

Decision No. 44022

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VALLEY SPRINGS IMPROVEMENT CLUB,

Complainant,

vs.

FAY SMITH, VIRGINIA MAYNE, DORIS K.
FULKERSON and CECIL RUTH SCHADLICH,

Defendants.

Case No. 5134

Huberty & Huberty, by Joseph S. Huberty,
for complainant. Hadsell, Sweet, Ingalls
& Murman, by Dan Hadsell, for defendants.

O P I N I O N

On October 3, 1949, complainant* filed this action against defendants, who own and operate a public utility water system in Valley Springs, Calaveras County. The complaint alleges that defendants' water service and facilities are inadequate for the safety, health, comfort, or convenience of the inhabitants of Valley Springs; that for more than two months defendants have failed to provide sufficient water for ordinary household, business and community use; and that most of the inhabitants have been completely without water throughout the major portion of each day during that period of time. Complainant asks that defendants be required to improve their facilities and develop additional sources of water.

Defendants, by their answer, admit having failed for more than two months to provide sufficient water for ordinary household,

* Complainant, Valley Springs Improvement Club, is an organization of approximately 30 residents of Valley Springs who are consumers of the water system operated by defendants.

business and community use, but deny that the service and facilities are, or have been, inadequate or that most of the inhabitants have been completely without water during the major portion of each day during said period of time.

A number of special defenses to the action are also raised. Summarized, they are: that complainant is not a legal entity and is not authorized to maintain the action; that summer water shortages have been caused by shortage of rain and snow on the watersheds and that cooler weather in fall, winter, and spring and the return of normal watershed conditions will bring about an improvement in the supply; that a recently formed public utility district, with which defendants are negotiating for a sale of the system, should undertake improvements rather than defendants; that defendants are financially unable, and income from the system under present rates is insufficient, to provide for substantial improvements; that to require substantial improvements under existing rates would be unreasonable and confiscatory in view of the expense and uncertainty of finding more water; finally, that to require defendants to increase the water supply would compel them to devote property to public use that never has been, and is not now, dedicated to public use, and that any such requirement is without the powers of the Commission. Defendants ask that the relief demanded in the complaint be denied and that they be granted the relief asked for in their answer; further, that a proceeding be instituted, to be conducted jointly with the instant case, for an increase in rates so as to provide funds for needed improvements.

The case was submitted, subject to the receipt of some late-filed exhibits,^{1/} following a public hearing held at Valley Springs on January 27, 1950, before Examiner Gregory.

Preliminarily, we find no merit in defendants' first special defense; namely, that complainant is not entitled to maintain this action. A service complaint may be brought against a water utility by any person or civic organization. (Public Utilities Act, Sec. 60)

Prior to 1924, water service in Valley Springs was maintained by the Mokelumne River and Power Company. In 1924, the Commission authorized that company to discontinue water operations on the portion of its system serving from Mokelumne Hill to Valley Springs. (24CRC 932) Thereafter, John K. Pattee permitted two gentlemen by the names of Wilds and Pennington to dig a well on his ranch and construct a transmission pipe line through the property to Valley Springs for the purpose of supplying water to the community. In 1925, John Pattee purchased those facilities from Wilds and Pennington, dug a new well, installed a pump and constructed a reinforced concrete reservoir of approximately 100,000-gallon capacity on a hilltop south of the well, and operated the system until his death in 1936. Thereafter, the water service was conducted by his administrators until May 1, 1938, when his brother,

^{1/} The exhibits, except one relating to monthly water service collections in 1948 and 1949, were received and the case submitted on February 20, 1950.

Frank B. Pattee, came into possession of a portion of the estate, including the water utility and the ranch at Valley Springs on which the wells then in existence were located.^{2/}

The evidence in the present case, together with the facts admitted by the pleadings, shows that Frank B. Pattee died on June 28, 1940, leaving his widow, Marie A. Pattee, and four married daughters, Fay Pattee Smith, Virginia Mayne, Doris K. Fulkerson, and Cecil Ruth Schadlich. Pursuant to the terms of the will, the estate, including the water utility, was distributed to Marie A. Pattee, Fay Pattee Smith, and Virgil M. Airola, as trustees, with the net annual income therefrom to be paid to Marie A. Pattee as long as she should remain unmarried. Upon her remarriage the trust was to terminate and the property was to go to the four daughters.

On October 29, 1948, Marie A. Pattee remarried and the property thereafter vested in the four daughters, subject to the lien of a deed of trust given by Frank B. Pattee in his lifetime to secure the payment of two promissory notes to the Central Bank of Calaveras, on which there remained an unpaid balance of \$3,930 at the time the trust terminated. The daughters took possession of the water utility on December 1, 1948, and are now the owners and operators thereof. The actual management, however, under both the present and former owners, has been in the hands of George Walker, who lives in Valley Springs and who is assisted by a lady who attends to the collection of water bills. Leroy Schadlich, husband of one

^{2/} The foregoing recital has been included for better understanding of the background of the instant case. The facts are recorded in a rate case filed by Frank B. Pattee in 1938. (Dec. 32109, June 27, 1939, Appl. 22122 - 42 CRC 900 - not reported in full text.)

of the owners and a public accountant, does the accounting work for the utility. Two of the owners live in Berkeley, one in Oakdale, and the other in San Francisco. Except for one of the daughters, who is employed by a radio broadcasting firm in San Francisco, none of the owners of the utility has available means aside from whatever income she may derive from collections for water service and for grazing privileges on the Pattee Ranch at Valley Springs. The latter item now amounts to \$400 annually.

The utility properties consist of one cased deep well, two shallow dug wells, the storage reservoir, a booster pump and tank, pumping equipment, pump houses and adjacent areas of land, an access roadway to the wells, transmission mains, and rights of way.

This company's 1948 annual report does not include any figures for the value of the capital invested in this system. Fixed capital reported by the trustees in the 1947 annual report totals \$10,326.57. Leroy Schadlich testified that the fixed capital reported did not appear to agree with what he knew to be in use on the water system. He stated that he planned to submit revised figures in the 1949 report based upon an appraisal of the system.

The system supplies a little over 100 services many of which are located at higher elevations than others in the town, which slopes upward northwesterly from the state highway. About half the services have been metered since 1945. Revenues in 1948 were \$4,101.59 and in 1949 were \$3,495.24^{2/}. Expenses in 1949 amounted to \$3,371.20, leaving a net income for the year of \$124.04.

3/ The drop in 1949 revenue was attributed by Schadlich to the water shortage during the summer of that year.

The gist of the evidence in the present case is that for the last 17 or 18 years there has been a chronic water shortage in the community during the summer period extending from July through early October. The supply appears to be sufficient, at least for household and normal commercial use, during the balance of the year. Residents whose homes are at the higher elevations are affected first by the shortages. Some of these have individual storage facilities which, although helpful on a temporary basis, do not permit accumulation of an adequate supply during longer periods of scarcity. The critical shortage in the summer of 1949, commencing earlier than usual, was acutely felt at the grammar school and the fire station, as well as by most of the users on the system. On 15 days between July 7 and September 26, 1949, water was unavailable at the fire station for 20 or more hours in each 24-hour period.

Early in January of the current year a serious situation developed when the booster pump burned out, due to overloading, and was out of service until just before the hearing. As a result, those whose supply depended on pressures produced by the booster facilities were without water, although gravity water was available to services at the lower elevations.

According to Walker, the local manager of the utility, the community's water needs range between about 20,000 and 35,000 gallons per day. He described the layout of the system and the problems connected with its operation. The gathering and storage system, comprising the three wells, pumps, sheds, reservoir and pipe connections, is located some 1,800 feet northeast of the easterly limits of the town on rolling grazing land through which flows Cosgrove Creek. Well No. 1, drilled in 1931 to a depth of about 150 feet, is the main source of supply. It is equipped with a

turbine pump and three horsepower three-phase motor which is capable of delivering about 24 gallons per minute to the reservoir; however, even during the winter months this well pumps dry periodically. Wells Nos. 2 and 3 are shallow dug wells each of which produced only about 2,000 gallons of water per day during the summer of 1949.

The record indicates that considerable trouble has been experienced with the booster facilities since they were originally installed in 1939. Walker testified that the present three horsepower motor is overloaded and that one of greater horsepower would be better.

Early in 1948 the town of Valley Springs and portions of the adjacent area were organized into the "Valley Springs Utility District" under the Public Utility District Act of 1921. During 1949, the District was negotiating with the utility for acquisition of the system and in October of that year hired an engineer to investigate and report on a water supply and a water supply system. Negotiations were still under way at the time of the hearing but no agreement had been reached on either the properties to be included in the sale or the price.

The testimony of the engineer and of the District manager indicates that the present facilities are inadequate for the growing community and that what is needed is more water and improved distribution. There is some evidence to the effect that the District might be willing to consider financing the cost of certain improvements in order to get water in the town as soon as possible, although there is no evidence of any definite commitment by the District in that regard.

The engineer retained by the District was of the opinion that two test wells should be drilled 150 feet deep about 500 or 600 feet from Well No. 1 (the deep well) in the same 40-acre tract or on an adjoining quarter-section to the north, and that if these were placed in service the present shallow wells should be abandoned. He also recommended that the pump and motor on Well No. 1 be repaired, that the booster facilities be rebuilt and relocated closer to the wells, and that a large reservoir be constructed in the town. He stated that, while these improvements should provide for the development of a minimum reliable supply of approximately 100,000 gallons per day, which would be from one and one-half to two times the amount that would probably be used, the community could probably get by with about one-half that amount for the next several years.

The record makes plain, and we find, that defendants' existing water production and distribution facilities in Valley Springs are inadequate to provide the inhabitants with reasonably sufficient quantities of water at sufficient pressures for normal domestic and commercial use, as well as for fire protection.

The immediate problem facing this utility is the one of placing the system in condition to supply sufficient water throughout the year and especially during the dry summer months. Although an ideal solution might entail making all, or a substantial part, of the improvements recommended by the District's engineer, it would be unrealistic to expect defendants to undertake such an extensive program with the limited sources of revenue now available to them. As owners and operators of a public utility water system, however, defendants are under an obligation to see to it that every reasonable

step is taken to furnish adequate service to their patrons. If that can be achieved here by measures short of a complete rehabilitation of the water works, such as has been suggested, then we are of the opinion that defendants should take those measures:

The pump and motor on Well No. 1 are obviously in need of repairs. The motor on the booster pump, although completely rewound, is still inadequate because it is overloaded during periods of heavy use causing it to heat up. This excessive heating will undoubtedly burn out the wires again unless a unit with greater horsepower is provided.

At least one additional deep well is desirable and necessary to supply the needs of the community for the coming summer season. In view of the financial condition of this small utility and the fact that a public utility water district has been formed in this area, it does not appear equitable that the company should be required to make this expenditure at this time. As the District plans to drill wells to augment the present supply from Well No. 1, we suggest that the District develop the necessary wells to its satisfaction, and if no immediate agreement can be reached for the sale of the water company properties to the District, the well or wells could be leased to the water company to provide adequate water for the coming summer.

In conclusion, we believe that the water service problem of this community will not be solved satisfactorily until some agency or group, with adequate means and with a definite program in mind, steps in and takes the situation in hand. If the recently formed District is in a position to do that, then it would seem to us that every effort should be made by the utility and the District.

to reach a fair settlement of their pending negotiations. In the meantime, however, the District and the company might explore the possibility of concluding arrangements for the development of new sources of water on the company's lands. Otherwise, the community will undoubtedly face a repetition of the shortages experienced last year.

O R D E R

Public hearing having been held in the above entitled and numbered proceeding, evidence having been received and considered, the matter having been submitted for decision, the Commission being now fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That defendants herein, doing business under the fictitious name and style of Valley Springs Water Works, a public utility water company, be and they are hereby ordered and directed as follows:

- a. Repair pump and repair or replace motor on Well No. 1.
- b. Install an additional booster pump with not less than a 5 horsepower motor.
- c. Repair storage and distribution system throughout to eliminate leakage.

(2) Defendants are hereby directed to notify the Commission in writing immediately upon completion of said work, specifying the things done and the cost of each item thereof.

This being an urgent matter, the effective date of this order shall be ten (10) days after the date hereof.

Dated at Los Angeles, California, this 4th day of April, 1950.

Q. J. [Signature]
Justus F. [Signature]
[Signature]
[Signature]
[Signature]
Commissioners.