

Decision No. 85608

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the status, rates,
rules, regulations, operations,
service, facilities, equipment,
contracts and practices of
GEORGE H. WOODWARD and GEORGE C.
WOODWARD, individuals, doing
business as WOODWARD RANCH WATER
COMPANY.

Case No. 9289
(Filed November 9, 1971)

Robert H. Stopher, Attorney at Law, for Woodward
Ranch Water Company, defendant.
S. B. Gill, Attorney at Law, for Fred Haas, Jr.,
complainant.
William J. Jennings, Attorney at Law, and Robert
M. Mann, for the Commission staff.

O P I N I O N

In Decision No. 80118 dated May 31, 1973 in this case we required the Woodward Ranch Water Company (Woodward), a sole proprietorship, and Woodward's owner, George H. Woodward, to make certain improvements in Woodward's water system. Subsequently in 1973, George H. Woodward was declared a bankrupt (U.S. District Court, Central District of California, Bankruptcy No. 73-02296) and later that same year died. This decision is the result of a further hearing on the case and was prompted by a complaint filed by Fred Haas, Jr. (Haas) in this docket. The complaint alleges that the improvements required by Decision No. 80118 have not been made, that the trustee in bankruptcy after repeated demands has failed to provide for the operation of the system, and that for the past several years Haas, a customer of the system, has voluntarily and without pay kept the system in

operation just so that all the customers would have water service available to them as there is no one else to operate the system. Haas asks that we order the trustee to make the required improvements and to operate the water system or, in the alternative, that we declare the service to have been abandoned so that the nearby McFarland Mutual Water Company may offer water service in Woodward's service area. Hearing on the complaint was held at Bakersfield on July 31, 1975 before Examiner Pilling.

Woodward was certificated to construct its water system by Decision No. 54060 dated November 5, 1956. The system presently has 48 connections located in two adjacent tracts on Cliff Street in the city of McFarland in Kern County. The interim order recites complaints by Woodward's customers including water outages; lack of reserve water supply; sand, oil, and sediment in the water supply; absence of an agent in the community; failure to acknowledge complaints; and failure to perform adequate maintenance. The interim order requires, among other things, that Woodward construct a 100,000-gallon storage tank and install a pump to provide a sufficient quantity of water at adequate pressures and to install a sand trap. In 1973, subsequent to the interim order, George H. Woodward was declared a bankrupt (U.S. District Court, Central District of California, Bankruptcy No. 73-02296) and died. His son who lives in South Laguna, California, refused to inherit the system or have anything to do with it. Since some months before the initiation of the bankruptcy proceeding in 1973, no person or entity claiming legal or other title to the system has lifted a finger to operate, maintain, repair, or check the system. Haas, who alleges he is authorized to represent the other 47 persons connected to the system and who is himself a customer of the system living on Cliff Street, voluntarily has spent two hours each day, seven days a week, since prior to the date of the initiation

of the bankruptcy proceeding, keeping the system in operation without remuneration. He bleeds the tanks and mains, checks and maintains the oil in the pump, and keeps the system in repair. He also makes billings and collections of the charges which he deposits into a trust fund. In June of 1972 Woodward's customers recovered a court judgment against Woodward for \$18,000 to apply to the betterment of the water system or, if betterment proves infeasible, then for distribution among the customers. The judgment is uncollected.

The two tracts served by Woodward are within the service area boundary of the mutual water company which furnishes water to practically all of the water users in the city of McFarland except the people on Cliff Street. The mutual states that it is ready, willing, and able to install a circulating system for the people on Cliff Street if the people on Cliff Street are agreeable to becoming members of the mutual and to contributing monies for the installation of a system conforming to the mutual's standards. Woodward's water system, which is dead ended, is substandard. The well furnishing water to the Woodward system and the transmission mains leading to the two tracts are owned by the Hazel Woodward Trust. Cost to each of the connections on Cliff Street would be approximately \$1,400.

The vice-president of a bank located in McFarland testified that the FHA will not insure loans on houses on Cliff Street because of the uncertain and poor water supply, and for the same reason his bank reduced the valuation on the houses there by several thousand dollars below the otherwise real value of the houses if there was an adequate water supply.

The Commission's staff recommends that the Commission order the trustee of the bankrupt estate to bring the system into compliance with existing Commission orders and to order the trustee to authorize one or more persons to manage, operate, and maintain the water system

in a business-like manner. The staff further recommends that a decision containing the above order be forwarded to the bankruptcy court requesting the court take such action as appropriate in its judgment to assist in implementing such decision and if the trustee fails to notify the Commission within 60 days that he has carried out the orders of the Commission then the Commission should file a petition with the court alleging failure of the trustee in his lawful charge and issue an order to show cause why the trustee should not be held in contempt of the Commission. The staff contends Section 2701 of the Public Utilities Code requires that the Commission regulate water companies even though they have been taken over by receivers or trustees.

At the close of the hearing on July 31, 1975 the examiner was requested to defer submission of the case to permit complainant to investigate more fully the title to the well and transmission main and other matters involved in the case. Correspondence received since the close of hearing reveals that complainant's counsel has been vigorously pursuing these matters. However, a decision on the merits of this case at this time would appear to have no adverse effect on his efforts.

Discussion

Because of impelling equitable considerations, bankruptcy courts occasionally have authorized the continuance of a public utility business for a limited time upon a proper showing that the utility could pay its way.^{1/} But the decision as to whether a bankrupt business shall continue rests with the bankruptcy court, not with the trustee,^{2/} and the trustee is under no duty to apply for authority to continue a business irrespective of his motive for

^{1/} See Note 12 ALR 295.

^{2/} Collier on Bankruptcy, 14th Edition, Volume 1, pages 240.7-243.

failure to do so.^{3/} Since the trustee has not been ordered by the court to continue Woodward's business, he has not failed in his lawful charge by not constructing the 100,000-gallon tank, or not securing a new water source, or not operating the system. The customers of the system would be proper parties to petition the bankruptcy court to order the trustee to operate the system for a limited time. Under the circumstances federal bankruptcy law prevails over state law and the trustee, having received no authority from the court to operate the system, cannot be compelled to do so. We would agree with the staff that under Section 2701 of the Public Utilities Code we would have jurisdiction over the bankrupt water system but only if the trustee was operating the system. He is not operating it. He is only attempting to liquidate it.

The mutual presents an alternative source of water service for the people on Cliff Street and it is ready, willing, and able to give that service. The mutual appears to be a well-established organization to which the people on Cliff Street can look for many years of worry-free water service.

Findings

1. Woodward was declared a bankrupt in 1973.
2. Woodward abandoned public utility water service in 1973 and that abandonment has continued to the present time.
3. No one appears willing to take over the water system and operate it as a public utility.
4. The water system is being cared for by a volunteer who, along with the other users supplied by the system, has requested that the Commission declare that the service has been abandoned so that the mutual may provide water service in Woodward's service area.
5. The mutual is ready, willing, and able to provide water service in Woodward's service area.

^{3/} Ibid., page 242.

6. The trustee in bankruptcy of Woodward's estate has not failed to discharge his duties in not operating the system and is not upgrading the system as required by the Commission's orders.

7. Public health and safety require that the people on Cliff Street speedily obtain a source of water service by a dependable operator. ✓

Conclusions

1. Woodward abandoned public utility water service in 1973 and such service has continued to be abandoned.

2. An alternate source of water service is available to Woodward's former customers by a dependable operator. ✓

3. Woodward's failure to render water service endangers the health and safety of the people on Cliff Street.

4. Complainant's request that the Commission order the trustee in bankruptcy of Woodward to conform Woodward's water system as required by Commission orders and to operate the system should be denied.


O R D E R

IT IS ORDERED that complainant's request that the Commission order the trustee in bankruptcy of Woodward Ranch Water

Company to make the water system conform to previous Commission orders and to operate the system is denied. ✓

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

Dated at Los Angeles, California, this 23rd day of MARCH, 1976.

 President
William Syron
Vernon L. Thompson
Leonard H. ...
James B. ...
Commissioners