plant and farm owned by Divizich. Althouse estimated that it would cost approximately \$12,000 to place the system on a footing adequate for the needs of the town at present and for the near future,^{2/} assuming the construction of a new well and the installation of a new deep well turbine pump of 200 G.P.M. capacity and 800 feet of six-inch water main.^{3/} Althouse estimated the appraised value of the system, with recommended installations completed, at \$22,154.62.

During the period from November 1, 1947, to December 31, 1948, collections for water service amounted to \$1,096.50 and operating costs were \$1,008.19, exclusive of depreciation. Divizich has paid all operating and other costs out of his own funds and has not made use of the sums collected by Mrs. Evans since November, 1947. During this time, it appears, various amounts were collected from the users, depending somewhat on the use to which their property was put and ranging from \$1.75 to \$5 per month. Althouse estimated that an increase of about 70% in revenues would have been necessary to pay operating costs, including depreciation, and a return on the investment during the 14 months ending December 31, 1948, and that, if the recommended improvements were made, additional revenue of \$1,200 per year would be required to support the system as a public utility.^{4/}

^{2/} The population of Ducor is approximately 200. There appears to be little activity in the sale of lots at the present time.

^{3/} The appraised value of the system, as of June 2, 1947 (Exhibit 7), including land (\$1,160) and the dry well and pumping plant (\$4,009), was \$11,137. Additions and betterments by Divizich from June 2, 1947, to April 1, 1949, amounted to \$3,226.62. That figure includes eight lots offered by Divizich for a new well site (\$1,200); a booster pump installed on his own well to feed water to the storage and distribution system (\$600), and 712 feet of new mains installed (\$1,426.62.)

^{4/} At the first hearing (June 18, 1948) David L. Duncan, an engineer of the Commission's Hydraulic Division, since deceased, testified that pumping costs for the system as then constituted would be increased by about 30% if the operation were to be declared to be a public utility, due to a change from agricultural to general service power schedules of Southern California Edison Company. Althouse, it appears, did not take note of such increased pumping costs in making his report.

The water system on which this controversy centers was constructed about 1907 by Ducor Land Company to serve the townsite of Ducor, which then comprised six blocks of 32 lots each lying west of Carlisle Street and the Southern Pacific tracks and south of Fountain Springs Avenue. Water was secured from a 400-foot-deep, 14-inch, cased well located on Lot 21 of Block 10 in the extreme southeast portion of the First Addition to Ducor. The water was lifted by a 280-foot-deep-well Pomona pump, driven by a 7½-horsepower motor (rated 60 G.P.M.), to a 6,000-gallon storage tank at the top of a 60-foot steel tower, from which it flowed into the distribution system.

At about the time Ducor Land Company commenced its real estate and water operations, another subdivider (whose identity was not clearly established) opened up a tract north of Fountain Springs Avenue (described on one of the maps in evidence (Exhibit 1) as "Portion of Ducor") and installed water mains which were later connected to the Ducor Land Company's mains. The Ducor Land Company furnished water through these mains and also repaired them, when necessary, for many years up to 1947. The company then withdrew its remaining unsold lots from the market, due to a decreasing supply of water, and sold them and the water system to Peter J. Divizich. During the time Ducor Land Company operated the system, the company extended domestic water service connections to about five homes west of Braley Street (the western boundary of the original townsite) both north and south of Fountain Springs Avenue. There is also an extension of two-inch pipe, running along the Southern Pacific right of way to the old Union Oil Company plant located between the tracks and the county road northeast of the town. The pipe terminates about 20 feet south of an unimproved acre owned by C. E. Garlock, one of the complainants in Case No. 4884. No one could testify as to when this extension was installed, or by whom, although it appears to be connected to the lines laid down north of Fountain Springs Avenue by the unknown real estate operator previously mentioned.

The question of ownership of the water system, as a result of the several transfers in 1947 and 1948, is not entirely clear. The testimony of Wilbur Dennis, president of Ducor Land Company, indicates that the well supplying water for the town began to go dry sometime in 1947, in consequence of which it became increasingly difficult to provide water service. The company was reluctant to extend service to new purchasers of lots and was unwilling to construct facilities to reach other portions of the neighborhood. Apparently, this was one of the factors that led to the filing of the complaint (April 14, 1947) by Garlock and others. It was about that time that the land company, spurred by the complaint or by the scarcity of water (or perhaps by both), decided to withdraw its unsold lots from the market. A purchaser for the entire unsold area south of Fountain Springs Avenue to Valencia Avenue (comprising the original townsite and the First Addition) was found in P. J. Divizich. The deed evidencing this sale was dated June 28, 1947, and conveys some 514 lots (chiefly 25 x 150 feet) and the entire water system.^{5/} Divizich had constructed and was operating a large fruit packing and refrigeration plant on nearby land southeast of the town. Water for the plant, and for Divizich's farmland south of Valencia Avenue, was obtained from a deep well, owned by the P. J. Divizich Fruit Corporation, located approximately 200 feet south of the town well and elevated storage tank.

Shortly after Divizich acquired the properties, a plan was devised whereby one of his employees, F. Norman Peters, would take over the land north of Orange Avenue and all distribution lines, and form a corporation to supply water to the town. The deed from Divizich to Peters and his wife (dated July 11, 1947), however, did not mention the

^{5/} It should be noted that this deed was executed two months after the question of utility status of the water system was at issue in the complaint proceeding, and about two weeks after the date upon which a hearing had originally been scheduled in that case (June 13, 1947). None of the parties, however, then or later, appears to have considered that Commission sanction for any transfer might have been necessary.

well, pumping plant, and elevated tank, nor, in fact, was the land on which they were situated conveyed by the grant.

After Peters acquired the property, the well continued to dry up. Peters then became ill and was unable to carry on with the project. On September 9, 1947, he deeded back to Divizich the land and distribution pipes north of Orange Avenue. About this time the water level in the town well fell below the pump intake.^{6/} Divizich removed the pump and, being unwilling to see the town without water, connected the storage tank to his own well, pump and ground level tank by means of a four-inch pipe line, and has since been supplying water to residents of the town, including some of the complainants who were unable to get water from Ducor Land Company when it operated the system.

On May 27, 1948, the Commission scheduled a hearing on the complaint for June 18, of that year. For some time prior to that, Divizich had been attempting to form a mutual water company, and had gathered a number of the residents together at a meeting in his office for the purpose of discussing the plan. Garlock and the other complainants, it seems, were not advised of this meeting, but learned about it afterwards. Articles of incorporation were adopted at this first meeting. The plan was presented to a number of the residents at a second meeting, held about April 28th, by A. O. Hunter, counsel for Divizich, and agreed to by those present.^{7/} At any rate, articles of

^{6/} Divizich denied that his 846-foot well across the road was responsible for this situation since he was not pumping from his well at that time. The town well, as we have pointed out, was 400-feet deep and the pump intake was 280 feet below ground level.

^{7/} The record is confused on the question of whether Garlock and his associates ever received a formal notice of the second meeting. Notices were mailed to several persons, but, according to J. L. Stewart, who worked in the Post Office and who was present at the second meeting, neither Garlock nor any of the other complainants was there.

incorporation of Ducor Water Company, a mutual water company, were signed by Divizich and eight others on April 28, 1948, and filed with the Secretary of State on May 19, 1948. The record does not reveal whether by-laws were adopted, although it appears to have been the intention to do so at some time. ^{8/}

On June 14, 1948, four days before the hearing held that year, Divizich deeded to the mutual company Lots 19 to 26 in Block 1 of the original townsite for use as a new well site. By assignment, dated the same day, he also purported to transfer to the mutual "all my right, title and interest in and to the distribution pipes of the water system of the Town of Ducor, County of Tulare, which are situated North of Orange Avenue in said Town." At the hearing held on April 7, 1949, Divizich's attorney admitted that there was some question as to the validity of these transfers, since, if the system were a public utility it would have no right, he conceded, to transfer its operative properties without prior authorization by the Commission. Both the deed and assignment have been recorded in Tulare County, as have the other deeds mentioned. Divizich retained the deed and the assignment, his counsel stated, "not as an individual but as a member of the board of directors of the mutual water company." In answer to a question by the Examiner as to what action the mutual had taken to accept Divizich's deed and assignment, his counsel stated: "It was agreed at the time of the meeting had by the board of directors that

^{8/} Subsequent to the meeting of April 28, 1948, Divizich's attorney prepared a draft of by-laws. At the hearing on April 7, 1949, he explained what happened (Tr. p. 168):

"The draft was to be presented at the organization meeting which was to be held. In the meantime, the hearing was held last June, and it had - the matter in general, had been flying back and forth. The hearing made the people feel they should wait until the matter was cleared. They seemed to feel a decision was coming from the Public Utilities Commission on any form of organization."

such action should be had and they accepted. There was no meeting held after that but it was agreed that Mr. Divizich was going to turn over the records which he had." (Tr. P. 168)

We have detailed the circumstances surrounding the purported transfer from Divizich to the mutual, as they appear of record, mainly for the purpose of indicating that at the time of the hearing held in June of 1948 there seemed to be some confusion in the minds of the principal parties to this affair as to just what were their legal rights and duties and as to what procedures should be adopted. The physical situation was that the well which originally supplied the town system was out of commission and that Divizich, as owner of a water distribution system with no source of supply, was furnishing water from his own well, constructed and used for other purposes, and was, at the same time, collecting charges for water so furnished but making no use of the money collected. His position at both hearings was that he was furnishing water merely as an accommodation.

There is no question but that the original water supply was dedicated to public use by Ducor Land Company, and that the town well, pumping plant, elevated tank and distribution lines, both north and south of Fountain Springs Avenue, comprised that system. The finding of public utility status made in the previous decision (Decision No. 42042) must hence be reaffirmed.

Whether Ducor Land Company, Divizich, or the mutual company is now the owner of the water system we do not determine. Certainly the mutual company, by the deed and assignment from Divizich, obtained nothing more than a well site and the distribution pipes north of Orange Avenue. Divizich still retains the tank and well on Lot 21 of Block 10, according to the deeds. Even if it wanted to, the mutual organization could not now commence supplying water to its members without obtaining a new source of supply.

We believe that a practical solution for all parties to this proceeding is to require Divizich, who claims ownership of certain properties dedicated to public utility water service, to continue to render service to the community of Ducor until such time as the mutual organization, or any other entity, is in a position to take over and perform the task of supplying water to the community. Divizich, moreover, should be entitled to apply the sums collected since he acquired the properties for the purpose of reimbursing himself for expenses paid heretofore, as far as possible, and should continue to collect charges at the existing rates and apply the sums so collected for current expenses and toward whatever return they may bring on his capital investment. Should the plans now envisaged for a different type of organization be slow in maturing, and the revenues collected during such period be noncompensatory, Divizich may file an application for an increase in rates. At this time, however, we will reaffirm our previous direction to Divizich to file the rates, rules, regulations, and maps specified in the former order.

What we have said in the foregoing opinion makes it unnecessary to consider in detail the position of the complainants. There is nothing in the record to suggest that Garlock and his associates are now being, or in the future would be, subjected to unfair or discriminatory treatment respecting water service. Divizich made it clear that if the mutual association became active he was willing to come in and bear his share of the burdens, which would in fact amount to about 40% of the total, since he owns that proportion of the land which is proposed to be included. He disclaimed any intention of excluding, or of attempting to exclude, any person from the mutual. The testimony of the complainants reveals little more than a feeling of dissatisfaction with the manner in which Divizich went about organizing the mutual and a dubious attitude toward the ultimate success of such an association.

O R D E R

Public hearing having been had in the above-entitled and numbered proceedings, evidence having been received, the matters having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in its previous decision herein, No. 42042, and in the foregoing opinion,

IT IS ORDERED:

1. That Decision No. 42042, rendered in Case No. 4884 on September 14, 1948, be and it is hereby reaffirmed.
2. That Peter J. Divizich shall file in quadruplicate with this Commission, within thirty (30) days from the effective date of this order, in conformity with the Commission's General Order No. 96; rates for water service rendered in the town of Ducor, which rates shall not be higher than those in effect for the various consumers in the area served, subject to approval by the Commission.
3. That Peter J. Divizich, within thirty (30) days from the effective date of this order, shall file with this Commission four sets of rules and regulations governing relations with his consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet 8½ x 11 inches in size, delineating thereupon by 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 Peter J. Divizich, 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

C-5002
C-4884
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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 after the date hereof.

Dated at San Francisco, California, this 28th day of

June, 1949.

R. Z. [Signature]
Justice J. O'Connell
[Signature]
Harold A. Hicks
[Signature]
Commissioners