

ORIGINALDecision No. 62512

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Whitney Enterprises,
Complainant

vs.

Case No. 7122

Del Mar Utilities, a corporation,
Defendant.Robert Kent Whitney, for Whitney Enterprises,
complainant.Ralph E. Dixon, for Del Mar Utilities, defendant.Luther L. Leeger and A. W. Dowden, Jr., for City of
Del Mar, interested party.OPINION AND ORDER

In this complaint, filed May 17, 1961, Whitney Enterprises, a partnership comprised of Robert K. Whitney, Milton D. Whitney and Milton E. Whitney, claims water service has been denied to it by Del Mar Utilities, a public utility water company under the jurisdiction of this Commission.

Defendant, Del Mar Utilities, in its answer filed June 7, 1961, in essence denies the allegations of the complaint and avers that it is ready to provide the water service requested provided "construction" is commenced before November 16, 1961, as permitted by this Commission's Decision No. 62010, issued May 16, 1961.

Public hearing in this matter was held before Examiner F. Everett Emerson on July 24, 1961, at Del Mar. The matter was submitted and is ready for decision.

A detailed review of the circumstances leading to the filing of this complaint will not be undertaken herein since most of the events are a matter of public record in proceedings in which

this Commission has heretofore rendered decisions.^{1/} Suffice it to say that because of shortage of supply, Del Mar Utilities, under order of this Commission, has heretofore been prohibited from providing water service to additional customers. By its latest decision respecting such situation (Decision No. 62010, issued May 16, 1961) the Commission lifted such prohibition for a period of six months by authorizing Del Mar Utilities to accept applications for water service for the period of six months after May 16, 1961, provided it appears to the utility that "construction of the facilities" for which new water service is desired is commenced prior to the end of that period.

Whitney Enterprises filed its complaint on May 17, 1961, the day following issuance of the Commission's decision which temporarily lifted the ban on new water services and was unaware that such decision had been issued.

Complainant desires to develop two adjoining parcels of land within the City of Del Mar by erecting on one of them a 90-unit motel and by devoting the other parcel to agricultural usage as a "growing" nursery. The motel site approximates 1½ acres. The nursery would utilize approximately 3 acres. Two problems confront complainant, the first being a refusal of the City of Del Mar to issue a permit for the construction of the motel and the second being the hesitancy of the water utility to provide water service to the nursery in the light of the language of this Commission's

^{1/} See Decision No. 59883, Decision No. 61653 and Decision No. 62010 of this Commission.

Decision No. 62010 respecting "construction" of facilities. Both complainant and defendant seek a clarification or interpretation of said decision.

With respect to complainant's first problem, that of obtaining a building permit from the city, this Commission has no jurisdiction whatever. Under the existing order of the Commission, water service may be established for the motel provided construction thereof is commenced on or before November 15, 1961. If construction is not so commenced, water service to the motel site may not be established by the utility except on further order of this Commission. Assuming that the time period set by the Commission is not extended but in fact runs out on November 15, 1961, complainant may avail itself of the formal processes open to it and apply to this Commission for appropriate relief in the light of circumstances then prevailing.

With respect to complainant's second problem, that of having water service established for the nursery, the Commission finds that complainant, insofar as public utility service is concerned, is entitled to receive the desired water service and that the same should be established forthwith. Since the commencement of nursery operations requires no "construction" but only the setting out of plantings, and since plantings may not be made until water is available therefor, it should be obvious that the language of this Commission's Decision No. 62010 should not be so construed as to prevent the establishment of water service to a bona fide applicant on the so-called technicality that no "construction" of a nursery has been commenced.

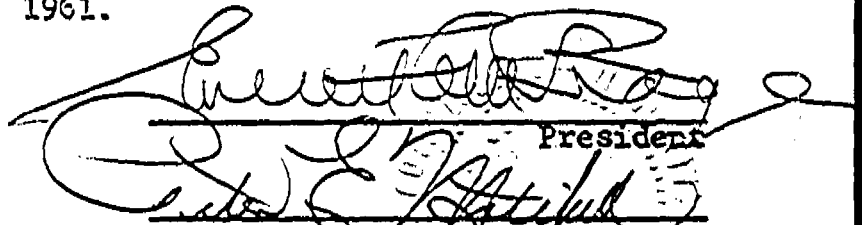

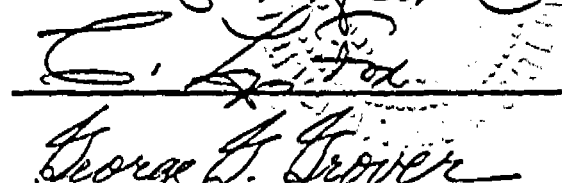
In view of the evidence and the foregoing finding, good cause appears for the following order, to wit:

IT IS ORDERED that Del Mar Utilities shall establish water service to complainant's parcel of land, appropriate for the purposes of a growing nursery, forthwith and within ten days thereafter shall notify this Commission, in writing, of the date on which said water service was established.

In all other respects, the relief requested by the complaint herein is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 5th
day of SEPTEMBER, 1961.

 President


George H. Grover
Commissioners