

ORIGINAL

Decision No. 42577

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 prac-)	
tices, operations, service, contracts,)	Case No. 4966
and facilities of MATTIE E. HANEY)	
(Topanga Canyon Public Utility Water)	
System).)	

Ryan & Ryan, by Mark E. O'Leary, for William C. Carter and Arthur E. Marshburn, Respondents. Ben Van Tress & James R. Jaffray, by Ben Van Tress, for Dale Lippincott, Mildred Buerckel, Guy Lambkin, and Mattie E. Haney, Respondents.

O P I N I O N

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.

By Decision No. 43233, dated August 23, 1949, in Case No. 4966, Mattie E. Haney was found and adjudged to be guilty of and in contempt of this Commission for her failure to do the acts, matters and things required by Decision No. 42198, supra. As a result of this contempt she was ordered to pay a fine of Five Hundred Dollars, which amount was paid, and it was further ordered that Mattie E. Haney "be imprisoned forthwith until she does and performs, or causes to be done and performed," the acts, matters and things set out in the order which were the same as those required of her under Decision No. 42198.

It came to the attention of the Commission that there was not a satisfactory compliance with the order in Decision No. 42198 in that, while, on September 9, 1949, Wells Nos. 7 and 8 of the Topanga Canyon Public Utility Water System had been reconnected to that water system, as directed by the order, that, some time prior to September 12, 1949, these wells had been disconnected from the public utility water system and had been reconnected to the pipes of the Topanga Park Mutual Water Company. Furthermore, there had been placed upon the property three signs warning that trespassers would be prosecuted and that the property was that of the Topanga Park Mutual Water Company. As a result, this Commission issued an Order to Show Cause, dated September 23, 1949, directed to William C. Carter, President and Manager, and Arthur E. Marshburn, Secretary, of the Topanga Park Mutual Water Company, ordering them to appear

before this Commission and show cause why they should "not be ordered and directed to discontinue or cause to be discontinued, any interference with the reconnection of Wells Nos. 7 and 8 to the public utility water system of said Mattie E. Haney and thereafter the continuous operation of said wells by said Mattie E. Haney..." in connection with said public utility water system.

It also came to the attention of this Commission that Mattie E. Haney apparently had left the State of California and, accordingly, a second Order to Show Cause, dated September 23, 1949, was directed to Mildred Buerckel and Dale Lippincott, employees of Mattie E. Haney, who had been left in charge of the operation of the Topanga Canyon Public Utility Water System, ordering these employees to show cause why they should not be ordered and directed to comply with the requirements set out in Decision No. 42198.

Public hearings on these Orders to Show Cause were held on October 18 and November 1, 1949, before Examiner Syphers in Los Angeles. On these dates evidence was adduced and on the last-named date the matter was submitted.

At the hearings it was developed that one of the employees of Mrs. Haney, Dale Lippincott, on or about September 8, 1949, had received telephonic orders from her to connect Wells Nos. 7 and 8 to the Post Office Tract of the public utility water system and to maintain the flow of water to this tract. Such a connection was made on September 9, 1949, but, to the knowledge of this witness, very shortly thereafter, the wells again were disconnected from the public utility water system and connected to the mutual water system. Arthur E. Marshburn, Secretary of the Topanga Park Mutual Water Company testified that, on or about September 9, 1949, he

learned of the disconnection of the wells from the mutual company and of their connection to the public utility system. Two members of the Board of Directors of the mutual company thereupon entered the property and reconnected the wells to the mutual system and put up the "no trespassing" signs.

On the last day of the hearing, Mrs. Haney's employee, Dale Lippincott, testified that, on October 27, 1949, upon written instructions from Mrs. Haney, he had again disconnected the wells from the mutual company and reconnected them to the public utility water system. He further testified that, as of November 1, 1949, the wells were connected to the public utility water system and were pumping water into the Post Office Tract.

It was further developed at the hearing, by the affidavits of Mildred Buerckel (Exhibit 1-c) and Dale Lippincott (Exhibit 3-c), that these individuals are employees of Mattie E. Haney and, in matters relating to the wells in question, acted according to her directions. Exhibit 6-c is a written direction from Mattie E. Haney to Dale Lippincott, dated October 28, 1949, reading as follows: "You are hereby ordered to disconnect from the old Canyon System & reconnect and keep reconnected to the Post Office System Wells 7 & 8, and keep them delivering water to the Post Office System, of Topanga Canyon Public Utility Water System".

In Decision No. 43233, supra, this Commission found "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...".

Therefore, it is obvious, both as a matter of fact and law, that the Topanga Park Mutual Water Company obtained no property

rights in the said Wells Nos. 7 and 8, as a result of said void and purported transfer and that the actions of its officers, directors, agents, servants and employees in diverting water from said wells to the mutual system and away from the public utility water system, constituted an unauthorized interference with the operations of the Topanga Canyon Public Utility Water System. Therefore, William C. Carter, the President and Manager, and Arthur E. Marshburn, the Secretary, of the Topanga Park Mutual Water Company and its directors, agents, servants and employees will be directed to cease and desist from any such further interference.

We further find that Dale Lippincott is the employee of Mattie E. Haney whose duties involve the operation of the utility system in general and specifically the operation of Wells Nos. 7 and 8. Therefore, we now find that the responsibility for the operation of these wells and for compliance with the Commission's orders relating thereto, lies with Mattie E. Haney as principal and also with Dale Lippincott as her employee and agent.

O R D E R

The Commission, on its own motion, having issued an Order to Show Cause, directed to William C. Carter, as President and Manager, and Arthur E. Marshburn, as Secretary, of the Topanga Park Mutual Water Company, and also an Order to Show Cause against Mildred Suerekol and Dale Lippincott, as employees of the Topanga Canyon Public Utility Water System, a public hearing having been held thereon, the matter having been submitted, and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That the Topanga Park Mutual Water Company, its officers, directors, agents, servants and employees and William C. Carter, Arthur E. Marshburn and Dale Lippincott be, and they hereby are, directed to cease and desist from any interference whatsoever with the operation of Wells Nos. 7 and 8 in connection with the Topanga Canyon Public Utility Water System.

(2) That Dale Lippincott, as an employee and agent of Mattie E. Haney, be and he hereby is directed to operate continuously Wells Nos. 7 and 8 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.

(3) That the Order to Show Cause directed to Mildred Buerckel be, and it hereby is, dismissed.

The Secretary is directed to cause personal service of a certified copy of this order to be made upon the Topanga Park Mutual Water Company, William C. Carter, Arthur E. Marshburn and Dale E. Lippincott, and to cause to be recorded upon the records of the County Recorder of the County of Los Angeles a certified copy of this decision and order.

This order shall become effective upon the expiration of five (5) days after said service.

Dated at San Francisco, California, this 29th day of November, 1949.

P. F. [Signature]
James J. Colver
Robert [Signature]
Harold P. Kils
[Signature]
 COMMISSIONERS