

ORIGINAL

Decision No. 58884

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RIM ROCK PROPERTY OWNERS ASSOCIATION
Bert Norman, president,

Complainants,

vs.

Case No. 6015

PIONEERTOWN UTILITIES COMPANY, PIONEERTOWN CORPORATION et al, PIONEERTOWN CORPORATION'S BOARD OF DIRECTORS OF THE YEAR 1951 NAMELY; RUSSELL HAYDEN, WILLIAM MURPHY, FLETCHER JONES, Attorney J. G. Moser and Attorney CHARLES NICHOLS, MOUNT SAN GORGONIO WATER COMPANY,

Defendants.

Irene Fox for Rim Rock Property Owners Association.
Arthur Gry and James P. Cantillion for Charles Nichols, Fletcher Jones, William Murphy, J. G. Moser, and Mount San Gorgonio Water Company.
J. G. Shields for the Commission staff.

INTERIM OPINION

Public hearings in this matter were held before Examiner Grant E. Syphers at Yucca Valley on May 13 and June 17, 1958, and on June 10, 1959. On these dates evidence was adduced and on the last named date the matter was submitted. It now is ready for decision.

More than ten years ago a California corporation known as Pioneertown was formed for the purpose of subdividing and selling land in San Bernardino County, and particularly in Section 19, Township 1 North, Range 5 East, and Section 3, Township 1 North, Range 4 East, S.B.B.&M. This corporation sold lots to individual

purchasers in two areas, Section 19 being known as Pioneertown, Section 3 as Rim Rock. At the time of the hearings there were approximately 190 property owners in Section 19 with 35 residents, and approximately 140 property owners in Section 3 with 13 residents.

The 35 residents in Pioneertown receive water from a well which is on Parcel 291 in Section 19. The 13 residents of Section 3 are receiving some water from a spring which is on government land and from which a pipe has been laid into Section 3.

Pioneertown Corporation, during the course of its operations, borrowed money from William Murphy, Fletcher Jones, and a third party named Charles Nichols. Mr. Nichols died December 16, 1958. As time progressed Pioneertown Corporation defaulted in the payment of this money and the lenders took land in Sections 19 and 3 in exchange for the indebtedness. This land was transferred to the Mount San Gorgonio Water Company, a corporation, which is wholly owned by William Murphy, Fletcher Jones and J. G. Moser. Specifically this corporation now owns the well in Section 19; and a well site in Section 3.

As of the time of the hearings Pioneertown Corporation apparently was nonexistent. There are no existing assets of this corporation and there are no existing officers, although it should be noted that this corporation has not legally been dissolved.

The complainants herein are the Rim Rock Property Owners Association consisting of most of the 13 users in the Rim Rock area. In their complaint they allege, among other things, that they purchased their properties from Pioneertown Corporation, and as an incident to such purchases the corporation agreed to furnish them

water. As a matter of fact, the evidence discloses that Pioneertown Corporation did install the existing water system in Section 19.

The evidence also discloses that there is a well site on Parcel 237 in Section 3, and one of the complainants testified that when she bought land in Section 3 in 1947 she did have a water connection with this well. She received water from Pioneertown Corporation through this connection for about 18 months and then the water supply was stopped due to a defective pump. For a time thereafter she received water which was hauled by a water truck owned by Pioneertown Corporation. Later the truck broke down and hauling was discontinued.

In June 1952 a Mr. and Mrs. Pekarovich, who own and operate the Rim Rock Motel in Section 3 in Rim Rock, obtained permission from Charles Nichols to make use of certain pipe which had been used to connect to the well in Section 3. They used this pipe to run a connection from a surface spring, which is located on government land, to their motel. They also permitted the other 13 residents of Rim Rock to receive some water from this pipe.

In the complaint which the property owners of Rim Rock have filed it is also alleged that this source of water from the spring on the government land is insufficient for their needs.

Since the demise of Pioneertown Corporation in about 1951, the 35 users in Pioneertown have received water through the system installed by Pioneertown Corporation but have not paid that corporation, nor Mount San Geronio Water Company nor its stockholders, for the water. The domestic users have, in fact, made monthly payments to a resident of the area in the sum of \$3.00 per user per month, and these payments are used to pay the expenses of keeping up the pipe line in Pioneertown.

The 13 users in the Rim Rock area have from time to time made payments to Pekarovich in order to maintain that pipe line although at the time of the last hearing in the matter there was considerable dispute among these users. Pekarovich took the position that there was insufficient water to meet all of the desires of the 13 users and that some of them were wasting water. Therefore, on occasion the supply of water has been padlocked by Pekarovich.

From this record there are two situations which must be resolved, (1) the status of the water supply in Pioneertown, and (2) the status of the water supply in Rim Rock. There is no dispute but that Pioneertown Corporation started operations as a public utility. That corporation now has defaulted and the water facilities, or at least the well site and well, have fallen into the hands of Mount San Gorgonio Water Company and its stockholders. These latter persons contend that they are in no way the successor of the Pioneertown Corporation, but that they merely took the land in payment of a debt. However, it is well established in the law that a utility cannot arbitrarily cease operations. Once it has made a dedication to the public it cannot withdraw such dedication without authorization of the Commission. While it is true that Pioneertown Corporation now is defunct, nevertheless the water supply is owned by Mount San Gorgonio Water Company, and whether this latter corporation intended to become a utility or not, it did acquire the source of the water supply of a utility.

A review of the pertinent statutory provisions will be helpful in determining this problem. The law provides that a public

utility includes, among other entities, a water corporation (Section 216, Public Utilities Code). A water corporation "includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State" (Section 241, Public Utilities Code).

In the instant case Mount San Gorgonio Water Company and its stockholders do own the principal part of a water system in that they own the well and well site in Section 19. However, they are not operating it for compensation.

A further definition of a public utility operating a water system is contained in the following statutory language:

"§2701. Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter." (Section 2701, Public Utilities Code.)

It will be noted that this statutory provision contains no reference to compensation.

In an early case construing these statutory provisions, which were then incorporated in Section 1 of an Act for Regulation of Water Companies, the Supreme Court of the State of California made an extensive inquiry into the subject of dedication of a water system to the public use, and announced the following principal:

"What differentiates all such activities from a true public utility is this, and this only:

"That the devotion to public use must be of such character that the public generally, or that part of it which has been served and has accepted the service, has the right to demand that that service shall be conducted, so long as it is continued, with reasonable efficiency under reasonable charges. Public use, then, means the use by the public and by every individual member of it as a legal right."
(Allen vs. Railroad Commission, 179 Cal. 68, 88.)

We now conclude that in the case of the water system in Pioneertown the dedication has been to the public use. Originally it was such a dedication and the present owners now control and legally own the only source of water supply. It would be contrary to the expression and intent of the law to permit this water supply to be relieved of its dedication to public use. While it is true that the present owners have not collected compensation therefor, it is their legal right to so collect and failure to do so does not relieve them from the obligation of the dedication. While it is also true that the present owners did not intend to succeed to a utility status, they did succeed to the principal property of the utility, and so long as they maintain ownership of that property they cannot avoid the incidents of the dedication.

So far as the situation in Rim Rock is concerned, we observe that the original Pioneertown Corporation did make a dedication in that area and did conduct public utility operations for a while. Again, we have the same situation as in Pioneertown. Mount San Geronio Water Company and its stockholders have succeeded to the ownership of the well site. Therefore, the public utility obligations of Mount San Geronio Water Company and its stockholders now include both Pioneertown and Rim Rock, or in other words, Sections 19 and 3.

The additional complication which has arisen because of the system installed by the Pekaroviches does not relieve Mount San Gorgonio Water Company and its stockholders of their public utility obligations.

In considering the Pekarovich installation, we are impressed with the fact that it is obviously a temporary one. The system consists of nothing more than a surface spring which flows into a pipe. The water supply from this system is not adequate to meet all of the desires for water of the 13 users in Rim Rock. Therefore, we now admonish these users to make every effort to conserve this water supply until more satisfactory arrangements can be made.

INTERIM ORDER

A complaint as above entitled having been filed, public hearings having been held thereon, and the Commission being fully advised in the premises,

IT IS ORDERED that Mount San Gorgonio Water Company, a corporation, be and it hereby is declared to be a public utility water corporation as that term is defined in Section 241 of the Public Utilities Code, and subject to the applicable law, rules and regulations pertaining thereto, in the following described territory:

That portion of Section 19, Township 1 North, Range 5 East, S.B.B.&M., more particularly described as "Pioneertown" and recorded in Book 5, Page 46 of Maps, Official Records of San Bernardino County, consisting of 279.10 acres more or less; and the West half of Section 3, Township 1 North, Range 4 East, S.B.B.&M.

IT IS FURTHER ORDERED that Mount San Gorgonio Water Company shall, within ninety days of the effective date of this order, submit in writing to this Commission a plan for the development of

a satisfactory water system in the above described territory or, in the alternative, a plan, acceptable to this Commission, for divesting itself of the well and well site on Parcel 291 in Section 19 and also the well site on Parcel 237 in Section 3.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 18th day of August, 1959.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Matthew J. Dooloy, being necessarily absent, did not participate in the disposition of this proceeding.