

Decision No. 83352

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of Loma Prieta Water Co. for Authority  
to Discontinue Water Service as a  
Public Utility.

) Application No. 54306  
(Filed September 11, 1973)

Ronald Dunton, Attorney at Law, for Loma  
Prieta Water Company, applicant.  
Miss Bobbie De Clure, for herself; Jack Strang,  
for himself and Bill Strang; and William  
Steyding, for himself and wife, protestants.  
James M. Barnes, Senior Utilities Engineer,  
for the Commission staff.

O P I N I O N

Hearing

After due notice, public hearing in this matter was held before Examiner Coffey at Santa Cruz on February 4, 1974. The matter was submitted upon the receipt of the transcript on April 23, 1974.

Requested Relief

The Summit Group, a California partnership comprised of general partners, Richard Alderson and Ronald Dunton, and about 15 unnamed limited partners, doing business as Loma Prieta Water Company, requests an order which authorizes the Loma Prieta Water Company to discontinue water service and to abandon its certificate of public convenience and necessity.

Upon receipt of authorization to discontinue water service, applicant offers to turn over to a mutual water company established by users of the system the 30,000-gallon wooden tank, the 4,000-gallon steel tank and all pumps, valves, meters, and all other equipment located on the tank site along with the existing lines

from the tank site to the users. Applicant will continue to pay all property taxes on the tank site and agree to give any approvals needed in order for the users to drill a well on the site. Applicant proposes to retain the line from the source of system water, two springs, and all water rights in the springs. The mutual shall have the right to use the property and all equipment on it until such time as they choose not to continue the use. Once use of the property and system by the mutual has ceased, the possessory right to the land would return to applicant.

Water System

The source of the water supply consists of two springs located about one mile south of the customers' residences. The main spring was constructed about 50 years ago and obtains water through a group of conduits that extend out from the concrete sump in the spring house. It has been reported that in the past the water flowing into the sump reached a maximum of six gpm and dropped to something less than one gpm in the dry seasons. The second spring, located about 100 yards from the main spring and at a lower elevation, resembles an old mine shaft. The flow from this spring is not known, but it is reported by the water company to be less than the main spring and to have produced no flow in dry seasons. A 30-inch diameter dug well, that was never put into service, is located about 30 yards from the main spring.

The approximately one mile long gravity-flow transmission pipe from the springs to the storage tanks is a combination of one-inch metal and plastic pipe.

The tank site, located close to the customers, contains a 4,000-gallon steel tank, a 30,000-gallon redwood tank, and a booster pump and pressure tank. Water flows to the customers through three pipe outlets. One branch line, flowing by gravity and approximately 1,000 feet long, the so-called siphon line, has served three

residences. A second gravity line serves the tri-plex residences. A third branch line, connected to the booster pump and pressure tank, has served the three residences that are located on a hill above the storage tanks. The gravity lines are plastic pipe laid mostly on the surface of the ground.

#### Present Status

Data on the origin and age of the water system are incomplete. The staff witness testified that the system is in poor condition and does not meet most of the requirements of Commission General Order No. 103. Since much of the plastic pipes are above ground, there have been numerous service problems due to frozen or damaged pipelines.

Applicant is presently furnishing service to just two customers, the Jack Strong residence on the siphon line and the tri-plex. The tri-plex is owned by the Summit Group. The other customers have either chosen to obtain water from other sources or were disconnected from the system for nonpayment of their water bills.

The electric service to the booster pump was disconnected on June 5, 1973 for nonpayment of the bill by applicant. Since the bill is still unpaid the electric service has not been restored.

Applicant reports that the customers have not paid their water bills for periods that vary from three months to about two years. However, some of the customers have indicated that they have not paid their bills because they have been without water service.

#### Water Supply

The available data on the water supply capabilities of the system is as follows:

<u>Flow Rates</u>		
<u>Location</u>	<u>Date</u>	<u>Flow (gpm)</u>
Main Spring	October, 1967	1/3
Main Spring	August, 1972	1/8
Main Spring	October, 1972	1.0 +
Storage Tank	February, 1973	1.0-1.5
Main Spring	March, 1973	1.0

On December 21, 1973, the staff engineer observed the flow at the main spring and at the inflow pipe of the storage tank. These two flows were just a little more than a trickle of water, and the storage tanks were nearly empty.

The Commission, in Decision No. 74846 dated March 17, 1967, found that the water supply of the company would be inadequate even with both springs and all available storage facilities connected to the system.

The Commission, in Decision No. 74846, also found that during the dry season it had been necessary to haul water to the system in trucks.

At the public hearing on Case No. 9458 that was held on March 19 and 20, 1973, customers testified that there were extended periods when they were without water.

#### Results of Operations

The following tabulation summarizes the income statements from the utility's annual reports:

#### Income Statement

<u>Year</u>	<u>Total Operating Revenues (Dollars)</u>	<u>Total Operating Revenue Deductions (Dollars)</u>	<u>Net Income (Dollars)</u>
1967	253.00	6,336.47	(6,083.47)
1968	582.01	2,354.20	(1,772.19)
1969	879.95	59.50	820.95
1970	946.00	60.00	886.00
1971	627.00	583.81	33.19

Note: The recorded revenue deductions (expenses) for 1969 and 1970 consisted of only purchased water and power.

Applicant states that the cost of additional time and expenses has not been charged to operating expenses.

Applicant provided the staff with the following data on 1972 expenditures and income in connection with Case No. 9458, a complaint by customers to improve service:

Income (Operating Revenues)	\$ 852.50
Expenditures (Operating Revenue Deductions)	<u>2,139.76</u>
Deficit (Net Income)	(\$1,287.26)

Staff Conclusions and Recommendations

A staff engineer concluded that:

1. The water supply from the two springs is not sufficient to satisfy the customers' water needs.
2. The water system is subject to frequent breakdowns and it is difficult to properly maintain the system.
3. The utility is presently operating at a loss, many of the customers having chosen not to use the water system and having indicated that they would not share in the expenses of upgrading the water system.
4. To continue operation with only one or two customers, the loss problem would be compounded.

Thereupon, the staff engineer recommended that the water company should remain in operation as a public utility for a period of six months to permit the customers sufficient time to obtain water from alternate sources. After this fixed time period, the applicant should be permitted to discontinue water service and be relieved of its public utility obligations in connection with the utility system.

### History

A review of the history of this utility as set forth in decisions of this Commission discloses the futility and burdens created by uneconomic offers of water service used as inducements to sell subdivided land.

Over 80 years ago, a spring was developed and a transmission line installed to supply what was known as the Wright Ranch in the Santa Cruz mountains. The large home on the 200-acre ranch burned down, but the water facilities were still used to supply a store, a cottage, and an apartment on the ranch properties.

The owner, Mrs. Agnes Cox Wright, sold parcels of her land to others, five of whom built homes which were also supplied water from a tank on the Wright Ranch water system. They paid \$2.00 per month for the water service. The arrangement was apparently by oral agreement, although some parties may have included in their deeds the right to purchase water.

Around 1946, three individuals named Weston, Sheldon, and Sole, purchased from Mrs. Wright a 19-acre portion of the ranch property. The real estate broker's listing stated that water would be provided to the parcel by gravity for \$2.00 per month. When the buyers indicated that they wished to divide the parcel and build three homes at the higher elevations of the property, Mrs. Wright (under her realtor business name of Agnes Cox) agreed to install a booster pump and the necessary distribution main to carry water to the property line of the 19-acre parcel. The water service agreement states that the \$2.00 rate per customer, originally proposed for gravity water, would be revised to not more than \$2.75 per month for domestic use, with an additional charge for water used for purposes other than domestic. The buyers agreed to install the necessary service lines on their own properties, and to install small pressure tanks and storage tanks of about 2,000 gallons at each of the three homes.

In 1957, Mrs. Wright died, and in November 1965 the entire residuals of the Wright Ranch properties were sold to the Summit Group. By this time changes resulted in the gravity system's serving three authorized customers, one user who has connected to the system without authorization and the Summit Group's cottage, store, and apartment. Only three users were on the pressure system.

When the Summit Group took over the properties they let the users know they were not willing to continue to serve water. Acting on the complaint of the three customers on the pressure system, the Commission in Decision No. 72108 dated March 7, 1967 in Case No. 8356 found the Summit Group to be the owner of a water system which had been dedicated to public use at least insofar as to service to the homes of the three complainants.

Decision No. 74846 dated October 22, 1968 in Cases Nos. 8742 and 8752 and Application No. 50203 ordered the water company to extend service to five more residents, a total of eight customers. In June 1968, the utility requested authority to increase its monthly flat rate from \$2.75 to \$74.47 for five years and thereafter reduce it to \$54.19. Decision No. 74908 dated November 6, 1968 authorized a rate increase to the present flat rate of \$11 per month and the right to prorate the cost of any water purchased among all the customers using it. This rate was the minimum amount necessary to barely recover out of pocket expenses. Even so, this record indicates that some customers because of various reasons have refused to pay the monthly charge. No charges have been prorated for such water as was trucked to the system.

#### Discussion

It is obvious that this water system is not an economic unit which can furnish reasonable service at reasonable rates. Sufficient revenues from two or three customers cannot be generated to pay the operating and maintenance expenses and taxes which can

be reasonably anticipated. There is little prospect of additional customers since those served by the pressure system have arranged their own supply. Because customers of the utility stated they would not participate in paying for needed improvements and threatened to disconnect from the water system if their rates were raised, the Commission in Decision No. 81595 dated July 17, 1973 decided it could not order the utility to undertake expensive improvements.

Applicant has offered the use of the water system, exclusive of the source of supply, tax-free to a mutual. This record contains no indication that any of the customers are interested in undertaking the formation and operation of a mutual water system. The California Supreme Court has said;

"The state has no power to compel the continued operation of a public utility at a loss, where the owner of that utility is willing to and does in fact abandon to the public all its property that has been devoted to the public use. . . . The basis of the conclusion that the state cannot compel the operation of a public utility at a loss is that such an order is a taking of property without compensation and therefore violates the fourteenth amendment to the federal constitution." (Lyon & Hoag v. Railroad Comm. (1920) 183 Cal. 145.)

Applicant cannot be said to have offered all of its property since it proposes to retain its source of supply. However, we believe that it is reasonable to relieve applicant of its duties as a public utility if it continues to supply for six months those customers served by the gravity system who express their desire for such service by paying each month the amounts prescribed by the tariffs presently authorized. This period of service will afford all customers on the gravity system sufficient time to arrange for their own water supply. It is our understanding that applicant is willing to comply with this condition on our authorization to abandon service.



Findings of Fact and Conclusion

1. The Loma Prieta Water Company presently serves not over two or three customers.
2. All customers are presently being served water by gravity flow.
3. The utility is operating at a loss.
4. There are no prospects of the utility operating at other than a loss.
5. Customers of the utility are unwilling to undertake the formation of a mutual to take over and operate applicant's water system.
6. Within six months, all customers of the utility should be able to develop their water supplies.
7. Public convenience and necessity does not require that applicant continue its duties as a public utility for more than six months.

We conclude that the request of applicant should be granted as hereafter ordered and conditioned.

O R D E R

IT IS ORDERED that:

1. Six months after the effective date hereof the Summit Group, doing business as Loma Prieta Water Company, is authorized to discontinue water service and is relieved of its public utility obligations provided it continues for six months after the effective date hereof to supply water to those customers connected to its gravity system who express their desire for such service by paying each month the amounts prescribed by presently authorized tariffs. This authority is further conditioned upon applicant at all times keeping its customers advised of where and how it or its representative can be advised of any service interruptions within four hours.

2. This authorization may be modified upon further order of this Commission if applicant fails to reasonably supply water to those customers entitled to service.

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

Dated at San Francisco, California, this 27<sup>th</sup> day of AUGUST, 1974.

Samuel L. Stanger  
President  
William J. Lyons  
[Signature]  
[Signature]  
Commissioners

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