

ORIGINAL

Decision No. 70509

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the equipment, facilities, plant and dams of Big Basin Water Company.

Case No. 8067

K. J. McGranahan, copartner, and John G. Lyons, of Vaughan, Paul & Lyons, with William J. Codiga, for Big Basin Water Company, a copartnership, respondent.
Wallace Epolt and William C. Bricca, for the Commission staff.

O P I N I O N

The Commission, on its own motion, alleging that respondent water utility owns and operates Hare Creek Dam as part of its plant for the purpose of serving water to the public in Santa Cruz County, and that the dam and related facilities may be unsafe for the public or the employees of respondent, instituted this investigation on November 24, 1964, to determine:

- (a) Whether the dam, or any other facility of the utility, is unsafe for the public or the utility's employees;
- (b) Whether respondent should be ordered to repair or reconstruct the dam or other parts of its plant in order to remove any unsafe condition therein that may now exist.

The case was submitted following public hearings at San Francisco on June 10 and October 29, 1965, before Examiner Gregory.

The only issue is whether Hare Creek Dam forms part of the utility's plant used, or useful, in serving water to the public. If so, the Commission has power to make an appropriate order for its safety. If not, the Commission has no such power and respondent's motion to dismiss the investigation for lack of jurisdiction must be granted.

The evidence discloses that the dam in question was built during 1961 for the owners of Big Basin Water Company. It is located on Hare Creek about one-half mile upstream from its confluence with Boulder Creek. The Boulder Creek Country Club, with a nine-hole golf course (being enlarged to eighteen holes) and the Hilton Airport are situated one-half mile below the dam. Reservoir capacity is 47.8 acre-feet, height to spillway crest is 24.88 feet, crest length is 400 feet and crest width is 15 feet. The first two dimensions are the only ones pertinent here.

Land on which the country club and the first nine holes of the golf course are located, comprising about 20 acres, is owned by Dr. Mahlon McPherson and K. J. McGranahan, who are copartners of Big Basin Water Company, and is leased by them to the country club corporation, headed by a Thomas J. Culligan, of San Mateo, under a 10-year lease with an option to purchase.

Irrigation water for the golf course is supplied from Hare Creek reservoir through a meter, pursuant to a written contract executed by Culligan and McGranahan. The facilities used to supply the irrigation water are not connected with the domestic water system of the utility, which serves some 100 customers, including the country club building, with treated water piped from springs and tanks located in a different watershed (Jamison Creek) from that which collects water for the Hare Creek reservoir. McGranahan and his partner, the record shows,

own considerable acreage in both watersheds, including land above the reservoir as well as spring and tank sites along Jamison Creek. No customer, other than the golf course, has been supplied with water for any purpose from Hare Creek reservoir, nor does the utility plan to supply water from that source in the future for domestic use.^{1/}

The evidence reveals that Hare Creek Dam is constructed so that its pertinent dimensions, mentioned earlier, are slightly less than those required to bring it within the regulatory ambit of the Division of Dam Safety of the State Department of Water Resources. Those minimum dimensions are a reservoir capacity of 50 acre-feet and a crest height of 25 feet. Whether the dam was designed and built with the intention of avoiding regulation by the Water Resources Department, or was constructed in its actual dimensions merely as the result of what the design engineer considered would be appropriate, is not clearly disclosed on this record. What is clear, however, is that the dam, although not considered hazardous in its present condition even in periods of above-normal precipitation, nevertheless needs certain improvements in the interest of increased safety and in order to hold and discharge water more effectively.

The details of those improvements, including several recommended by the engineering witnesses who had made field

^{1/} Some two or three years ago, during a water emergency, respondent supplied 2,000,000 gallons of water from the reservoir to a nearby utility, Citizens Utilities Company of California, without charge. The water was simply released from the reservoir and allowed to run downstream to be pumped out of Boulder Creek by Citizens.

investigations of the dam and nearby areas, are set forth in the record. In substance they comprise: an additional spillway, with a lower crest than the existing one and extending to the stream bed below the dam; levelling the crest of the dam to provide a constant and higher freeboard; and installation of a valve on the 8-inch service line at the upper side of the dam.

Respondent McGranahan stated that he intended to consult an independent engineering firm and would make whatever repairs to the dam the consultants might recommend.

Respondent was not represented by counsel at the initial hearing on June 10, 1965. The question of whether or not the reservoir and dam and service therefrom to the golf course was a utility or nonutility operation, was not explored at that hearing, which was concerned primarily with details of engineering investigations and recommendations. The jurisdictional issue, posed by respondent at the final hearing is, however, the decisive one and may be raised at any stage of the proceeding.

It is well-settled that an owner of property may make a limited dedication of such property to the public service, while still retaining rights of private ownership in properties not so dedicated. The evidence in this case concerning the nature, conditions of use and location of the facilities employed for irrigation of the golf course, as distinguished from that relating to the totally unconnected and typically different facilities used by respondent to supply avowed public utility domestic water service to its 100 or more residential customers, leads to the conclusion that the owners of Hare Creek Dam and reservoir have not, by act or intent, dedicated those facilities to public use.

It follows that the safety of Hare Creek Dam, conceded not be to of concern to the State Department of Water Resources for reasons alluded to above, is also not a matter for interposition by this Commission because of the nonutility status of the properties in question.

Big Basin Water Company is hereby placed on notice that the properties comprising Hare Creek Dam and Reservoir, together with appurtenant land, land rights, water, water rights and facilities used in connection therewith to gather, store and supply irrigation water, and any operating revenues or operating expenses connected with said facilities or service, will not be considered as properties used or useful by said water company for the purpose of fixing just and reasonable rates to be charged for water service to the general public by said water company.

Respondent's motion to dismiss the investigation should and will be granted.

ORDER

IT IS ORDERED that respondent's motion herein to dismiss this investigation for lack of jurisdiction is granted and the investigation is hereby discontinued.

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

Dated at San Francisco, California, this 29th day of MARCH, 1966.

*I will file a concurring opinion
George J. Grover*

Fredrick B. Hallock

President

George J. Grover

Commissioner

William L. Bennett

Commissioners

Case No. 8067

CONCURRING OPINION OF COMMISSIONER GROVER

I concur in that part of the order which discontinues the investigation, for I agree that Hare Creek Dam has not been dedicated to public use. At the same time, on the issue of our jurisdiction, I question some of the restrictive language in the majority opinion.

If respondent owned dedicated public utility property (a water treatment plant, for example) located immediately downstream from Hare Creek Dam, then I believe we would have jurisdiction to require respondent to maintain the dam in a safe condition so as not to endanger the treatment plant -- even though the dam is not itself dedicated public utility property. So far as I am aware, this case does not involve any such facts, and the Commission's generalizations concerning jurisdiction are perhaps harmless. It would be a mistake, however, to apply those generalizations uncritically in future cases. Commission jurisdiction runs not only to dedicated public utility property, but also to public utility conduct. (See Pub. Utils. Code §§ 702, 762, 768 and 770.)

George G. Grover

Commissioner

San Francisco, California

March 29, 1966