

ORIGINALDecision No. 71445

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JIMMY BEVEL, EUGENE CARLILE, ALVIS E.
 CALLICK, DAVE JUSTICE, FRANCIS R.
 BRUBAKER, TONY MOHAR, ELBERT LOWRY
 and W. D. LEDBETTER,

Complainants,

vs.

MARY J. STERKIN and ALBERT STERKIN
 and MELVIN N. LEEN and CLOEY V. LEEN,
 owners of a water system on the
 Oberlin Road, Siskiyou County,
 California, known as the Campbell
 Water System,

Defendants.

Application of ALBERT STERKIN and
 MARY JANE STERKIN, his wife, to pur-
 chase, and application of MELVIN N.
 LEEN and CLOEY V. LEEN to sell, a
 water system on Oberlin Road,
 Siskiyou County, California.

Case No. 8509
 (Filed August 22, 1966)

Application No. 47864
 (Reopened August 30, 1966)

Jane Skanderup, for complainants in Case No. 8509
Harry A. Hammond, for defendants in Case No. 8509
 and applicants in Application No. 47864.
W. B. Stradley, for the Commission staff.

INTERIM OPINION

Complainants seek an order (1) requiring defendants to maintain the pumps and water system serving complainants' property, (2) holding defendants in contempt of this Commission, (3) restraining defendants Leen from transferring the water system to defendants Sterkin, (4) requiring defendants to discontinue water service to residents who had not received service prior to June 6, 1961, and (5) requiring defendants to comply with certain previous orders of this Commission.

Public hearing on this complaint was held before Examiner Catey at Yreka on September 15 and 16, 1966. Copies of the complaint, answers thereto, notice of hearing and notice of reopening Application No. 47864 had been served prior to the hearing. Testimony in support of complainants' allegations was presented by a customer of the water system, by a well driller and by a sanitarian from the Siskiyou County Department of Public Health. Complainants also called as witnesses defendant Sterkin and his consulting engineer.

Subpoenas

In this proceeding, complainants requested subpoenas for nine witnesses to appear at the hearing on September 15. Complainants returned the originals with certification of service upon four of these potential witnesses. One of these witnesses failed to appear, apparently under the mistaken impression that complainants' counsel would stipulate to the receipt of the deposition of his testimony presented as Exhibit No. 1 in lieu of his appearing. Inasmuch as the record shows that he would not have been called as a witness on September 15 even if he had been present, we will not take punitive action for his failure to appear.

Defendants requested subpoenas for 31 witnesses to appear on September 15. The originals were not returned by defendants' counsel so it is not known how many actually were served. In any event, none of these witnesses were called by defendants on September 15 or 16.

Complainants and Defendants

Complainants are residents of the Campbell Tract, located a short distance south of Yreka, Siskiyou County. They receive water service from what was formerly known as the Campbell Water System, now known as Oberlin Road Water System.

Defendants Leen are former owners of the subject water system. Decision No. 65143, dated March 26, 1963, in Application No. 44789 authorized the transfer of the system to them from the

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original owners, Charles S. Campbell and Myrtle E. Campbell.

Defendants Sterkin are the present owners of the subject water system. Decision No. 69882 dated November 2, 1965 in Application No. 47864 authorized the transfer of the system to them from defendants Leen. A joint statement by defendants Leen and Sterkin filed in Application No. 47864 shows that the transfer took place on December 27, 1965. Defendants' failure to file the joint statement dated January 3, 1966, until August 25, 1966, left the ownership of the system in doubt at the time Case No. 8509 was filed on August 22, 1966. Application No. 47864 was reopened by this Commission to determine the present status of the transfer and to fix the responsibilities of buyer and seller. Although defendants' delay in filing the various required documents in Application No. 47864 created confusion as to the status of the transfer, there is no reason to doubt the validity of the documents. Case No. 8509, to the extent it includes defendants Leen, is dismissed by the interim order herein. Application No. 47864 will remain open and consolidated with Case No. 8509 to the extent both proceedings involve defendants Sterkin.

Counsel for defendants agreed to file his proposed petition for dismissal of Case No. 8509 on or before September 25, 1966, so that his request for dismissal could be considered in this opinion and order. The petition was not filed.

Adequacy of System and Operations

When the original owners of the water system were found in 1961 to be operating a public utility, it was recognized that the system was inadequate. The owners were ordered to have prepared "a comprehensive master plan of an adequate water supply system which, when carried out, will provide their entire water utility service area with a water system that will fully meet the minimum requirements of this Commission's General Order No. 103." Decision No. 69882 indicates that, as of 1964, the original owners had made no effort at compliance with that requirement.

When defendants Leen acquired the water system, they agreed and were ordered by this Commission to have the comprehensive master plan prepared. Decision No. 69882 indicates that as of 1965, defendants Leen also had made no effort at compliance with that requirement.

In Application No. 47864, defendants Sterkin alleged that they desired to engage in the water distribution business. They presented a purchase agreement that stated categorically that they were familiar with the requirements of the Commission with which their predecessors had failed to comply and they agreed specifically to comply with each and every such requirement. They presented to the Commission a financial statement showing a net worth of \$659,767, thus inducing the finding in Decision No. 69882 that they had the financial resources necessary to operate the system and to comply with the requirement of a master plan for improvement of the system. At that juncture, it appeared that the long-standing service problems were well on their way to solution.

Shortly after defendants Sterkin acquired the water system, Mr. Sterkin developed a serious cardiac condition which precluded his active participation in the management and operation of the system. He retained a consulting engineer to prepare a master plan but did not follow up to see how the plan was progressing. He relied upon his attorney to make the necessary filings required by the order in Decision No. 69882 but did not check to see if the material was filed on time. He left the operation of the system in the hands of the man formerly employed by defendants Leen, turning over to that individual all of the revenue produced by the system, but defendants Sterkin did not personally supervise or manage the operation other than to pay power bills and other bills tendered for repairs or improvements.

Complainants allege that water is available only sporadically in some parts of the system and not at all in other parts. One customer has testified so far in support of complainants' allegations. It is apparent from that testimony that the water supply situation has become critical. It would not be in the public interest to await the

presentation of additional testimony before ordering the collection of basic data needed to determine what type of system additions are needed. At the rate the testimony is being adduced, it would take many more days of hearing to receive the testimony of the nine potential witnesses for complainants and the 31 potential witnesses for defendants. The purpose of this interim order is (1) to make available in this record certain essential data which the system operator should be able to obtain at relatively small expense, and (2) to clarify and limit the issues so that a future hearing will be more productive in solving the basic problem of an inadequate supply.

Water Supply Permit

This Commission's General Order No. 103 requires, among other things:

"Any utility supplying water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Public Health."

As of September 16, 1966, defendants Sterkin did not hold nor had they applied for a water supply permit.

Contempt Action

Because of Mr. Sterkin's cardiac condition, which caused him to rely upon others to carry out this Commission's previous orders, we do not consider it appropriate to institute contempt proceedings for the failure of defendants Sterkin to comply fully and on time with those orders. We place those defendants on notice, however, that failure to comply with the interim order herein and with future orders could lead to the institution of contempt proceedings against them.

Defendants Sterkin point out that the water system is operating at a loss. This does not justify the continuation of substandard service. If a rate increase is needed, an application can be filed for such relief. Defendants Sterkin were apparently aware of this at

the time they asked for authority to acquire the system and assume responsibility for it. They stated in their application:

"7. That applicants ALBERT STERKIN and MARY JANE STERKIN, his wife, adopt and refile the existing tariffs relating to said water system, subject, however to the later filing of an application for increase in rates." (Emphasis added.)

Findings and Conclusions

The Commission finds that:

1. The transfer of a water system from defendants Leen to defendants Sterkin, as authorized by Decision No. 69882, dated November 2, 1965, in Application No. 47864 has been effected and was not invalidated by the delinquent filing of documents in that proceeding.
2. Certain basic preliminary data must be developed by defendants Sterkin to enable intelligent planning of system improvements.
3. Defendants Sterkin must file an application for a water supply permit to comply with Section II.1.a. of General Order No. 103.

The Commission concludes that defendants Leen are no longer responsible for the operation of their former water system and that defendants Sterkin are responsible for the operation of, improvements to, and water supply permit for that system.

INTERIM ORDER

IT IS ORDERED that:

1. Case No. 8509 is dismissed only to the extent that it relates to defendants Leen.
2. On or before October 31, 1966, defendants Sterkin shall cause tests to be made, and shall file a written report or reports in this proceeding, which will show:

- a. Depth of each well supplying water to the system.
- b. Static water level in each well.
- c. Drawdown (difference between dynamic and static water level) of each well if pumped continuously against a reasonable system pressure.
- d. Production capability (gpm) of each well.
- e. Effect, if any, on the static water level in the other wells when each well is being pumped.
- f. Capacity (gpm) of each present well pump when pumping against a reasonable system pressure.
- g. Available site or sites for possible location of a water storage tank at a ground elevation approximately 60 feet higher than the highest service connection (or alternate sites at still higher elevation if none available as prescribed.)

3. On or before October 31, 1966, defendants shall file with the Siskiyou County Department of Public Health an application for a water supply permit.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 18th day of OCTOBER, 1966.

Robert L. Mitchell
President

George L. Trover

Frederick B. Holdhoff

Augusta

William W. Bennett
Commissioners