

ORIGINAL

Decision No. 81097

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. EDWARD SHERIDAN, et al.,  
RAMONA ESTATES, WATER CONSUMERS,

Complainants,

vs.

RAMONA WATER COMPANY, E. E. EVERETT,  
ANITA M. KLEINMAN,

Defendants.

Case No. 9400  
(Filed July 10, 1972)

C. Edward Sheridan and Walter H. Yaw, for themselves,  
complainants.

H. Morgan Dougherty, Attorney at Law, for Ramona  
Water Company, respondent.

Reginald H. Knaggs, for the Commission staff.

O P I N I O N

Summary of Complaint and Answer

By this complaint C. Edward Sheridan and 27 other customers (complainants) of the Ramona Water Company (Ramona) allege that Elmer E. Everett, as a subdivider, has subdivided considerable acreage and, in conjunction with his subdivision activity, has, to enhance the sale of 2½-acre plots, installed wells and water mains. The complaint also names as defendants Anita M. Kleinman, a real estate broker, and Ramona Water Company, alleged to be a "dba" of Mr. Everett and Mrs. Kleinman.

Complainants allege that a connection charge has been levied by defendants against each water consumer based on \$700 for each 2½-acre plot. Complainants further allege that the monies so paid constitute a deposit on a water certificate with Ramona.

Complainants request that the Commission issue an order that:

- a. Defendants shall not create or seek to create a mutual water company.
- b. The charge levied per 2½-acre plot shall be that which would reasonably reimburse defendant for the cost of a suitable water meter and installation thereof.
- c. Defendants establish with the Commission reasonable rates for water consumed and minimum charges.
- d. Defendants be restrained from accepting money as a deposit on water certificates.
- e. Defendants establish reasonable rules and procedures and distribute same to consumers and potential consumers so that all are treated equally and fairly.

The answer of defendants was filed by Mike Dunn, as a director of Ramona, on August 15, 1972 alleging that:

- a. Ramona Water Company is a California corporation.
- b. Ramona Water Company is the owner of a water system in the Anza area which has provided water service for several years.
- c. Ramona Water Company has attempted to charge all users connected to its system the sum of \$700 to cover the cost of installing meters and modification of the water system.
- d. Defendants do not wish to create a mutual water company and do not intend to issue water certificates.

#### Public Hearing

Public hearing was held before Examiner Boneysteele at Anza, Riverside County, on November 8, 1972. Testimony and evidence were adduced from several of the complainants and water users of Ramona, from a Commission staff engineer, and from the operator of a mutual water system serving the community of Anza.

#### Area Served

Field investigations by the Commission's staff engineer show that Ramona is providing water service in a subdivision known as Anza Acres, located approximately two miles east of the

unincorporated community of Anza. The subdivision comprises Sections 23 and 24, Township 7 South, Range 3 East, San Bernardino Base and Meridian, and portions of Sections 14, 19, and 22. Elevations within the area served range from 3,960 feet above mean sea level to 4,720 feet above mean sea level. The lower portions of the service area are in the west in Sections 22 and 23, and the land slopes upward to the east through Sections 24 and 19.

#### Ownership and Affiliated Interests

The staff verified that Ramona is a corporation. Articles of Incorporation were filed with the Secretary of State on November 21, 1967 and recorded in Riverside County on December 4, 1967.

The principal and specific purposes for which Ramona Water Company was formed are to "...conduct the business of developing, distributing, supplying, and delivering water for domestic or irrigation purposes in the County of Riverside, California, within a service area to be selected by the board of directors."

Elmer E. Everett, Michael Dunn, and Anita M. Kleinman were named as the first directors of Ramona. Mr. Dunn, Mr. Everett, and Mrs. Kleinman have all been involved in the development and sale of the area served by Ramona.

The Articles of Incorporation and By-Laws of Ramona do not provide for authorization to issue shares or securities of any designation. As of September 15, 1972, there was no information in company records as to conveyance of water system properties by the directors to the corporation.

The local office of Ramona is in the building of Anza Acres Realty Company on Highway 71, Anza.

#### Water Supply and Plant

The water plant consists of seven separate distribution systems served by 12 wells. The seven systems are not interconnected. One of the systems is served by 6 wells, one by two wells, and the remaining 5 by one well each. The pumps are powered by submersible electric motors. The smallest installation is a one-horsepower unit

which pumps approximately 5 gallons per minute; the largest installation is a 5-horsepower unit which pumps approximately 45 gallons per minute.

Drilling logs for each location have been reviewed by a staff engineer for the purposes of determining the existence of water producing strata. Calculations of specific yield were also made where basic data were available. Well logs and static water level comparisons do not show a continuity of water-bearing strata. There is a differential of approximately 1,000 feet in static water levels between the 12 wells now in operation.

Specific yields for seven of the wells for which data are available show that they range from a low yield of 0.15 gpm/ft. drawdown at Well No. 6 to a moderate yield of 2.11 gpm/ft. drawdown at Well No. 2.

Ramona has not filed an application with either the Riverside County Health Department or the Department of Public Health of the State of California for a public drinking water permit. As of September 15, 1972, the company records did not show that water samples had been submitted for either bacteriological or chemical analyses.

The distribution mains are Schedule 40 polyvinyl chloride and meet the requirements of the National Sanitation Foundation for use in potable water systems. This Commission's General Order No. 103 has no criteria for plastic pipe used in distribution water systems. As of September 15, 1972, the distribution system contained 13,300 feet of 2-inch pipe, 15,475 feet of 3-inch pipe, and 2,860 feet of 4-inch pipe. According to the nomograph, Chart 1, in General Order No. 103, the 2-inch and 3-inch single pipe runs installed by Ramona Water Company exceed the prescribed lengths.

Many of the homes in the service area are occupied only on weekends and holidays and create peak demands at these times. There were 88 active service connections as of September 15, 1972. Meters had been installed on 11 of these services as of that same date but had not been read.

Other Water Purveyors

There are no public utility water companies within 50 miles of the service area of Ramona. The nearby community of Anza is served by Anza Village Mutual Water Company.

Rates and Revenues

Ramona has not adopted a schedule of rates for water service on either a flat rate or metered basis. The company records show no indication of billing or charge for water service and no operating revenue was recorded as of September 15, 1972.

Operating Expenses

The cost of power purchased for pumping is not paid by Ramona nor are any of the salaries of water company employees paid by it.

Summary of Complainants' Testimony

Complainants testified that they had been required to pay a \$700 connection charge per 2½-acre parcel, provision being made, however, to make payment by installments. Several witnesses showed copies of receipts and canceled checks evidencing payments made on the connection charge and these contentions were not controverted by defendants. One complainant testified that when her family refused to pay the connection charge, water had been turned off and service was only restored after intervention by her attorney.

Most of the complainants testified that pressures were often low and outages frequent. One testified that water was frequently muddy. Another testified that the valve on his service was turned off at times in order to provide better pressures to the remaining customers of the system. After the complainant learned of the cause of the interruption of his service, he would open the valve himself, and continued this practice until a lock was installed on the valve box.

All of the complainants admitted that they had never been billed for water consumed.

Summary of Defendants' Testimony

Defendant Everett was unable to appear, being seriously ill, but was represented by Michael Dunn, an officer and director of the water company. Dunn explained that he had been the original subdivider of the area, starting in Section 23 in 1958. He produced a copy of a document entitled "Amended Final Subdivision Public Report Res. No. 18134", as issued by the Division of Real Estate on March 13, 1962. The report contained the following statement:

"WATER: There is no regular water service to this tract. Purchasers will be required to haul water onto parcels from an outside source or develop their own water supply by drilling individual wells. This Division has not been advised as to the quality or quantity of water obtainable except that information furnished by the subdivider indicates that water may be obtained on a nearby ranch for a nominal charge; and individual wells may be drilled at a cost of approximately \$1,400.00."

Since the issuance of the report, there has been a substantial increase in the cost of wells in the area. The last well cost approximately \$5,500 and Mr. Dunn said that he now anticipated that the present cost of drilling and equipping a well would be approximately \$7,000.

In order to facilitate the sale of lots, the subdividers drilled wells and installed the distribution systems.

Although a corporation was formed to operate the system, it was not the intention of the defendants to engage in a public utility water business. The subdividers had approximately \$100,000 invested in the system which they hoped to recover by collecting the \$700 connection charge from the water consumers. Although operation of the system cost from between \$1,400 to \$1,500 per month, and some meters had been installed, no charge had been made for water used. Mr. Dunn estimated that an additional \$150,000 would be required to bring the system to minimum standards. He stated that his group would be willing to transfer the systems to a special district at a value set by independent appraisal and would

also be willing to take back bonds in payment. He stated that the assessed value of property within the service area was approximately \$750,000, and if the surrounding area his group owned were to be included, it would be over \$1,000,000. Mr. Dunn felt this a sufficient tax base and was confident that approval of the Local Agency Formation Commission of Riverside County would be obtained for formation of a water district.

Anza Village Mutual Water Company

The manager of the mutual serving the community of Anza suggested that the management of the Anza Rural Electric Co-op would be willing to assist on the establishment of a mutual water system, although the Co-op could not own a mutual water system itself.

Staff Testimony

The staff report had been distributed prior to the hearing and was accepted by stipulation. The staff witness, although sworn at the behest of the examiner, was not cross-examined. The factual information set out in this opinion prior to the discussion of testimony is taken from that report.

The staff report concluded that Ramona Water Company is not providing water service to its consumers for compensation. The water systems do not meet the minimum standards of design and construction set forth in this Commission's General Order No. 103. The report also concluded that upgrading and expanding the system would have long term adverse affects on community values and on the environment. The staff recommended that complainants and defendants should give consideration to the formation of an appropriate public agency which could provide water service in the area.

Discussion of Evidence

It is evident that the water utility plant of the Ramona Water Company does not meet the requirements of this Commission's General Order No. 103 and that it would be necessary to rebuild the entire distribution system in order for it to comply. Should

this Commission require Ramona to reconstruct the system to meet the Commission's construction standards, and further considering the high ratio of plant to customers inherent in a system serving 2½-acre lots, it is apparent that rates for service on a public utility basis would be prohibitive. It does not seem that this water system can ever function as an economically viable public utility. ✓

The intentions of the subdividers in constructing the water system are not clear. In their answer defendants state that they do not wish to create a mutual water company and defendant's representative Dunn testified that they did not intend to engage in a public utility water business. The fact remains, however, that a corporation was organized for the express purpose of furnishing water service and this corporation has required water users to pay a connection charge for supplying such water service. They assert that the one-time charge of \$700 is to cover the cost of installing meters and modifying the system, yet only 11 meters out of a potential 88 have been installed. This is compensation. The Commission has no alternative but to recognize that Ramona Water Company is presently operating as a public utility water corporation as contemplated by Sections 240, 241, and 2701 of the Public Utilities Code. The Commission must apply the law to the facts, whatever may be the intent of defendants or the best interest of the water users. RECEIVED

We find that Ramona Water Company, a corporation, is a public utility, and we will prescribe rates to enable it to recover its out-of-pocket costs of operation. Defendants and complainants are cautioned that, should this water operation not be, at all deliberate speed, converted, subject to Section 851 of the Public Utilities Code, into a bona fide mutual or into a public district, the Commission may, upon further complaint or on its own motion, order the reconstruction of this utility to Commission standards. Such reconstruction could require a large capital investment by the utility and entail very high rates for water service to the customers. ✓✓



Since it is a fundamental principle of public utility regulation that customers not be required to invest in production plant as a requisite for service, our order will provide for the refund of all connection charges collected by any of defendants. We require the refund because the basis of the charge is unlawful. This unlawfulness cannot be seized upon by defendants as negating a finding that they have been delivering water for compensation. To hold otherwise would permit them to profit from their own wrong. ✓

The order which follows will require the filing of the tariffs and system maps, and the application for the health permits required by General Orders Nos. 96-A and 103. It will also require filing of cost information and will specify a depreciation rate and depreciation procedures. Because of water supply problems and substandard water plant, the order will provide that Ramona Water Company shall not, without further order of this Commission, extend its water systems nor connect additional customers to the existing systems.

#### Findings

1. Ramona Water Company is a water corporation as defined in Section 241 of the Public Utilities Code and, according to Sections 216 and 2701 of that Code, is a public utility subject to the jurisdiction, control, and regulation of this Commission.
2. Ramona Water Company owns the water systems serving water to a subdivision known as Anza Acres in Riverside County.
3. Ramona Water Company charges all users connected to its system the sum of \$700 per 2½-acre parcel to cover the cost of installing meters and modification of the water system. This is compensation for the delivery of water. By serving all persons who buy lots and pay the \$700 fee, Ramona has dedicated its plant to public use.
4. Ramona Water Company owns, controls, operates, and manages a water system for compensation within California which delivers water to persons within California. ✓
5. The water systems of Ramona Water Company, although constructed subsequently to the adoption of General Order No. 103,

effective July 1, 1956, do not meet the water supply requirements or construction standards of that General Order.

6. Ramona Water Company should not, without further order of this Commission, extend its water systems nor connect any new customers to its existing systems.

7. A flat rate schedule will not be authorized. There is a limited water supply. Unlimited water service to 2½-acre lots in the desert would overdraw the supply.

8. The rates authorized herein are reasonable until there is a significant change in Ramona Water Company's operations. The rates will do no more than cover operation and maintenance expenses for the foreseeable future.

9. Ramona Water Company should file system maps, health permits, cost information, and rules governing relations with its customers as required by this Commission's general orders and as set forth in the order which follows.

10. Ramona Water Company should compute its depreciation expense in the manner set forth in the ensuing order.

11. All connection charges collected by defendants should be refunded.

12. Except as granted herein the relief requested in the complaint should be denied.

### O R D E R

IT IS ORDERED that:

1. Ramona Water Company, within forty-five days from and after the effective date of this order, shall prepare and file with this Commission, in quadruplicate and in conformity with the Commission's General Order No. 96-A, the rate schedule attached to this order as Appendix A.

2. Within forty-five days after the effective date of this order, Ramona Water Company shall file a tariff service area map, rules governing relations with its customers, and sample copies of printed forms that are normally used in connection with customer's services.

3. Ramona Water Company shall prepare and keep current the system map required by paragraph I.10.a. of General Order No. 103. Within ninety days after the effective date of this order, it shall file with the Commission two copies of this map.

4. Ramona Water Company shall file with this Commission, within one hundred twenty days after the effective date of this order, a report setting forth in detail a determination of the original cost, estimated if not known (historical cost appraisal), of the properties used and useful in providing water service, and also the depreciation reserve requirement applicable to such properties. The report shall designate which items are supported by vouchers or other like documentary evidence and which items are estimated, and it shall show the basis of any such estimates.

5. For the year 1973, Ramona Water Company shall apply a depreciation rate of 4 percent to the original cost of depreciable plant. Until review indicates otherwise, this rate shall be used. This rate shall be reviewed at intervals of five years and whenever a major change in depreciable plant occurs. Any revised depreciation rate shall be determined by: (1) subtracting the estimated future net salvage and the depreciation reserve from the original cost of plant; (2) dividing the remainder by the estimated remaining life of the plant; and (3) dividing the quotient by the original cost of plant. The results of each review shall be submitted promptly to the Commission.

6. Ramona Water Company shall not, without further order of this Commission, extend its water systems nor connect any new customers to its existing systems.

7. Ramona Water Company shall apply to the health authority having jurisdiction for a water supply permit for its systems, and shall report to the Commission, in writing, within thirty days after the effective date of this order, that application has been made for such permit.

8. Ramona Water Company, E. E. Everett, and Anita M. Kleinman shall refund, within 180 days after the effective date of this order, all connection charges which each may have collected.

9. Except as granted herein, the relief requested in the complaint is denied.

The Secretary of the Commission is directed to cause personal service of this order to be made upon defendants. The effective date of this order shall be twenty days after the completion of such service.

Dated at Los Angeles, California, this 6<sup>th</sup>  
day of MARCH, 1973.

Vernon L. Sturgeon  
President  
William J. Spivak

[Signature]  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

## APPENDIX A

## Schedule No. 1

METERED SERVICEAPPLICABILITY

Applicable to all metered water service.

TERRITORY

Anza Acres, Ramona Estates, and vicinity, located approximately two miles east of Anza, Riverside County.

RATES

## Quantity Rates:

	<u>Per Meter</u> <u>Per Month</u>
First 500 cu. ft. or less .....	\$ 5.00
Next 1,500 cu. ft., per 100 cu. ft. ....	.60
Next 3,000 cu. ft., per 100 cu. ft. ....	.50
Over 5,000 cu. ft., per 100 cu. ft. ....	.30

## Minimum Charge:

For 5/8 x 3/4-inch meter .....	\$ 5.00
For 3/4-inch meter .....	7.50
For 1-inch meter .....	9.00
For 1 1/2-inch meter .....	15.00
For 2-inch meter .....	25.00

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rates.