

ORIGINAL

Decision No. 85941

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Glen D. Koskela, Berry Matheny,  
Charles Migliavacca and Roger L.  
Yates,

Complainants,

vs.

Brown's Water Works, a public  
utility, the executor, heirs, and  
beneficiaries of the estate of  
Palle H. Andersen, deceased, Does 1  
through 8, inclusive,

Defendants.

Case No. 9888  
(Filed March 26, 1975;  
amended June 2, 1975)

ALBION-LITTLE RIVER FIRE DEPARTMENT,  
BUD THOMPSON, CABI NEWGARD, LENA  
LUZZI, T. L. SPROCK, W. D. PUGH,  
DAVID NIERHAHE, GERRETT GREGORY, GLEN  
KOSKELA, ROGER YATES, SARAH ADELMAN,  
MARK GAUCHE, DON SILL, CHARLES  
MIGLIAVACCA, BYRON D. RANDALL, W. B.  
MATHENY, and MRS. A. L. ROMER,

Plaintiffs,

vs.

EARL LATHAM, CHARLES LATHAM, ALICE  
MAE LATHAM FRAZELL, PEARL D. GROOM,  
PAUL E. ANDERSEN, LOIS B. TOWNSEND,  
HARVEY BEAN, BROWN WATER WORKS, VERNE  
BEAN and PACIFIC GAS AND ELECTRIC CO.,  
a public utility, and DOES ONE through  
FIVE, inclusive,

Defendants.

Case No. 9897  
(Filed April 9, 1975;  
amended April 17, 1975)

(Appearances are listed in Appendix A.)

SECOND INTERIM OPINION

In our Interim Order, Decision No. 84872 dated September 3, 1975, we ratified the following motion made by the defendant's attorney as modified by other parties:

"Without prejudice to the claim of the defendants that they have transferred any interests they might have had in Brown's Water Works and without prejudice to any other claims of defendants or complainants, defendants are authorized to employ Mr. Strelow or others to install and operate a water chlorination system in the water system; defendants are authorized to obtain estimates of the costs of constructing a complete system; and defendants are authorized to test by drilling or otherwise to determine the ability to establish an adequate water supply upon the property described in Exhibit 23 and in the location identified as Well No. 1."

Further, in the Interim Opinion we said, "These matters were taken off calendar to provide an opportunity for complainants and defendants<sup>1/</sup> to negotiate in good faith to the end that complainants may form a mutual water company to take from defendants the Brown's Water Works. Defendants will operate the system and provide service to complainants during this period. Further hearings on this matter will be held at the request of any party."

Subsequent to September 3, 1975 the staff has investigated the utility's implementation of the stipulation and based on such investigation has proposed the additional restrictions and requirements set forth in this decision.

Discussion

Brown's Water Works first came under Commission regulation on November 23, 1932 with the filing of tariffs by A. P. Brown. The utility apparently had been providing water service to the citizens of Albion for several years preceding.

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<sup>1/</sup> Decision No. 84872 dismissed Pacific Gas and Electric Company as a defendant in this proceeding.

In Decision No. 25972 dated May 29, 1933 in Case No. 3431, a protest by six water users that for several years the utility had failed to supply them with sufficient water to meet their base requirements, the Commission ordered development of an additional and adequate water supply by means of a well or wells, or springs, and additional storage capacity. The water supply available at the time of the hearing was described as being "obtained from a collecting pit or cistern, ten feet square and about nine feet in depth, which intercepts shallow, sub-surface drainage waters."

In Decision No. 65779 dated July 30, 1963 in Application No. 45095, which was an application for an increase in rates, the Commission authorized the transfer from A. Brown to Palle H. Andersen of the operating rights and properties described in the application as "Land and equipment (source of water supply) \$15,000.00".

The water supply at the time of the hearing on Application No. 45095 was described in D.65779 as:

"The utility produces its water supply from three separate locations. Two dug wells, 6 feet by 6 feet and approximately 20 feet deep, are piped together. The water flows, either by gravity or, when necessary, pumped by a pump equipped with a one-half horse power motor, through about 750 feet of 1-inch plastic pipe and 150 feet of 3/4-inch galvanized pipe to an elevated storage tank. Another dug well in the vicinity of the storage tank is equipped with a pump and 3/4 horse power motor and a chlorinator from which water is pumped directly into the tank. A spring and trough located east of town supply water through approximately 600 feet of 1-inch plastic pipe and 400 feet of 3/4- and 1-inch galvanized pipe into the distribution system at the opposite end from the storage tank. The utility has also installed about 3,000 feet of 1-inch plastic pipe from the owner's private well to the trough at the spring for use when the supply becomes critically low. Most of the 17 customers are located along some 650 feet of 2-inch pipe. With the exception of the 1-inch plastic pipe, all the pipe has apparently been in the ground some 40 years or more."

At the time of the hearing on Cases Nos. 9888 and 9897, there had been little change in the sources of supply. In this hearing the dug well near the storage tank was identified as Well No. 1 and the two connected wells as Nos. 2 and 3. The spring and trough have apparently been developed into a well in the same fashion as the others, now identified as Well No. 4. Portions of the 1-inch plastic pipe to the owner's supply were still in place on the surface, but segments had been removed so that it was not serviceable. Prior to and after the death of Palle H. Andersen in 1973 the Mendocino County Department of Public Health had been active in endeavoring to secure needed improvements to Brown's Water Works. After Mr. Andersen's death, they were informed that the Crocker Bank had been appointed executor, and were then informed by the Crocker Bank that Mr. Conrad L. Cox of Ukiah, an attorney, was the proper person for inquiries regarding the water company. After correspondence between Mr. Cox and the County Department of Health, Mr. Cox informed the department on November 23, 1973 that the bank did not have the authority to make capital repairs to the water system, and that preliminary distribution of the estate would turn over the water system to the heirs. From that time to January 9, 1975 the County Department of Health handled complaints of water shortages from the customers, and corresponded with the heirs in regard to improvements to the system. On January 9, 1975 the department was informed that the water company had been abandoned by the heirs.

The staff of this Commission was not advised of the foregoing actions until a telephone complaint was received from Mr. Roger Yates, one of the complainants in both Cases Nos. 9888 and 9897. This complaint led the staff to secure from the office of the district attorney for Mendocino County a copy of the notice and deed to customers by which the heirs proposed to transfer the water system to the customers, and correspondence with attorney Edson Abel, who apparently had acted for the heirs in the matter. By letter of December 24, 1974 our staff advised

Mr. Abel that abandonment required the approval of this Commission and provided him necessary information to request same. A copy of the letter was sent to the executor of the estate. Mr. Abel responded, stating that the action of the heirs was proper, and in turn was sent a letter dated January 15, 1975 by our legal staff, stating that a purported transfer in violation of the statute confers no rights on the transferees. There is no record of an answer having been received to this letter.

Since the date of the Interim Order the Commission has received complaints of water outages and has endeavored by correspondence and telephone to secure action to correct them. Our staff has been advised by telephone that the gathering lines from Wells Nos. 2, 3, and 4 are clogged to the extent that none of the water from these wells reaches the tank. The staff has also been advised that the total production from these three wells has been measured at 1.3 gallons per minute and the production of Well No. 1 has been measured at 1.4 gpm. Only the water from Well No. 1 is reaching the tank and distribution system at this time, which is approximately one-fourth the amount (6 gpm) previously estimated to be available, and deemed inadequate (Exhibit 33).

Water has historically been secured from sources on the hill, now tapped by Wells Nos. 2, 3, and 4. During times of water shortage an additional source has been the owner's private water supply through about 3,000 feet of one-inch plastic pipe. Use of these hillside sources stems from the Commission's Decision No. 25972 dated May 29, 1933 in Case No. 3431, which ordered development of additional water supply and storage facilities by September 1, 1933.

Our staff is informed that defendants to date have employed Mr. Strelow to install and maintain a chlorination system, have repaired the inoperative pump, have drilled a new well in the vicinity of Well No. 1, and have been unsuccessful in obtaining a

producing well. An estimate of the costs of constructing a system, but not including costs of Wells Nos. 2, 3, and 4 or the gathering system, has been received.

The existing system is in a continuing state of disrepair, with the result that customers have been repeatedly without water for lengthy periods.

Efforts by our staff to secure correction of water outages have been fruitless.

#### Findings

1. Brown's Water System is and has been a public utility since 1932, as established by Decision No. 65779 dated July 30, 1963 in Application No. 45095.

2. The transfer of control of Brown's Water Works from the estate of Palle H. Andersen has never received the approval of this Commission.

3. The purported transfer by the heirs of Palle H. Andersen to the water users has never received the approval of this Commission.

4. Service by Brown's Water Works has been consistently unsatisfactory since the death of Palle H. Andersen, due in large part to neglect of the upkeep of the system.

5. The watershed occupied by Wells Nos. 2, 3, and 4, the water supply from all wells, springs, or seeps on this watershed and from the ranch water system (owner's private supply), and the watershed occupied by Well No. 1 and the water supply from Well No. 1 have all been dedicated for the water supply of Brown's Water Works through years of utilization of and dependence on this supply by the utility for service to its customers.

6. Water service by Brown's Water Works is and has been unsatisfactory in both supply of water and condition of physical plant.

7. Defendants, including defendant executor, have accomplished all actions authorized under the ratified motion, but have not satisfactorily operated the utility in the interim period pending completion of all actions.

Conclusions

1. Brown's Water Works should be restricted from serving customers additional to the presently existing 17 connections.

2. Public convenience and necessity require that the existing system be adequately maintained, and that the dedicated water supply and watershed be protected now from misuse and for the future by suitable deed restrictions and covenants running with the land to preserve the quantity and quality of water presently available for public utility use, and reserve the land in its natural state of open space for compatible uses only.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Service shall not be expanded beyond the 17 customers of record without prior authority of this Commission.

2. None of the watershed or right-of-way lands of this utility shall be sold or otherwise disposed of or committed to any other purpose without prior approval of this Commission.

3. Brown's Water Works shall, prior to September 1, 1976, install and make operative new gathering lines of minimum four-inch diameter from Wells Nos. 2, 3, and 4 to the elevated storage tank, and shall repair and improve the distribution system to the extent required to insure distribution of available water to all customers.


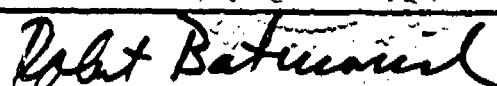
4. Prior to September 1, 1976, Brown's Water Works shall file with the Commission a legal description of all watershed and right-of-way lands supplying the water system.

5. Prior to September 1, 1976, Brown's Water Works shall submit to the Commission evidence that appropriate conditions and covenants running with the land, satisfactory to the Commission, have been filed and recorded to protect the quality and quantity of water generated from all watershed lands supplying the water system.

6. Upon completion of actions directed in paragraphs 3, 4, and 5 of this order, Brown's Water Works may petition the Commission for authority to transfer the Brown's water system to recorded owners of property now served by the utility, without cost to the property owners; or may accept responsibility for operation and maintenance of the utility, under Commission regulation, and ask that Cases Nos. 9888 and 9897 be closed.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of JUNE, 1976.

 President  
William J. Lyons  
Lemon L. Sturgeon  
 Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.



APPENDIX A

LIST OF APPEARANCES

Complainants: Roger L. Yates, Christopher Charpentier, Harold A. Irish, Attorney at Law, Glen D. Koskela, Raymond A. Yates, W. B. Matheny, Gerrett W. Gregory, David and Margo Nierhahe, Mrs. A. L. Romer, and Arthur Piscitelli, for themselves; Charles Migliavacca, for Water Users and Customers of Brown's Water Works; and Jonathan M. Lehan, Attorney at Law, for Albion-Little River Fire Protection District.

Defendants: Paul E. Andersen, for himself; Kathy Graham, Attorney at Law, for Pacific Gas and Electric Company; and Conrad L. Cox, Attorney at Law, for Crocker National Bank.

Intervenors: Scott A. Miller, for Mendocino County Health Department, and Marguerite C. Dawson, for Whitesboro Grange.

Interested Party: Margarett L. Parducci.

Commission Staff: Freda Abbott, Attorney at Law.