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ORIGINAL

Decision No. 68741

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Complaint of water consumers of the Arrowhead Manor Water Company against Arrowhead Utilities Co.	Case No. 7719
Arrowhead Manor Water Company, Inc., Complainant, vs Arrowhead Utility Company, Defendant.	Case No. 7723
Investigation into the operations and practices of Arrowhead Utility Company, a corporation, and Lake Arrowhead Development Corporation.	Case No. 7732

Guy and Smith, by Arthur D. Guy, Jr., Ernie A. Schoettmer, and M. R. Starick, for complainant.
Gibson, Dunn & Crutcher, by Max Eddy Utt, for respondents.
R. H. Knaggs, for the Commission staff.

OPINION ON FURTHER HEARINGS

On April 7, 1964, the Commission issued Decision No. 67047, in the above-entitled matters which had been consolidated for hearing. The gist of the complaints and the Order of Investigation was that the Arrowhead Manor Water Company, Inc. (complainant) secured its water from Deep Creek Tunnel (tunnel), which is owned by Lake Arrowhead Development Company (Development Co.); that the Development Co. was threatening to do certain work in the tunnel; and that such work would contaminate complainant's source of supply. These parties executed an "Irrevocable Agreement" (agreement) on December 9, 1963, which is set forth in haec verba in

said decision, the gist of which is that complainant has been granted a permanent right to maintain two 2-inch pipes, or their equivalent, and to transport water through said pipes across the property of the Development Co., extending to the west portal of the tunnel, upon certain conditions including:

> "b. Commencing on the first of December of each year and continuing through the last day of March of each calendar year, Lake Arrowhead Development Co. shall have the right to use said tunnel to convey surplus surface runoff waters.
>
> "c. Lake Arrowhead Development Co. and Arrowhead Manor Water Co. understand that for the four month period referred to in paragraph b above, the percolating waters in the area (to which Arrowhead Manor Water Co. has over the years acquired a prescriptive right) will be commingled with said surplus surface waters and hence rendered unpotable during said period. Therefore, Lake Arrowhead Development Co. agrees that for the four month period in question it will purchase potable water of acceptable quality from the Lake Arrowhead Utility Company and provide said water at Lake Arrowhead Development Co.'s own expense and free of cost to Arrowhead Manor Water Co. at a mutually agreed upon location in exchange for the percolating waters of Arrowhead Manor Water Co. which have been referred to.
>
> Upon termination of each said four month period referred to in paragraph b above, Arrowhead Manor Water Co. will resume drawing upon its percolating waters from said Deep Creek Tunnel. Lake Arrowhead Development Co. shall, however, continue to provide water, as herein contemplated, for each of the aforementioned four month periods, during such additional time after the last day of March of each year as is necessary to enable the Arrowhead Manor Water Company to qualify its Deep Creek Tunnel waters for domestic distribution. Arrowhead Manor Water Co. will pay to Lake Arrowhead Development Co., or Lake Arrowhead Utility Co., the same rate for said water the latter will have paid the Arrowhead Utility Water Company during the prior four month period."

As a result of the execution of the referred to agreement, the Commission by Decision No. 67047, supra, dismissed the two cases and discontinued the investigation. That decision became final on April 28, 1964.

On December 29, 1964, complainant filed a petition for rehearing (designated as a petition to reopen and for further hearing) of the three cases. It is therein alleged that the alternate water source contemplated by the agreement had not been provided, resulting on December 22, 1964, in a total outage of water to over 200 of complainant's customers. It is further alleged that complainant, using an emergency source with emergency equipment, has been able to rectify the outage but is in doubt as to the period of time it can continue to provide emergency service. Complainant asks that the agreement be declared breached and rescinded and that it be granted monetary damages.

It is obvious from the petition that this is not a type proceeding in which the Commission may award damages. We conclude therefore that the claim for damages should be dismissed.

On December 30, 1964, the Commission issued an order reopening for further hearing the above three cases to determine whether the activities of defendants and respondents, or either of them, will contaminate or otherwise endanger or interfere with the source of water to complainant and its customers.

A public hearing on the reopened cases pursuant to said order was held before Examiner Rogers in Los Angeles, on January 15 and 18, 1965, evidence was presented and the matters were argued and submitted. They are now ready for decision.

Evidence was presented by the parties to show the following facts.

Complainant has approximately 500 customers. Since 1953

and prior thereto, the main source of supply of complainant and its predecessors in interest has been from the west portal of the tunnel. This portal is located on the southeast edge of complainant's service area. There is no cost to complainant for this water. Between 60 gpm and 70 gpm of water flow by gravity from this portal to complainant's pump house where a 20 hp centrifugal pump boosts the water to tanks in complainant's system. Less than one-third of complainant's total water supply comes from two other sources in the eastern portion of the service area.

Some of the water from the tunnel is boosted to two tanks, E and D, referred to below, in the southwestern portion of the service area.

The eastern boundary of the Arrowhead Utility Company (Utility Co.) is contiguous to the western edge of complainant's service area. The Utility Co. is an affiliate of the Development Co. It has a water tank on the extreme southeast portion of its service area and immediately contiguous to complainant's service area. Complainant has a pump house a short distance from this tank and tanks E and D, and on and immediately prior to December 23, 1964, there was no pump therein.

Each of complainant's said tanks holds approximately 50,000 gallons of water and their respective base altitudes, heights and top of tank altitudes as well as the corresponding facts relative to the Utility Co.'s tank are as follows:

Tank	Base Elevation	Height	Top Elevation
Utility Co.	5400 feet	23.5 feet	5423.5 feet
D	5411.78 feet	14.5 feet	5426.28 feet
E	5417.54 feet	14.5 feet	5432.04 feet

It is apparent from this table that with the Utility Co.'s tank full and an unobstructed connection between the three tanks listed there would be approximately 11.28 feet of water in tank D and approximately 6 feet of water in tank E.

The Utility Co. has an unused 2-inch line extending from its said water tank to the immediate vicinity of complainant's pump house from which a 2-inch line extends to tank D and, theoretically, a 2½-inch line extends between tanks D and E. The diameter and condition of this latter line was not determined.

Tank E is connected to complainant's source of supply at the tunnel, but is at a higher elevation than the tunnel source.

In attempting to secure an alternate source of supply as permitted by the agreement, the Development Co. contacted complainant's president who suggested that a tie-in between the Utility Co. and complainant's main could be made at the pump house. This pump house is situated between the Utility Co.'s tank and complainant's tank D. Water transmitted from the pump house to tanks D and E should flow by gravity from these tanks to the rest of complainant's system. On January 20, 1964, a connection was made between the tank of the Utility Co. and complainant's 2-inch line from

the pump house to tank D. Through this line or connection complainant secured water during the summer months of 1964 for a portion of its service area and paid the charges therefor. This was not water contemplated by the agreement of December 9, 1963. This water was furnished until sometime shortly prior to October 19, 1964, when complainant advised the Development Co. that the connection was unsatisfactory (Exhibit No. 3). Thereafter, the Utility Co. and the Development Co. attempted to help complainant secure a firm supply of water. Among other things done was the construction of a bypass of the Utility Co.'s tank, supra; the connecting of complainant's system directly to the Utility Co.'s line under 65 pounds of pressure near the Utility Co.'s tank; also the construction of a bypass of tank D. This bypass should permit the flow of water directly into tank E. The line between the bypass of tank D and tank E, however, was either too small or partially closed and as a result not enough water could enter tank E. On December 21, 1964, the Development Co. opened the tunnel pursuant to the agreement, thereby rendering approximately 200 of complainant's customers without water for periods up to 18 hours. On December 24, 1964, the Development Co. installed a pump at the pump house. This installation resulted in a flow of 20 gpm to 24 gpm to that portion of complainant's system served by tank E. This water, together with the other sources of supply, was adequate for complainant's needs during the winter months when it uses only approximately 50 per cent of its total requirements but will not be adequate during the summer period. Complainant's witness said the best method of correcting the deficiency of complainant's supply would be to install a 4-inch main approximately 700 feet long from the vicinity of the Utility Co.'s tank to an existing 4-inch line of complainant in the vicinity of

tank D. This, he said, will give complainant the same amount of water that it could obtain from the tunnel.

A witness for the defendant testified that no entity but complainant is served from the line between the Utility Co.'s tank and complainant's pump house and a test of this line made on January 16, 1965, shows this line will supply complainant with 75 gallons of water per minute.

Findings

The Commission finds that:

1. For many years complainant has secured between 60 gpm and 70 gpm of water from a tunnel adjacent to its system. This tunnel is owned by the Development Co. In the normal course of events the water from the tunnel flows by gravity from said tunnel into a sump from which complainant pumps the water into storage tanks for distribution to its customers.

2. Sometime prior to December 9, 1963, the Development Co. and complainant executed an agreement pursuant to which during the period between December 1 and March 31, inclusive, of each calendar year, the Development Co. could open said tunnel for specific purposes, which opening would result in contamination of the water in the tunnel. In lieu of the tunnel water supply the Development Co. agreed to furnish and complainant agreed to accept an equivalent supply of water to be delivered by the Utility Co. at a mutually agreed upon location.

3. In accordance with said agreement the Utility Co. has made available to complainant water from a 2-inch line. The amount of water furnished is 75 gpm, equivalent to the amount of water complainant could secure from the tunnel and is delivered at a point mutually agreed to by the parties. This supply was, in fact, accepted by complainant and such water was purchased and paid for by complainant for a period of months.

4. The Development Co. has fully complied with the terms and conditions of the agreement and the only duty on the part of the Development Co. is to continue to make available to complainant at the agreed upon location not to exceed 70 gpm of water during the period of December 1 through March 31, inclusive, of each calendar year and thereafter until the water in the tunnel is satisfactory for human consumption.

Conclusions

We conclude that the relief sought in these reopened proceedings should be denied; the Irrevocable Agreement dated December 9, 1963, between the Development Co. and complainant should continue in full force and effect; and the claim for damages should be dismissed.

O R D E R

IT IS ORDERED that:

1. The relief sought in these reopened proceedings is denied, that in all respects the order of Decision No. 67047, dated April 7, 1964, in said cases, shall remain in full force and effect.

2. The claim for damages contained in the Petition for Rehearing herein is dismissed.

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

Dated at San Francisco, California, this 17th day of March, 1965.

Frederick B. Holoboff
President

[signature]

George G. Grover

[signature]

William M. Bennett
Commissioners