

ORIGINAL

Decision No. 43233

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Commission's  
investigation into the propriety,  
adequacy and lawfulness of the  
practices, operations, service,  
contracts and facilities of  
MATTIE E. HANEY (Topanga Canyon  
Public Utility Water System).

Case No. 4966

R. B. Cassidy, for affiants; Ben Van Tress and Milan E. Ryan, for Mattie E. Haney; William C. Carter, for Topanga Park Mutual Water Company, and Paul E. Richards, for the Post Office Tract, interested parties.

#### FINDINGS AND CONCLUSIONS

Under date of November 3, 1948, this Commission issued its Decision No. 42198, in Case No. 4966, under the terms of which Mattie E. Haney, doing business as Topanga Canyon Public Utility Water System, was ordered (1) on and after January 15, 1949, to discontinue all public utility water service to consumers outside the boundaries of Tracts Nos. 7806, 8910, and 6915, in Los Angeles County; (2) to notify, within ten days after the effective date of that order, all consumers served by her outside of the aforementioned tracts, of the discontinuance of service, and to file a written statement with this Commission showing the action taken in connection therewith within twenty (20) days after the effective date of the order; and (3) on January 15, 1949, to reconnect Wells Nos. 7 and 8 to her public utility water system and thereafter operate continuously said wells in connection with Wells Nos. 5, 9, and 10, in supplying water to consumers residing in Tracts Nos. 7806, 8910, and 6915, and to no others, without receiving prior authority from this Commission.

The order in Decision No. 42198, supra, became final on November 18, 1948

Under date of March 9, 1949, an affidavit and Application for Order to Show Cause was filed by the secretary of this Commission alleging, in substance, that respondent, Mattie E. Haney, had failed and refused to comply with the requirements of the order in Decision No. 42198, supra. This Commission issued an Order to Show Cause as a result thereof, on March 15, 1949. Personal service was made on respondent on March 24, 1949 (Exhibit No. 3), and public hearings were had in the matter before Commissioner Euls and Examiner Syphers on April 13, 1949, and June 20, 1949. On the last named date the matter was submitted on concurrent briefs to be filed on or before July 11, 1949, with no reply briefs.

At the hearing, an Affidavit of Service (Exhibit No. 2) was received in evidence showing, and we hereby find, that a certified copy of Decision No. 42198 was personally served upon Mattie E. Haney on November 8, 1948. Exhibit No. 4, received in evidence at the hearing, is a mimeographed copy of a notice which Mattie E. Haney reportedly sent to all consumers of the Topanga Park Mutual Water Company. Whether or not this notice complies with the requirements of the order in Decision No. 42198 is not here of controlling importance although we do point out that the record indicates that this notice was not sent out within the time prescribed by Decision No. 42198, nor was a copy of it filed with this Commission within the time so prescribed. Furthermore, it is extremely doubtful that this notice constitutes a written statement such as is required by the aforementioned decision.

The evidence further indicated, and we find, that on January 17, 1949, Wells Nos. 7 and 8 were not connected to the public utility water system in compliance with the terms of the order in

Decision No. 42198. On January 15, 1949, Mattie E. Haney and one of her employees did reconnect Wells Nos. 7 and 8 to her public utility water system. However, on the same day, one William C. Carter, who is president of the Topanga Park Mutual Water Company, disconnected these wells from the public utility water system and connected them to the mutual water system. This mutual water company has been operating Wells Nos. 7 and 8 since July 27, 1948, after an attempted purchase from Mrs. Haney, for the sum of \$7,000, of the property upon which these wells are located. A deed signed by Mattie E. Haney on July 12, 1948, purporting to transfer the property in question to the mutual company, was recorded on December 1, 1948, and on that same date there was also recorded a trust deed signed by officers of the mutual company on July 12, 1948, and given as security for a note for \$4,000. On January 14, 1949, Mrs. Haney had advised Mr. Carter, president of the mutual company, that she intended to divert the water from the two wells in question into the utility water system. On that date, Mr. Carter wrote her a letter stating, in part: "You are hereby ordered to refrain from making any changes or alterations in the present connections without specific approval, in writing, from the Topanga Park Mutual Water Company, Inc." When Mrs. Haney and her employee connected the wells to the utility system, the pipes which had previously connected these wells to the mutual system were conveniently left in place and, when Mr. Carter reconnected them to the mutual system, it was merely a matter of reconnecting these pipes.

We find that the respondent has not complied with the terms of the order in Decision No. 42198 in that she has diverted the water from Wells Nos. 7 and 8 to be used for purposes other than the public utility water system since January 15, 1949. The

purported transfer of the property on which these wells are located was recorded on December 1, 1948, twelve days after the effective date of the order in Decision No. 42198. In that order, respondent was specifically ordered to reconnect Wells Nos. 7 and 8 to the public utility water system on January 15, 1949, and thereafter to continuously operate those wells in supplying water to consumers in Tracts Nos. 7806, 8910, and 6915. Further, the respondent was specifically admonished to supply water to no other consumers without receiving prior authority from this Commission. Inasmuch as no authority from this Commission has been received, and inasmuch as the water from Wells Nos. 7 and 8 has been diverted to consumers other than those specifically described in Decision No. 42198, supra, we find that respondent has failed and refused to comply with the requirements of the order in Decision No. 42198.

We find that the purported transfer of the property on which Wells Nos. 7 and 8 are located, from the public utility system to the mutual water company, is void under the terms of Section 51 of the Public Utilities Act which provides, in substance, that any transfer of possession of the whole or any part of the operative property of a utility system "made other than in accordance with the order of the Commission authorizing the same, shall be void." Such a transfer cannot be recognized by this Commission and it confers no rights on the purported transferee. In Slater v. Shell Oil Company (1940), 39 Cal. App. (2d), 535, 547, the court holds as follows:

"It is to be noted that this provision" (Section 51 of the Public Utilities Act) "declares every transfer without consent of the Railroad Commission is void. That the section means what it plainly states, that a purported transfer in violation of the statute confers no rights on the transferee, and that third persons may raise this defense, is clearly established by the following cases: Webster Mfg. Co. v. Byrnes, 207 Cal. 630 [280 Pac. 101]; Crum v. Mt. Shasta Power Corp., 220 Cal. 295 [30 Pac. (2d) 30]; Napa Valley E. Co. v. Calistoga E. Co., 38 Cal. App. 477 [176 Pac. 699]."

We find that at the times respondent was required to comply with the order contained in said Decision No. 42198, she had, and now has, the ability to comply with said order, and that such compliance was then, and now is, possible.

We further find and conclude that the respondent has committed acts, and has failed to do acts, which acts and failures to act constitute contempt of this Commission, and that she is guilty of and in contempt of said Commission.

#### ORDER OF FINE AND IMPRISONMENT

The above-entitled matter having been duly instituted, tried and submitted for decision, and the Commission being fully advised in the premises and having made its findings and conclusions finding and concluding that MATTIE E. HANEY has committed acts, and has failed to do acts, which acts and failures to act constitute contempt of this Commission, and having found that said Mattie E. Haney is guilty of and in contempt of said Commission,

IT IS HEREBY ORDERED that the said Mattie E. Haney be and she is hereby fined the amount of \$500, said fine to be paid to the Secretary of this Commission within ten days from and after the date of this order. If said fine be not paid within said ten days' time, execution, in accordance with law, shall issue upon and pursuant to this order directed to the sheriff of any county within this State wherein may be located property belonging to the said Mattie E. Haney, not exempt from execution, and said sheriff shall levy said writ of execution upon any such property and sell the same in accordance with law and out of the proceeds of such sale satisfy the amount of said fine, together with costs, or such amount thereof as may remain unpaid at said time.

IT IS FURTHER ORDERED that said Mattie E. Haney be imprisoned forthwith until she does and performs, or causes to be done and performed, the following acts, matters and things:

1. Discontinues, or causes to be discontinued, all public utility water service to consumers outside the boundaries of Tracts Nos. 7806, 8910, and 6915, in Los Angeles County;

2. Notifies, or causes to be notified, all consumers who have been served by her outside of the aforementioned tracts, of the discontinuance of such service;

3. Reconnects, or causes to be reconnected, Wells Nos. 7 and 8 to her public utility water system, and thereafter operates or causes to be operated continuously said wells in connection with Wells Nos. 5, 9, and 10, in supplying water to consumers residing in Tracts Nos. 7806, 8910, and 6915, and to no others, without receiving prior authority from this Commission.

This order shall constitute sufficient warrant and authority to the sheriff of any county of this State, wherein the said Mattie E. Haney may be found, to arrest her forthwith and imprison her in the jail of said county and to keep her so imprisoned until she does and performs, or causes to be done and performed, the acts, matters and things aforesaid.

Done at San Francisco, California, this 23rd day of August, 1949.

R. Z. Indrera  
Justice J. C. Cullen  
Wray H. L. L. L.  
Harold P. Kula

Commissioners