ALJ/jc/jn *

Decision 84-09-020 September 6, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TERRY MACKEY et al.,

Complainants,

vs.

VISTA GRANDE WATER SYSTEM,

Defendant.

Case 84-05-079
(Filed May 21, 1984)

O P I N I O N

Statement of Facts

In 1959, by Decision (D.) 57920 in Application (A.) 40586, Howard and Wilma Pulliam, doing business as Vista Grande Water System, obtained a certificate of public convenience and necessity to construct and operate a public utility water system to serve their 72 lot Pulliam Subdivision located in the Antelope District, an unincorporated area approximately 2 miles northeast of the City of Red Bluff in Tehama County. A 161 foot well (Roundup VG # 1) capable of producing approximately 200 gallons per minute against system pressure was placed into operation, delivering water by means of a 5,000 gallon hydropneumatic tank through a metered water distribution system. On August 26, 1958 the State Board of Public Health issued a water supply permit.

In 1968, by authority granted in D.73785 in A.49703, Shannon O. and Shirley R. Patterson, then owners of the Las Flores Water Works, and since also owners of the Mira Monte Water Company, purchased Vista Grande from the Pulliams who by then were residing in Guaymas, Mexico. By 1983 Vista Grande was serving 112 customers.

In recent years problems have developed in the area of the Antelope District. The area is not sewered, and there are septic tanks and wells in the same block. In June 1983, routine testing of the Roundup well disclosed a high coliform bacteria count in water from that well. On June 24, 1983 Vista Grande was instructed by the Tehama County Environmental Health Department to notify all customers within one week of the contamination and to suggest boiling water or use of bottled water. Vista Grande was to continue such notice monthly until the contamination threat ended. On June 23, 1983 Vista Grande complied, notifying all customers, and the utility began manual chlorination while cleaning the storage tank, sealing the pump base and installing screening.

Earlier, in 1976 a second well (Mary Lane VG # 2) had been constructed under the then existing environmental standards to draw at 184 feet from the third strata of the local aquifer, but this well had not been put on line nor was a pump installed. In August 1984, facing the problems it did with the first well, Vista Grande sought approval from the Tehama County Environmental Health Agency to bring this second well into service. Meanwhile, a chlorinator had been temporarily installed on the first well.

Although water from the well on Mary Lane did not at anytime exceed bacteriological quality standards, the Environmental Health Agency was reluctant to permit Vista Grande to bring this

second well into use because the well lacks an annular seal. Health Department bulletins since 1981 have included an annular seal as a requirement for any new wells to be drilled.[1] As noted, however, the Mary Lane well had been constructed in 1976. But then, on November 16, 1983, the pump on the Roundup well burned out and the Health Agency relented to allow the second well on stream on an emergency basis from the 16th to November 18th. However, Vista Grande again was required to warn customers and it developed that the Roundup well would require considerable work.

Discussions between the Health Agency and Vista Grande followed, with Vista Grande seeking authorization to use the water from the Mary Lane well on a permanent basis. The utility asserted that the well's concrete base would be an effective seal to prevent contaminants from gaining access through the casing; that the nitrate level of this second well was lower than that of the first well, making its water more desirable; and that two impervious strata layers separated the well's first strata from the third strata from

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[1] Health Department Bulletin No. 74 printed in December 1981, requiring an annular seal, was thereafter the standard in Tehama County. Pursuant to Section 4019 of the California Safe Drinking Water Act, modifications to sources of water supply may not be made unless the operator of the public water system first files a petition to do so and receives an amended permit. But changes in the distribution system may be made without permit review if such changes comply in all particulars with the waterworks standards.

which the water was drawn, making it improbable that leakage could occur.[2]

After review, the Health Officer by a letter on January 13, 1984, approved the Mary Lane well as a source of water for the Vista Grande System, waiving the annular seal requirement, noting that back in 1976 when the well had been constructed there was confusion about requirements. But he required the utility to submit plans for its new distribution system before a new permit would issue. Vista Grande furnished these plans and proceeded with work to rehabilitate Well No. 1 while using the water from Well No. 2.

On February 18, 1984, the utility was told that its system was in violation in that it did not have an amended permit. It was required to again notify customers, and a hearing was scheduled for February 23, 1984 to determine if legal action would be taken. Charges were dropped at that hearing although the then sanitarian stated that things were not always done as promised or when promised.

The Tehama County Environmental Health Office today states that the utility has done what the agency asked that it do; that there have been no suspect water samples since October 11, 1983, and that no actions involving the utility's Vista Grande system are presently pending. The Health Officer in charge during these developments (since resigned) stated that the State Health Department is currently conducting a survey of the system.

This complaint, containing signatures purporting to represent 28 residential customers of the utility, recites their critical view and understanding of the chronology of events stated

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[2] The Health Officer stated that it was his feeling that you cannot depend upon yellow clay as the best seal, but that no purpose would be served to put in an annular seal now that the well had been constructed.

above, and asks that the Commission "investigate the operations and procedures by which Mr. Patterson operates the Vista Grande Water System and see if he is abiding by the laws of the State of California, and investigate past records".

Mr. Patterson, in his answer to the complaint, asks for dismissal, stating that his actions and notifications were in strict compliance with directions of the Health Agency; that while there was a problem, no unsafe coliform samples have been received since October 11, 1984, and that he was authorized to use Well No. 2. Patterson blames the discordant situation upon personal difficulties with a short tenured sanitarian since departed. The Agency confirms that this individual is no longer with the Agency.

Discussion

The Tehama County Environmental Health Agency has cooperated fully with the Commission in furnishing our ALJ with copies of its correspondence with Mr. Patterson, the owner-proprietor of Vista Grande, over this matter. Review of this correspondence does indicate that a contamination problem involving Well No. 1 did occur in the summer and early fall of 1983, but it also reflects that Mr. Patterson fully complied with the notification requirements imposed by that Agency, and acted expeditiously to meet that emergency. It reflects prompt efforts by Patterson to chlorinate, including addition of automatic chlorination when manual chlorination proved unacceptable. It also reflects Patterson's reasonable efforts to bring a second well, the one on Mary Lane, on stream to replace the contaminated first well on Roundup. Samples from Well No. 2 have never disclosed evidence of contamination during the time at issue here. The sole issue relating to Well No. 2 appears to be the absence of an annular seal and what if anything should be done about it. The Health Department requirement for an annular seal came about after the well was drilled. Whether a retrofit should now be required before that well may be used is a matter within the jurisdiction of the Health Department.

This Commission does not have exclusive jurisdiction over all matters relating to public utilities. It must share its jurisdiction over utility regulation where that jurisdiction is made concurrent. The State Department of Health Services has the authority to suspend or revoke a water utility's permit at anytime if it determines that the water is or may become impure or unwholesome. Our general rules applicable to the purity of water from a water source apply only in the absence of comparable requirements of the State Department of Health Services (see P.U.C. General Order 113). Here the Health Agency has made its determination that water from Well No. 2 is safe and that an annular seal will not be required. Patterson was cleared of charges at that Agency's February 23, 1984 hearing. In view of the lack of any specific charges relating to violations of the Public Utility Code there remains nothing for this Commission to consider and there is no need for a public hearing.

Findings of Fact

1. The community water system serving the Pulliam Subdivision in the Antelope area northeast of the City of Red Bluff is the Vista Grande Water System owned by Mr. and Mrs. Shannon Patterson.

2. The Vista Grande Water System is a public water utility within the jurisdiction of this Commission.

3. On health and water purity matters this Commission shares regulatory jurisdiction with the State Department of Health Services.

4. In mid and latter 1983, the system's water obtained from its Roundup well became contaminated through ground seepage from local septic tanks.

5. In response to Health Agency orders the system water was chlorinated and customers were advised in timely fashion of the danger.

6. The pump in the contaminated well burned out in the fall of 1983 and the Health Agency permitted the utility to use water from a second non-contaminated well which, however, had been constructed in earlier years when Health Department standards did not require annular seals.

7. The utility proposed to replace the contaminated well by using the second well permanently.

8. After discussion and review the Health Agency determined that the annular seal requirement would be waived, and permitted the water from the second well to be used but required an amended permit to be issued following review of the plans of the distribution system which resulted.

9. Patterson was cleared of any charges following a Health Agency hearing on February 23, 1984, to determine whether any legal action should be taken against him in relation to the problems arising from the well contamination.

10. The subject area of the complaint more properly falls within the jurisdiction of the State Department of Health Services.

11. No violations relative to the Public Utilities Code appear to be alleged or occurred.

12. There is no need for a public hearing.

Conclusion of Law

The complaint should be dismissed.

O R D E R

IT IS ORDERED that the complaint is dismissed.

This order becomes effective 30 days from today.

Dated SEP 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director

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If the customers of Vista Grande are dissatisfied with the ownership and operation as indicated and prefer public operation by the City of Red Bluff they can, in association with the city, negotiate for its sale to the city, or petition the city to acquire the system by eminent domain. They can also form a water district and themselves acquire and operate the system.

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