

**ORIGINAL**

Decision No. 74711

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BIG BEAR MUNICIPAL WATER DISTRICT,  
 Complainant,  
 vs.  
 BEAR VALLEY MUTUAL WATER COMPANY,  
 Defendant.

Case No. 8782  
(Filed April 8, 1968)

Tobin & Gassner, by Alexander R. Tobin, for complainant.  
 Surr & Hellyer, by James R. Edwards, and Clayson, Stark, Rothrock & Mann, by George G. Grover, for defendant.

O P I N I O N

Big Bear Municipal Water District (District), a municipal water district organized and existing under the California Water Code, Section 71000, et. seq., located in San Bernardino County, surrounding Big Bear Lake, seeks an order of this Commission that Bear Valley Mutual Water Company (Mutual), a California corporation, furnishing water service in the San Bernardino Valley, including portions of the City of Redlands and surrounding territory, and East San Bernardino County Water District, (1) has been furnishing water service to others and shareholders at a profit; (2) has dedicated its service to the public; and (3) is a public utility subject to the Commission's jurisdiction. Also sought is

an order requiring Mutual to open its books, records and documents to inspection by District, together with an investigation on the Commission's own motion to determine if any or all the parties to this proceeding may be public utilities and, therefore, subject to the Commission's jurisdiction.

In its Answer defendant sought dismissal of the complaint forthwith.

Complainant alleges through its president that it is informed and believes that for many years past and now Mutual has sold and does sell water to the City of Redlands with a population of approximately 37,000, and to East San Bernardino County Water District serving a population in excess of 36,000 inhabitants. Complainant further alleges that Mutual has consistently refused and does now refuse to open any and all of its books and records for examination as required by law.

Public hearing was held before Examiner Warner on June 13, 1968, at Big Bear Lake where Mutual renewed its motion to dismiss the complaint and District renewed its requests for an order that Mutual open its books and records for inspection. District sought to stand on the verified allegations of the complaint rather than produce any witnesses or testimony and evidence in support thereof. The motion to produce books and records was denied by the presiding officer on the ground that the Commission lacked evidence from which it could determine whether or not it had jurisdiction over Mutual. Adjourned public hearing was held before Examiner Warner on June 27, 1968, at San Bernardino where District produced two witnesses, and evidence was taken. The matter was submitted subject to the filing of

briefs. Mutual's brief was received August 5, 1968, and District's on August 12, 1968.

A shareholder of Mutual testified on behalf of District that his verbal request of Mutual to permit his inspection of its books and records had been refused. He further testified that he had, in the past, bought shares of Mutual from private parties and had sold them to the City of Redlands, which issued him "water credits" of one miner's-inch for every two shares. He then sold the water credits to subdividers and developers in the City of Redlands who were at that time required by the City of Redlands to own water credits sufficient for their needs in order to receive water service from the City. This witness testified that he had never owned any land or property served by Mutual, and that he had purchased and sold Mutual shares only for profit. His residence was in Rialto which is remote from Mutual's service area to the west thereof beyond the City of San Bernardino. This witness testified that he had never formally demanded access to Mutual's books and records as a shareholder of Mutual.

District's other witness was the former general manager of East San Bernardino County Water District and now District's general manager. This witness testified that, while with East San Bernardino, it had bought shares of Mutual and had requested access to Mutual's records as a shareholder and had been refused. He further testified that District had never owned any of Mutual's

shares and had never asked Mutual to produce its books and records for District's examination.

The record shows that Mutual's water is suitable and used for irrigation and underground spreading, only.

District submitted Exhibits Nos. 1 and 1-A, which are copies of letters between Mutual's counsel and Mutual advising it on the possibility of District's buying Mutual's stock and in some fashion keeping water in Big Bear Lake in lieu of taking delivery of water under the stock. Counsel also advised Mutual whether this might be a satisfactory alternative to a contract between Mutual and District by which District would provide water to Mutual in the San Bernardino Valley, and in exchange Mutual would agree to limit to a specified extent its withdrawals of water from the Lake. Mutual's counsel urged caution in committing any of Mutual's water supplies to District due to the vagaries of natural water supply to and withdrawals from the Lake. Further, counsel reminded Mutual that the latter's water rights applied to the mouth or bottom of the Santa Ana River which drains from the Lake. The record shows that, as noted before, District owns no Mutual stock, and the record further shows that no contract between District and Mutual has been executed.

In its brief, District states that it is not asking the Commission at this time to find that Mutual is a public utility, but asking only that the Commission order Mutual to open its books, records and files to District or to the

Commission staff for investigation, or that the Commission, on its own motion, investigate Mutual's status.

No other evidence was offered, and District's president did not appear or testify; nor did any other officer or director of District.

The Commission takes notice of the common practice of mutuals to sell their shares to other water purveyors, such as municipal districts and many public utility water companies, who depend on mutuals as major sources of supply to sell and distribute water to their customers. The purchase, holding and use of mutual water company shares, and resale of water entitlements thereunder does not constitute a public use or dedication to the public, and does not impress nor place such mutual water companies, or the instant Mutual with public utility status.

After a careful review of the record, the Commission finds:

1. That Mutual has not engaged nor is engaging in water service as a public utility.

2. That Mutual has not held itself out to the public or dedicated itself to public utility water service.

3. That there is no authority pursuant to which the Commission could order Mutual to open its books, records and files either to its shareholders or to District. The Commission is not the proper forum before which to apply therefor.

The Commission concludes:

1. That Mutual is not and has not been a public utility subject to its jurisdiction.

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2. That an investigation on its own motion as to whether Mutual has been or is a public utility should not issue.
3. That the complaint should be dismissed.

O R D E R

IT IS ORDERED that:

The complaint of Big Bear Municipal Water District versus Bear Valley Mutual Water Company, Case No. 8782, is dismissed.

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

Dated at San Francisco, California, this 26<sup>th</sup>  
day of SEPTEMBER, 1968.

William J. Jones, Jr.  
President

Paul E. [unclear]

William M. Bennett

[unclear]

Paul P. Monissey  
Commissioners