

**ORIGINAL**

Decision No. 75744

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the contracts, transactions, operations, practices and rates of BYRON J. WALTERS, doing business as TAHQUITZ LAKE WATER COMPANY; COACHELLA VALLEY SAVINGS AND LOAN ASSOCIATION, a corporation; CEDAR GLEN DEVELOPMENT ASSOCIATION, a corporation; HELEN B. NELSON; DONALD MENG; and CHARLES A. HOFFMAN.

Case No. 8556

Application of BYRON J. WALTERS, DBA TAHQUITZ LAKE WATER CO., for certificate of Public Convenience and Necessity to Operate a Water System, for Authorization of Water Rates, and for Establishment of Rules and Regulations.

Application No. 41904  
Order to Show Cause-  
Contempt

William C. Bricca, for affiants William W. Dunlop and Reginald H. Knaggs, of the Commission staff. Murry Greenbaum (as attorney-in-fact), for Byron J. Walters, respondent.

O P I N I O N

Respondent Byron J. Walters was ordered (Decision No. 74008, dated April 16, 1968) to show cause why he should not be held in contempt of the Commission and punished for disobeying five remedial orders for operation of his public utility water system (certificated in 1960 by Decision No. 60879, dated October 11, 1960, Application No. 41904). The orders appear in an interim decision (Decision No. 73705, dated February 6, 1968, Case No. 8556, Application No. 41904) issued after hearings, held in April and July, 1967, that involved both managerial irregularities and customer

complaints of inadequate service. Respondent was served personally with the underlying decision and with the show cause order.<sup>1/</sup>

The interim order required respondent, at or within various specified times up to 30 days after personal service (the final compliance date thus being March 14, 1968), to -

1. Provide, forthwith, a local operator for his water system located near Idyllwild, Riverside County, and notify the customers and the Commission thereof within 48 hours of service of the order.
2. Keep, henceforth, a weekly log of system operations showing four classes of data; mail a copy thereof to the Commission each Tuesday for operations ending the preceding Saturday; report to the Commission emergency interruptions to service in compliance with General Order No. 103.
- 3.(a) Rebuild or replace the pump and take other steps to make Well No. 1 operational; seal Wells Nos. 1 and 4 from surface contamination and place Well No. 1 in service or on standby, within 30 days of service of the order; (b) direct a letter, upon completion of work on Wells Nos. 1 and 4, to the Riverside County Health Department requesting an inspection of said source of supply installations, and furnish a copy of the letter to the Commission.
4. Have the system inspected by a qualified consultant to determine its condition, need for repairs and the extent of and means of eliminating oil contamination of the water supplied to customers, said inspection and a written report thereof to the Commission to be accomplished within 30 days of service of the order.
5. File the utility's Annual Report for 1966, then overdue.

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<sup>1/</sup> The record shows that respondent appeared and testified during the July, 1967 hearings; that he was served on February 13, 1968 with the interim decision, which required compliance with the several orders at various times up to 30 days after personal service, and that on April 18, 1968 he was served with the show cause order, returnable May 1, 1968, to which were attached certified copies of the main and supporting affidavits and Decision No. 73705.

The charging affidavit, by William W. Dunlop, Secretary of the Commission, contains appropriate allegations concerning respondent's notice and knowledge of the contents of Decision No. 73705, his ability to comply with the several regulatory orders, and his failure and refusal to comply therewith. The Dunlop affidavit is supplemented by supporting factual affidavits by Reginald H. Knaggs, a staff engineer familiar with the water system, and by Gerald H. Evers, M.D., a homeowner in respondent's Forrest Lake Estates subdivision, who is a dissatisfied customer of the water system.

The contempt proceeding, which respondent's counsel orally moved to dismiss for asserted jurisdictional defects, was argued and submitted on June 14, 1968 at the conclusion of four days of public hearings held during May and June at Los Angeles before Examiner Gregory. Respondent did not file a counter-affidavit or other defensive pleading and he was not personally present at the hearings.

Respondent, arguing the motion to dismiss, asserts that the Commission lacks power to adjudicate or punish for indirect contempt where complaining affiant does not show first, by his direct evidence, that respondent was able to comply with the Commission's orders, or where the record as a whole does not convince that respondent had such ability.

The short answer to respondent's argument is that he did not, by a defensive pleading, put in issue any allegation of the main or supporting affidavits. Such allegations, including assertions of his ability to comply, thus stand admitted. It is well settled that inability to comply with a proper order is a matter of defense for the alleged contemnor to show.

Respondent's motion, rather than presenting a challenge to the Commission's power to adjudicate and punish for contempt (the

constitutional and statutory basis for which respondent concedes), is an assertion that respondent may not be required to proceed with his defense unless and until his ability to comply with the orders in question has been first established by affiants' direct evidence. That is not the law as we understand it.

Respondent's second point (that the Commission lacks power to punish for contempt when the record, as a whole, shows inability to comply) would have merit if the record here had shown, as it did in the early case of Van Hoosear v. Railroad Commission (1922) 184 Cal. 553, cited by respondent, that legal title to the water system properties had passed (as had Van Hoosear's) from respondent to others prior to the Commission's order to rehabilitate them. The Commission's adjudication of contempt was annulled in Van Hoosear for that reason. Respondent here has made no such claim. The motion to dismiss lacks merit and must be denied. We now turn to what the record discloses concerning the present controversy.

Respondent commenced his Forrest Lake Estates subdivision near the mountain resort community of Idyllwild, Riverside County, in the mid-1950's. His certificate, issued in October, 1960 (Decision No. 60879), authorized metered water service to Units 1, 2 and 3; temporary service to ten so-called "Hoffman customers" located in Dunkirk Highlands (Tract No. 2158) and in an unsubdivided area between that tract and Unit 2, and surplus service, at an annual limited metered rate, to a golf course adjacent to the residential areas and to Buckhorn Camp, Inc. (a church camp that also had its own well). Decision No. 60879 ordered respondent to serve the "Hoffman customers" until such time as the Pine Cove County Water District, the boundaries of which include all the certificated and adjacent areas above-mentioned, was ready, able and willing to serve those temporary customers, which the District later did.

The system's facilities, when certificated, comprised four wells with electrically driven pumps (elev. approx. 5800'), located in the easterly portion of the golf course; transmission and distribution mains, and a 67,000-gallon reservoir (elev. 6060') situated on a parcel of land adjacent to the westerly portion of the development near the Banning-Idyllwild highway. The record in the contempt proceeding shows that the most productive of the wells (Well No. 4), with adequate pumping equipment, could have supplied all present and potential customers of respondent's system with sufficient volumes of water at sufficient pressures.

The Commission, as a result of service complaints received during 1966 from customers in both the certificated and outside areas, on October 25, 1966 instituted a general investigation (Case No. 8556) of the system's operations and of certain financial transactions by Walters and others, to determine questions concerning ownership and operation of the utility, adequacy of service and the steps needed to place the system in efficient operating condition. The Commission, also, concurrently reopened Application No. 41904 to determine whether respondent's certificate should be revoked, suspended or modified.

The two proceedings were heard on a common record at Idyllwild in April and July, 1967. After arriving at what appeared to be a satisfactory temporary arrangement for water service - and in anticipation of the filing of a formal complaint by Walters regarding certain unauthorized loans, encumbrances of utility plant and related foreclosures on real property - the hearings were continued to a date to be set, which is the present status of the basic consolidated proceeding.

Following adjournment of the basic proceeding and as the result of further customer complaints concerning water service, the Commission issued the interim decision and order for violations of which respondent is now charged with contempt.

The interim decision notes that in addition to having failed to carry out the agreed water service arrangements, respondent, at various times commencing about 1961, had issued, without authorization, promissory notes and encumbrances on land containing important portions of the water system plant, for personal and institutional loans. One such security, a deed of trust to Coachella Valley Savings and Loan Association, covered a portion of the golf course on which the utility's water-producing facilities and a transmission main are located. The security was foreclosed and the property sold to Cedar Glen Development Association (a nearby developer) in December, 1965.

Another instance of respondent's financial transactions (developed in some detail at the last day of the hearings in the contempt proceeding and referred to briefly in the interim decision) involves a loan to respondent of \$25,000 by a group of investors interested in developing Unit 3 of Forrest Lake Estates. Respondent issued for this sum, at some unspecified date prior to certification of his water system, a promissory note secured by a deed of trust covering a portion of the parcel on which the 67,000-gallon reservoir was later built. The record in the instant proceeding established that nothing has been paid on that loan and that foreclosure proceedings are contemplated by the security holder.

The foregoing and other instances of respondent's financial transactions, to which a considerable portion of his defense in the instant case was directed, indicate that in connection with his

Forrest Lake Estates development, both before and after certification of his water system, respondent has been immersed in a sea of financial troubles, complicated by the recent illness and death of his wife, and is now involved in bankruptcy proceedings.

Notwithstanding, respondent testified, in part, during the July, 1967 hearings in the basic proceedings, that -

"I have the . . . financial ability to indemnify . . . or subsidize this system until it is on its feet . . . .

". . . I do have my retirement income for life amounting to \$1,437.50 a month, and I am willing to dedicate any portion of that in addition to my law practice . . . to putting this system in complete operable shape and pay the necessary charges, the electric charges." (Tr. Vol. 5, p. 549, l. 15 et seq., in basic proceeding, incorporated by reference in the present record, Tr. Vol. 4, p. 349, et seq.)

Affiant's evidence at the show cause hearing disclosed, in substance, that respondent, after having been served with Decision No. 73705, filed with the Commission on February 19, 1968 a copy of a notice to the Commission and to 14 named customers, which stated that he had employed one Gil Lunt, with a designated Idyllwild address and telephone number, as the local operator of the Tahquitz Lake Water Company. On February 28, 1968 the Commission received a letter from Gil Lunt, dated February 26, 1968, in which Lunt denied that he had been so employed, which stated that immediately after the July, 1967 hearings in the basic proceedings he had agreed only to check the condition of Pump No. 4 twice a day, for a period of not more than three months during the absence of one Milton Stewart (a former local manager), and had carried out that agreement for that period of time only. (Respondent's notice of Lunt's employment and Lunt's denial thereof appear as Attachments B and C of the Dunlop affidavit.) Lunt's uncontradicted testimony corroborated the statements contained in his letter. The Commission received no

further advice from respondent or anyone else concerning provision of a local system operator. No report, other than the notice received by the Commission on February 19, 1968 of Lunt's purported employment, was received from respondent during the designated reporting periods or otherwise, concerning any other requirement of Decision No. 73705.

Dr. Evers testified that on February 23, 1968, on the occasion of a planned weekend, he and his family arrived at their residence in Forrest Lake Estates and found that no water service or local operator was available, water production facilities and surrounding areas were in bad order, and that he had to buy water at a store for use in his home. His telephone inquiry to respondent on February 24, asking for help, produced no results. He and his family then left for their permanent home in Whittier. He stated that he had experienced a lack of water service from respondent's system many times before.

Another customer, Edward F. Koenig, whose permanent residence is in Hemet, testified that he was without water service for his Forrest Lake Estates residence on April 11 and 22, 1968. Thomas Goodman, a customer whose residence is close to and at the level of the pumping facilities (below the 30-foot level of the distribution system), testified that on the weekend of April 27-28, 1968 there was some water in his house but no pressure and that he had to buy water for drinking and cooking.

Respondent did not, at any time, report the foregoing service interruptions to the Commission.

Reginald H. Knaggs, a Commission staff engineer who had made numerous investigations of respondent's system during the period from August, 1966 to May, 1968, testified that on January 31,

1968 there was a total failure of water service; on February 29, 1968 some water was available only in the lower portions of the system to which four customers are connected; on March 26, 1968 there was no water service available except to two customers, also on the lower portion of the system.

Knaggs' testimony corroborated allegations of his supporting affidavit and also revealed that on March 26, 1968 he inspected the well casings, pumps, motors and other source of supply equipment at Wells Nos. 1 and 4, to determine whether those facilities had been rebuilt, replaced or repaired, as required by ordering paragraphs 3(a) and (b) of Decision No. 73705. He found that said facilities had not been repaired, replaced or rebuilt in any respect. He also inspected, on March 26, 1968, the storage facilities and distribution system and determined that an emergency interruption to water service did exist, and that all customers whose residences were more than 30 or 50 feet in elevation above Pump No. 4 were without water service. Knaggs attributed such failure of water service at the higher system elevations to lack of maintenance of Pump No. 4, in consequence of which water could not be pumped to the 67,000-gallon reservoir to supply residences situated at the higher elevations.

Counsel for affiants as part of his direct showing, and respondent's representative as part of his defensive showing, devoted a substantial portion of the record to eliciting from various witnesses the details and progress of certain current and past discussions or negotiations for acquisition of respondent's water system,

or portions thereof, by Pine Cove County Water District.<sup>2/</sup> One of the points involved in the discussions concerned the status of respondent's financial obligations in connection with the 67,000-gallon reservoir site, and whether or not respondent, or some one in his behalf, would be willing to pay the District a sum of money, mentioned as \$2,000, as one of the conditions for the District's assumption of water service to Units 1 and 2.

Evidence presented at the hearing concerning possible future changes in water service for respondent's subdivision, although relating to the issues in the basic proceeding, serves no material purpose here. Such evidence may be relevant to respondent's assertion that the inconclusive discussions with the Pine Cove District, together with his claim of financial stress, should be considered in mitigation of the offenses charged. That evidence has been considered and weighed with other evidence of record in reaching our determination here.

Respondent's defensive showing included testimony and exhibits designed to establish, in substance, that he had in fact complied with the Commission's orders in certain respects, but that his financial condition and the activities of certain officials of

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<sup>2/</sup> The opinion in Decision No. 73705 notes that the President of the District's Board of Directors, at the 1967 hearings in the basic proceedings, testified that while the District was unwilling to purchase the system, it would be willing to provide service to Units 1 and 2 of Forrest Lake Estates if the presently installed water system in those units were conveyed to the District at no cost and certain other conditions, governing tracts to be served by the District, were met.

While not of record in the show cause proceeding, it may be noted, in passing, that the Commission recently authorized respondent, B. J. Walters, to transfer certain water facilities in Units 1 and 2 to the District and to be relieved of public utility obligations in said units with respect to the transferred facilities. (Decision No. 75245, dated March 11, 1969, Application No. 50932.)

the District and others, together with the long illness and subsequent death (on March 16, 1968) of his wife had frustrated full compliance.

Evidence in support of respondent's assertions includes testimony and exhibits: (1) by his son-in-law, Donald Meng, who on February 27, 1968 at respondent's request, after Dr. Ever's telephone call concerning lack of water service, went to Idyllwild with a \$50 check, signed by Mrs. Meng, to secure and pay for the temporary services of a local restaurant manager, Jim Curtiss, to take care of the system in place of Gil Lunt, who had disavowed his employment by respondent; (2) by respondent's part-time secretary, Mrs. Mendell, who stated she had typed and mailed three letters (Exhibits 7-C, 8-C and 9-C) to the Commission, at its San Francisco office, purporting to report the condition of the system on February 24, March 1 and March 8, 1968 (the gist of the reports was that "Pump No. 1" (sic) was in operation, that the system was being regularly maintained by Curtiss and that, except for minor pressure deficiencies at higher levels on February 24 and March 1, which were being corrected, the system was otherwise in satisfactory operating condition on the three occasions reported); that respondent was often away from his office during his wife's illness and that he did not have funds to pay his bills or to pay her salary regularly; and (3) by Murry Greenbaum, respondent's legal representative, that between May 1 and May 6, 1968 "Pump No. 4" (sic) was repaired by Ralph Crocker and was in working order, and that Crocker had estimated it would cost about \$850 to install a new pump for "Well No. 1" (sic) which would fully operate the system, with "the pump in Well No. 4" (sic) as a standby pump (Exhibit 11-C). (We shall clarify this discrepancy in the designation of the wells and pumps when we discuss next the further testimony of Witness Knaggs.)

Witness Knaggs (of the Commission's Los Angeles office) testified, in rebuttal, that he had not seen respondent's letter reports (Exhibits 7-C, 8-C and 9-C) until they were offered in evidence on May 9, 1968; that he would have seen them, in the ordinary course of Commission business, even if they had been received at the Commission's San Francisco office, since they concerned the Tahquitz Lake Water Company, one of his current assignments. Knaggs stated that he had checked the Commission's Los Angeles office mail log and had found no entry for receipt of the letter reports, and that they would have been logged had they been first received by the Los Angeles office, even though addressed to the San Francisco office. As stated earlier, the Commission's Secretary, Dunlop, had checked the Commission's general and division records at San Francisco and, excepting respondent's purported notice of the employment of Gil Lunt as local operator of the system, had found no reports or other communications from respondent relating to his compliance with Decision No. 73705.

Knaggs, on the basis of numerous inspections of the system before and since December 1967, including the period covered by respondent's Exhibits 7-C, 8-C and 9-C (February 24-March 8, 1968), categorically and specifically denied the statements in respondent's report letters. Those inspections showed that Pump No. 1 had not been in operation for more than six months and was not in operation on the dates of the reports; the pump on Well No. 4 (the system's entire source of supply for the last three years) at no time, when inspected or since, had developed sufficient pressure to lift enough water to the reservoir to supply the system, especially at higher levels, and that there was substantially less water in the reservoir than the amounts stated in the exhibits. In addition, Knaggs testified that no corrective steps to increase pressure had been

taken until April 16, 1968, when he arranged with a local pump man to adjust the bowl settings on Pump No. 4 at a cost of \$19.50. Although the pump thereafter operated satisfactorily for about 72 hours, it again failed. Inspection at that time disclosed that the pump was worn to the point of needing replacement rather than repairs. Knaggs, after making inquiries among several pump suppliers, ascertained that it would cost approximately \$980 to replace Pump No. 4 with an adequate installation and, if so replaced, that well and pump could supply adequate amounts of water at sufficient pressures over the entire system.

Summary, Findings and Conclusions

The record shows that respondent, a California lawyer and retired judge of advanced age, has attempted to develop a large tract of land and to supply water, as a public utility, under increasingly adverse financial and operational conditions. The enterprise, located in what appears to be a desirable resort area, has deteriorated largely because of inadequate supervision and maintenance, with the result that the investments of respondent and his homeownership customers have been endangered.

Even if respondent had been willing to make necessary repairs or replacements to his source of supply facilities, it is doubtful that the system, mismanaged as this record shows it to have been, could long survive under current conditions of ownership and management. While we recognize that respondent, especially during the early months of 1968, was confronted by many personal and financial problems, the record also makes plain that his customers were denied even minimal service as the result of deficient local supervision and deteriorated pumping facilities.

Although respondent's personal affairs were at a critical stage when the Commission, by Decision No. 73705, required him to take remedial action in connection with his water system, there is no evidence in this record that respondent ever applied to the Commission, as he had a right to do, for an extension of time to comply with its orders. Such extension normally would have been granted on a showing of hardship. Instead, respondent, in stressful surroundings far distant from the scene of the problem area, attempted, through relatives and others, to bring some semblance of order to the rapidly worsening water service situation after he had received the Commission's interim order. The fact that in the circumstances he took some steps, though they proved ineffective, in our view mitigates, to some extent, his failure to comply with the orders within the specified periods of time.

In holding that respondent failed to comply with the Commission's orders, we have considered that, with respect to the order to provide and give notice of the employment of a local operator, the denial by Gil Lunt, the purported employee, that he had been so employed, immediately followed by respondent's efforts to secure the services of Curtiss (the Idyllwild restaurant manager) without notifying his customers or the Commission of Curtiss' availability as a local operator, fell far short of complying with the order for provision of such an essential service.

Concerning the second order (to keep and send the Commission a copy of a weekly log of system operations and also to report emergency service interruptions), the purported "logs" (Exhibits 7-C, 8-C and 9-C), even if filed with the Commission as respondent claims but which both Dunlop and Knaggs deny, were so emasculated by Knaggs' testimony, based on personal, professionally competent

observations, as to be worthless to indicate the true condition of the system. Especially is this true as the record does not disclose the source of information for the data shown by those exhibits. Also, the record shows that respondent did not report, in compliance with General Order No. 103 or at all, the emergency interruptions to service testified to by certain customers, as mentioned hereinabove.

With regard to rehabilitation of source of supply installations and to the requirement that a copy of a letter to the Riverside County health authorities (requesting an inspection of source of supply facilities) be sent to the Commission (the third order in Decision No. 73705), Knaggs' testimony, without contradiction established that Pump No. 1 (mentioned in respondent's Exhibits 7-C, 8-C and 9-C), had been inoperative for over six months. Knaggs' testimony established also that the pump with which everyone was most concerned - the one connected to Well No. 4, the system's major source of supply for over three years - was so deteriorated as to be in need of replacement rather than repair. Respondent presented no credible evidence of having made any serious effort to even discover the condition of Pump No. 4 or Pump No. 1, let alone to have them repaired, rebuilt or replaced, or to have Wells Nos. 1 and 4 sealed from surface contamination as ordered. The record also shows that respondent did not file with the Commission a copy of any letter he may have sent to the Riverside County Health Department concerning an inspection of source of supply installations.

With respect to the fourth order - to have the system inspected by a competent consultant for water contamination by oil and for needed repairs, and to report the results to the Commission -

the record, though silent as to any action respondent may have taken concerning that requirement, affirmatively shows that no report of the required inspection was ever filed with the Commission.

As for the fifth requirement - to file the utility's overdue 1966 Annual Report - the record shows that no such report was filed.

Although respondent's defensive showing rested primarily on the claim that he was financially unable to comply with the Commission's orders, there would seem to be little, if any, financial burden involved in keeping weekly logs of system operations, mailing copies thereof to the Commission and reporting emergency interruptions to service (Second Offense); requesting, in writing, a health inspection of source of supply installations and furnishing a copy of such request to the Commission (par.(b), Third Offense); or in filing the utility's 1966 Annual Report (Fifth Offense). Granting that the foregoing requirements presuppose some supervisory or clerical help for an absentee owner of a water system, there is no credible showing, on this record, that the state of respondent's finances had reached the point of precluding employment of such assistance.

With regard to the employment of a local system operator (First Offense), rehabilitation of source of supply installations (par.(a), Third Offense), and securing an expert evaluation of the system's condition (Fourth Offense), those requirements would seem to entail the outlay of more substantial sums.

Respondent's showing of financial inability was developed chiefly through testimony of his part-time secretary, Mrs. Mendell; by testimony of a Los Angeles attorney who held respondent's defaulted note secured by a deed of trust on the parcel of land on

which the 67,000-gallon reservoir was later erected, and by references, in the closing arguments, to several foreclosures of respondent's secured obligations and to his having filed a federal bankruptcy petition.

Although respondent's indicated financial condition may have been precarious, there is nothing in the record to show his assets and liabilities and gross and net income during the periods pertinent to this proceeding or at any other time. Mrs. Mendell, while she testified to familiarity with respondent's "bank account" and "financial status", was not asked for details either on those subjects or on respondent's overall financial condition and the record is silent as to such details. Thus, respondent's claim that he was unable, for financial reasons, to comply with orders that would have entailed the outlay of various sums, is not verifiable by evidence that would tend either to prove or disprove his claim. Respondent had the burden of showing his asserted financial or other disability. He not only failed to meet that burden, but his showing, absent any counter-affidavit or other defensive pleading, must be considered as simply the proffer of circumstances in mitigation of his admitted failure to comply with the Commission's order.

We hold, on this record, that respondent has been guilty of contempt of the Commission, as charged in the affidavit of William W. Dunlop herein, and that he failed to establish his inability to comply with the remedial orders contained in Decision No. 73705.

While we have held that respondent is guilty of the contempt charges, we do not think that his conduct, in the circumstances disclosed by this record, points to a studied defiance or evasion of the Commission's orders; rather, it suggests his understandable

preoccupation, during a period of rising emotional and financial stress, with pressing personal matters.

We recognize that respondent, as the holder of a public utility water company certificate, has a continuing obligation to provide - and his customers have a continuing right to receive - adequate water service, especially in an area that contains substantial homes and also is subject to the fire hazards associated with mountain resort communities in California. We note, also, that the record here shows that respondent, for the relatively modest sum of \$980 for which monthly installment payments could have been arranged, could have replaced the long-siling Pump No. 4 with a new pump that would have enabled Well No. 4, with existing storage capacity, to supply the entire system with adequate quantities of water at sufficient pressures.

The complexities of respondent's financial affairs connected with his subdivision development, together with what the record shows to have been recurring difficulties in obtaining responsible local supervision of his water system, suggest that respondent may not be in a position, at least for some time to come, to carry out his utility obligations. For that reason, and for the further reason that respondent's failure to respond effectively to the Commission's orders occurred in a context of severe stress rather than one of defiance or evasion, we are of the opinion that only minimal penalties should be imposed.

#### Findings of Fact

The Commission, on this record, finds that:

#### First Offense

1. On April 16, 1968 the affidavit of William W. Dunlop, Secretary of the Public Utilities Commission of the State of

California, for an order to show cause herein was filed with said Commission. Affiant alleged, in substance, that respondent, Byron J. Walters, doing business as Tahquitz Lake Water Company, a public utility water corporation within the meaning of Section 241 of the Public Utilities Code, notwithstanding the Commission's order in Decision No. 73705, issued on February 6, 1968 in the above-entitled consolidated proceedings (after hearings held therein during April and July, 1967, at the July sessions of which respondent personally appeared), and with knowledge of the contents of and ability to comply with said order and during its effective period, unlawfully and contumaciously failed and refused to comply therewith; that a certified copy of said Decision No. 73705 was personally served on respondent on February 13, 1968.

2. On said April 16, 1968, upon reading the affidavit and application for an order to show cause of said William W. Dunlop and the supporting affidavits of Gerald H. Evers, M.D., and Reginald H. Knaggs, filed herein, the Commission duly issued its order, Decision No. 74008, directing respondent to appear before a commissioner or examiner to be thereafter designated, at 10:00 a.m. of the 1st day of May, 1968 in the Commission's Courtroom, State Building, 107 South Broadway, Los Angeles, California, and then and there to show cause, if any he had, why he should not be punished for the contempts alleged in said affidavit of William W. Dunlop. A certified copy of said order to show cause, to which were attached a certified copy of each of the affidavits hereinabove mentioned and a certified copy of said Decision No. 73705, was served personally on respondent on April 18, 1968.

3. Public hearings were held on said show cause order on May 1, May 9, June 7 and June 14, 1968 at Los Angeles, before Examiner Gregory. Following oral argument on the evidence and on respondent's oral motion to dismiss the show cause order, the proceeding was submitted for decision. Respondent did not file a counter-affidavit or other defensive pleading and was not personally present at any time during said hearings. He was represented by an out-of-state attorney acting as attorney-in-fact pursuant to written powers.

4. Ordering paragraph 1 of said Decision No. 73705 provides as follows:

"IT IS ORDERED that Byron J. Walters, doing business as Tahquitz Lake Water Company, shall:

"1. Provide forthwith a local operator to operate and maintain the water system presently installed to serve Forrest Lake Estates Tracts Nos. 1 and 2. The Commission and each customer of Tahquitz Lake Water Company shall be notified in writing of the name, address and telephone number of the system operator within 48 hours of service of this order."

On February 19, 1968 respondent caused a notice to be filed with this Commission that designated one Gil Lunt as local operator of said water system and purported to notify each customer of said system of that fact; on February 28, 1968 there was filed with this Commission a letter, dated February 26, 1968, subscribed by Gil Lunt, denying that he had been so employed; on February 27, 1968 one Donald Meng, respondent's son-in-law, during a trip to Idyllwild, California, in connection with supervision of the operations of said water system and after ascertaining from Gil Lunt that he (Lunt) was not supervising said system, gave to one Jim Curtiss, a restaurant manager at Idyllwild, a personal check of Meng's wife in the

sum of \$50 and asked him to perform certain supervisory tasks in connection with said water system; the record does not show whether said Curtiss, or any one else employed by respondent, actually performed such service on or after February 27, 1968; however, said Gil Lunt was not so employed. Respondent did not notify this Commission or his customers of the aforesaid arrangement with Curtiss.

Respondent, except as indicated hereinabove, while having notice and knowledge of the contents of said Decision No. 73705, including ordering paragraph 1 thereof, and while having the ability to comply therewith and while said decision and ordering paragraph 1 thereof remained in effect, failed and refused to comply therewith, in that respondent failed and refused to provide a local operator to operate and maintain said water system. Said failure and refusal were and are in violation of law and in contempt of the Commission and of its said order.

Second Offense

5. We refer to and incorporate by this reference paragraphs 1, 2 and 3 of the findings hereinabove set forth with respect to the First Offense, with the same force and effect as if said paragraphs and each and every finding therein were set forth in full herein.

6. Ordering paragraph 2 of Decision No. 73705 provides as follows:

"IT IS ORDERED that Byron J. Walters, doing business as Tahquitz Lake Water Company, shall:

"2. (a) Keep henceforth a log of system operations showing:

- (1) Time and date pump turned on;
- (2) Water level in tank when pump turned on;
- (3) Time and date pump turned off;
- (4) Water level in tank when pump turned off.

(b) Mail to the Commission, on or before each Tuesday, a copy of the log of operations for the week ending the preceding Saturday.

(c) Report to the Commission emergency interruptions to service. Such reporting shall comply with General Order No. 103."

No copy of said log of the system operations was ever received by this Commission as required by said ordering paragraph 2; no report whatsoever was filed with this Commission by respondent, in compliance with General Order No. 103 or otherwise, notifying it of any emergency interruption to service; emergency service interruptions, so unreported to the Commission, occurred at the residence of Gerald H. Evers, M.D., on February 23, 1968, of which respondent was advised by Evers by telephone on February 24, 1968; at the residence of Edward F. Koenig on April 11 and 22, 1968 and at the residence of Thomas Goodman on the weekend of April 27-28, 1968.

Respondent, while having notice and knowledge of the contents of said Decision No. 73705 and of said ordering paragraph 2, and while having the ability to comply therewith and while said decision and ordering paragraph 2 remained in effect, failed and refused to comply therewith, in that respondent failed and refused to mail to the Commission copies of the weekly log of system operations and to report to the Commission emergency interruptions to service, as required by said decision and by said ordering paragraph 2 thereof, or at all. Said failure and refusal were and are in violation of law and in contempt of the Commission and of its said order.

### Third Offense

7. We refer to and incorporate by this reference paragraphs 1, 2 and 3 of the findings hereinabove set forth with respect to the First Offense, with the same force and effect as if said paragraphs and each and every finding therein were set forth in full herein.

8. Ordering paragraph 3 of said Decision No. 73705 provides as follows:

"IT IS ORDERED that Byron J. Walters, doing business as Tahquitz Lake Water Company, shall:

"3. (a) Rebuild or replace the pump and take other steps necessary to make Well No. 1 operational, seal Wells 1 and 4 from surface contamination, and place Well No. 1 in service or on standby, within thirty days of service of this order.

(b) Direct a letter at the time of completion of the work on Wells Nos. 1 and 4 to the Riverside County Health Department requesting an inspection of said source of supply installations and furnish a copy of the letter to the Commission."

Respondent, while having notice and knowledge of the contents of said Decision No. 73705 and of said ordering paragraph 3 thereof, and while having the ability to comply therewith and while said decision and ordering paragraph 3 remained in effect, failed and refused to comply therewith, in that respondent failed and refused to rebuild or replace, within 30 days after service of said Decision No. 73705, or at all, the pumping equipment connected to respondent's well sources of supply, including the pump connected to Well No. 4, which well we specifically find to be the principal source of supply for respondent's water system and the pump for which we specifically find needed replacement, or to seal Wells Nos. 1 or 4 from surface contamination, or to place any of said source of supply facilities in service or on standby, as provided by said ordering paragraph 3, subparagraph (a), or at all. Respondent failed and refused to provide this Commission with a copy of a letter directed, as provided by subparagraph (b) of said ordering paragraph 3, to the Riverside County Health Department requesting an inspection of said source of supply installations on Wells Nos. 1 and 4 upon completion of required work thereon. Said failure and refusal were and are in violation of law and in contempt of the Commission and of its said order.

Fourth Offense

9. We refer to and incorporate by this reference paragraphs 1, 2 and 3 of the findings hereinabove set forth with respect to the First Offense, with the same force and effect as if said paragraphs and each and every finding therein were set forth in full herein.

10. Ordering paragraph 4 of said Decision No. 73705 provides as follows:

"IT IS ORDERED that Byron J. Walters, doing business as Tahquitz Lake Water Company, shall:

"4. Have the water system inspected by a water works consultant, or someone equally qualified, to determine its condition, the repairs needed and the extent of and the means of eliminating the contamination by oil of the water supplied to customers. This inspection, together with the results thereof reported in writing to the Commission, shall be accomplished within thirty days of the service of this order."

No such inspection of said water system by a water works consultant or by someone equally qualified, and no written or other report to the Commission of such inspection was ever accomplished by or on behalf of respondent.

Respondent, while having notice and knowledge of the contents of said Decision No. 73705 and of said ordering paragraph 4 thereof, and while having ability to comply therewith and while said decision and said ordering paragraph 4 remained in effect, failed and refused to have an inspection of his said water system made and to file with the Commission a written or any other report of the results thereof, as required by said ordering paragraph 4. Said failure and refusal were and are in violation of law and in contempt of the Commission and of its said order.

Fifth Offense

11. We refer to and incorporate by this reference paragraphs 1, 2 and 3 of the findings hereinabove set forth with respect to the First Offense, with the same force and effect as if said paragraphs and each and every finding therein were set forth in full herein.

12. Ordering paragraph 5 of said Decision No. 73705 provides as follows:

"IT IS ORDERED that Byron J. Walters, doing business as Tahquitz Lake Water Company, shall:

"5. File with the Commission the annual report of the operations of Tahquitz Lake Water Company for calendar year 1966 within thirty days of the service of this order. Such filing shall comply with General Order No. 104 in all respects other than the date of filing."

No annual report of the operations of Tahquitz Lake Water Company for calendar year 1966 was filed by or on behalf of respondent which complies with General Order No. 104 or otherwise.

Respondent, while having notice and knowledge of the contents of said Decision No. 73705 and of said ordering paragraph 5 thereof, and while having ability to comply therewith and while said decision and ordering paragraph 5 thereof remained in effect, failed and refused to file an annual report of the operations of said Tahquitz Lake Water Company for calendar year 1966 which complied, in all respects other than the date of filing, with General Order No. 104, or to file any annual report whatever of the operations of said water company for calendar year 1966. Said failure and refusal were and are in violation of law and in contempt of this Commission and of its said order.

12. The allegations contained in the affidavit of William W. Dunlop herein and in the supporting affidavits herein of Reginald H. Knaggs and of Gerald H. Evers, M.D., are, and each allegation of each of said affidavits is, true.

13. Respondent should be punished as provided in the following judgment and order.

JUDGMENT AND ORDER

Byron J. Walters, respondent herein, having appeared by his attorney-in-fact, Murry Greenbaum, Esquire, and having been given full opportunity to answer the order to show cause filed herein on April 16, 1968, and to exonerate himself from the alleged contempts set forth in the affidavit of William W. Dunlop; now, therefore, based upon the foregoing Opinion and Findings of Fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Byron J. Walters is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made February 6, 1968 in ordering paragraph 1 of its Decision No. 73705 in the consolidated proceedings herein, by failing and refusing to provide a local operator to operate and maintain his water system, known as the Tahquitz Lake Water Company, installed to serve Units Nos. 1 and 2 of respondent's Forrest Lake Estates subdivision development near Idyllwild, Riverside County, California. (First Offense.)

2. Byron J. Walters is guilty of contempt of the Public Utilities Commission of the State of California in disobeying said order (paragraph 2), by failing and refusing to mail to the Commission copies of weekly logs relating to operations of said Tahquitz Lake Water Company, and to report to the Commission emergency interruptions to service by said water system. (Second Offense.)

3. Byron J. Walters is guilty of contempt of the Public Utilities Commission of the State of California in disobeying said order (paragraph 3), by failing and refusing to rebuild or replace

certain pumping equipment connected to wells that were essential sources of water supply, for service or as standby, by said Tahquitz Lake Water Company, so as to make said source of supply installations operational; to seal Wells Nos. 1 and 4 of said source of supply facilities from surface contamination, and to direct a letter, with a copy thereof to the Commission, to the Riverside County Health Department on completion of said rehabilitation work, requesting an inspection of said source of supply installations. (Third Offense.)

4. Byron J. Walters is guilty of contempt of the Public Utilities Commission of the State of California in disobeying said order (paragraph 4), by failing and refusing to have an inspection made of said Tahquitz Lake water system by a water works consultant or someone equally qualified, so as to determine its condition, need for repairs and the extent of and means of eliminating contamination by oil, and to report the results of such inspection in writing to the Commission. (Fourth Offense.)

5. Byron J. Walters is guilty of contempt of the Public Utilities Commission of the State of California in disobeying said order (paragraph 5), by failing and refusing to file with the Commission the annual report of the operations of Tahquitz Lake Water Company for calendar year 1966. (Fifth Offense.)

6. For said contempts of the Public Utilities Commission of the State of California and its said orders, as hereinabove described, the following punishments are hereby imposed:

For each of the five contempts (First through Fifth Offenses, inclusive), specified hereinabove, Byron J. Walters shall pay a fine of \$25.00; said fine, totalling \$125.00, to be paid to the Secretary of the Public Utilities Commission of the State of California, 5th Floor, State Building, San Francisco, California 94102, within five (5) days after the effective date of this decision.

7. In default of payment by said Byron J. Walters of the fine herein imposed upon him, said Byron J. Walters shall be committed to the County Jail of the County of Los Angeles, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars (\$5.00) of said fine that shall be unpaid.

8. The Secretary of the Public Utilities Commission of the State of California, if said fine or any part thereof shall not be paid by said Byron J. Walters within the time specified above, shall prepare an appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of the County of Los Angeles, to which shall be attached a certified copy of this decision.

This decision shall become effective twenty (20) days after personal service of a certified copy hereof upon said Byron J. Walters. The Secretary of the Commission is directed to cause such service to be made.

Dated at San Francisco, California, this 3rd day of JUNE, 1969.

William Jefferson D.  
President

W. J. D.  
W. J. D.

W. J. D.  
Commissioners

*I dissent.*  
*J. B. [unclear]*

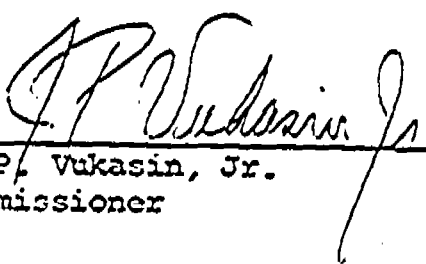
COMMISSIONER J. P. VUKASIN, JR., DISSENTING:

This matter has been submitted since June, 1968. The purpose of this investigation and Order to Show Cause is now moot inasmuch as a District is now providing service to the former customers of this utility.

The record of the proceeding shows that the respondent, Byron J. Walters, was not present for the contempt hearing. In addition, it is not clear that the respondent had the ability to comply with the orders of the Commission, as stated in the decision:

"....both before and after certification of his water system, respondent has been immersed in a sea of financial troubles, complicated by the recent illness and death of his wife, and is now involved in bankruptcy proceedings." (c.f. p. 7, D 75744)

Under the circumstances, I would dismiss the investigation and Order to Show Cause.

  
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J. P. Vukasin, Jr.  
Commissioner

June 3, 1969