

JUL 2 1992

Decision 92-07-020 July 1, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Frank W. Clark,

Complainant,

vs.

Baycliff Subdivision,

Defendant.

ORIGINAL

Case 91-10-062
(Filed October 30, 1991)

O P I N I O N

Summary of Decision

The decision finds the Baycliff Subdivision Water System (Baycliff Water System) to be a public utility water corporation and, as such, subject to regulation by the Commission. The decision also requires the owner of the water system to provide water service to Frank W. Clark, complainant.

Background

Baycliff Water System is located near the southeast corner of Clear Lake, in the area known as Jones Bay. Baycliff Water System was established to serve the Baycliff Subdivision. According to a study¹ prepared for the County of Lake-Special Districts, Baycliff Water System has a potential capacity to serve 65 customers. It currently serves 50 customers who pay a flat rate of \$240 per annum. It is owned and operated by Peter Nolasco, who purchased the system in 1986 and is the defendant in this proceeding.

1 An excerpt from the study is included in Appendix B to this order.

While Baycliff Water System was established to serve only the Baycliff Subdivision, its previous owner, Norman Bayliss, provided water service connections to ten lots (Lots 14, 23, 26, 31, 32, 33, 36, 37, 38, and 39 in Appendix A map) in the Jones Bay area which were outside of the subdivision. Although the Baycliff Subdivision is not shown on Appendix A map, it is located southwest of Lot 32 on the map.

In August 1987, Frank W. Clark (complainant) purchased two contiguous lots, Lots 25 and 29² in Appendix A map, in the Jones Bay area which are outside of the Baycliff Subdivision.

In 1988 complainant asked defendant to provide him a water connection for Lot 25. In making his request, complainant agreed to install the necessary facilities to pump the water from Lot 25 to Lot 29 which is at a higher elevation. Defendant refused to provide service to complainant contending that his lots were outside the Baycliff Subdivision. After unsuccessfully attempting to secure water service from Baycliff Water System on two or three other occasions, complainant filed this complaint seeking an order declaring Baycliff Water System a public utility and requiring defendant to provide water service to his lot.

To meet his current need for water, complainant has installed a water storage tank on his property which is supplied water by a tank truck.

Evidentiary Hearing

A duly noticed hearing was held on January 31, 1991 in the City of Clear Lake before Administrative Law Judge Garde. The matter was submitted upon completion of the hearing.

² Although the two lots are contiguous, Anderson Road runs along the property line dividing the two lots. Property owners in the area have dedicated right of way to the county for location of Anderson Road.

Complainant's Position

Complainant contends that the previous owner of Baycliff Water System, Bayliss, promised to provide him water service before he purchased the lots. Complainant asserts that Baycliff Water System serves several lots outside of the Baycliff Subdivision, including the two lots on either side of his property. According to complainant, Baycliff Water System's water main runs adjacent to Lot 25 and, as such, there would be no difficulty in providing him with a water connection.

In addition, complainant contends that Baycliff Water System is, in fact, a public utility as defined by Public Utilities (PU) Code § 2701. Complainant requests that the Commission declare Baycliff Water System a public utility water corporation and order it to provide service to his property.

Defendant's Position

Defendant contends that Baycliff Water System was established to serve the Baycliff Subdivision only. Defendant argues that since complainant's property is located outside the subdivision, complainant is not entitled to service.

Defendant concedes that the previous owner, due to his generosity, did extend water service to certain lots outside of the Baycliff Subdivision as a personal favor on an individual basis. However, he insists that because of limited water supply, he cannot serve additional customers outside of the subdivision. According to defendant, any additional connections outside of the subdivision would jeopardize his ability to serve the remaining 15 vacant lots in the subdivision.

Defendant points out that complainant's property is on the shores of Clear Lake and as such he has riparian rights to use lake water. Defendant asserts that certain other properties in the Jones Bay area are exercising their riparian rights and using lake water.

Finally, defendant insists that requiring him to serve complainant would result in requests for additional water connections which would jeopardize the system and would have a detrimental effect on the entire community. Accordingly, defendant requests that complainant's request be denied.

Discussion

The main issue to be resolved in this complaint is whether or not Baycliff Water System is a public water utility within the purview of PU Code § 2701. If it is, the system automatically, as a matter of law, comes under our jurisdiction. Although defendant has not expressed any opinion on the issue and complainant requests that we assume jurisdiction and regulate, the issue is not one that can be evaded nor one that can be assumed; it simply depends on application of the law to the facts of the case.

PU Code § 216 defines a "public utility" as including every "water corporation, ...where the service is performed for or the commodity delivered to the public or any portion thereof" and "for which any compensation or payment whatsoever is received." Further, PU Code § 2701 states that "Any person, firm, or corporation...owning, controlling, operating, or managing any water system within the State, who sells...or delivers water to any person..., whether under contract or otherwise, is a public utility, and is subject...to the jurisdiction, control, and regulation of the commission." But § 2704(c) of the Code also provides in relevant part that "Any owner of a water supply not otherwise dedicated to public use and primarily used for domestic...purposes by him..., who...sells or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available, is not subject to the jurisdiction, control, and regulation of the commission."

While Baycliff Water System was established for the limited purpose of serving the Baycliff Subdivision, it is not a

mutual water company under the provisions of PU Code § 2725 because its customers are not stockholders who receive service at cost. In addition, Baycliff Water System has extended its service beyond the boundaries of the subdivision and, thus, is in fact dedicated to serve "the public." Since Baycliff Water System owns, controls, and operates a water system and delivers water to the public for payment, it is a public utility under the provisions of PU Code §§ 216 and 2701.

Next, we will examine if Baycliff Water System could be excluded from the Commission's regulation under the provisions of PU Code § 2704(c). The provisions apply to water systems "not otherwise dedicated to public use" and which serve water supply as "a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available." But while dedication is a prerequisite to declaring a water system to be a public utility, dedication can be manifested in many different ways, and PU Code § 2704(c) cannot be applicable to a situation where the service outside the Baycliff Subdivision was provided not as an accommodation but on a selective basis on the whim and generosity of the owner. Clearly, as claimed by defendant, if riparian rights allow complainant the use of lake water, owners of the adjacent lots who are similarly situated had and have the right to use lake water. Baycliff Water System, by the actions of its owners, has become one "otherwise dedicated to public use."

In summary, the evidence is clear that Baycliff Water System's operations went far beyond the "accommodations" to neighbors contemplated by PU code § 2704(c). Baycliff Water System has held itself out to serve, and has furnished water for compensation to members of the general public within the context of PU Code §§ 216 and 2701. Through the actions and conduct of its owner, the operation has become dedicated to the service of the

general public and has become a de facto public utility within the jurisdiction of this Commission.

Service Area

Since Baycliff Water System was built to serve the Baycliff Subdivision, its service area would include all lots, occupied or unoccupied, in that subdivision. To determine the service area boundaries outside of the subdivision, we will analyze Appendix A map.

Appendix A map does not show the location of the Baycliff Subdivision. However, based on the testimony provided at the hearing, the Baycliff Subdivision is located approximately ten lots west of Lot 32 on the map. Baycliff Water System serves Lots 14, 23, 26, 31, 32, 33, 36, 37, 38, and 39. All these lots are located north of Anderson Road. Lots 19 and 29 are located south of Anderson Road and are at a higher elevation than lots on the north side of Anderson Road. Since the farthest lot from the Baycliff Subdivision served by the Baycliff Water System is Lot 39, Baycliff Water System's service area should be extended from the Baycliff Subdivision to include all lots north of Anderson Drive up to and including Lot 39.

Service to Complainant

Complainant requests water service connection for Lot 25 which is within the service area of Baycliff Water System adopted above. Accordingly, complainant is entitled to receive water from Baycliff Water System under the provisions of PU Code § 453 which prohibit a water utility from discriminating between customers within its service area. We will require defendant to provide complainant a water service connection at Lot 25.

Findings of Fact

1. Baycliff Water System was developed to serve the Baycliff Subdivision.
2. Baycliff Water System is providing water service to lots outside of the Baycliff Subdivision for compensation.

3. Baycliff Water System has become dedicated to public use.
4. Complainant requests water service for Lot 25 from Baycliff Water System.
5. The owner of Baycliff Water System refuses to serve Lot 25.
6. Baycliff Water System serves the two lots on either side of Lot 25.
7. Lot 25 is located within Baycliff Water System's service area.
8. The owner of Baycliff Water System charges a flat rate of \$240 per annum.
9. General Order (GO) 96-A requires a public utility to file tariffs with the Commission.
10. GO 103 requires a water utility to file and keep current system maps with the Commission.
11. Baycliff Water System has the capacity to serve 15 additional customers.

Conclusions of Law

1. Baycliff Water System is a public utility water corporation and, as such, is subject to regulation by this Commission as provided by the laws of the State.
2. PU Code § 453 does not allow a public utility to discriminate between customers within its service area.
3. The owner of Baycliff Water System should provide water service to complainant.
4. The owner of Baycliff Water System should file its tariffs and a system map as required by GO 96-A and GO 103, respectively.

APPROVED AND FORWARDED:
BY: [Signature] DATE: [Date]
[Faint circular stamp]

ORDER

IT IS ORDERED that:

1. The Baycliff Subdivision Water System (Baycliff Water System), which is a public utility, is subject to regulation by this Commission as provided by the laws of the State.
 2. Baycliff Water System shall, within 60 days of the effective date of this order, file the Commission's standard tariff schedules provided by the Water Utilities Branch, in accordance with advice letter procedures of General Order 96-A.
 3. Baycliff Water System shall prepare its system map as described in this order and file it with the Commission within 60 days of the effective date of this order.
 4. Within 10 days of the effective date of this order, Baycliff Water System shall provide water service to Lot 25, as shown on Appendix A map.
 5. Baycliff Water System's current flat rate of \$240 per annum shall remain in effect until further Commission order.
 6. The proceeding in Case 91-10-062 is closed.
- This order becomes effective 30 days from today.
Dated July 1, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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

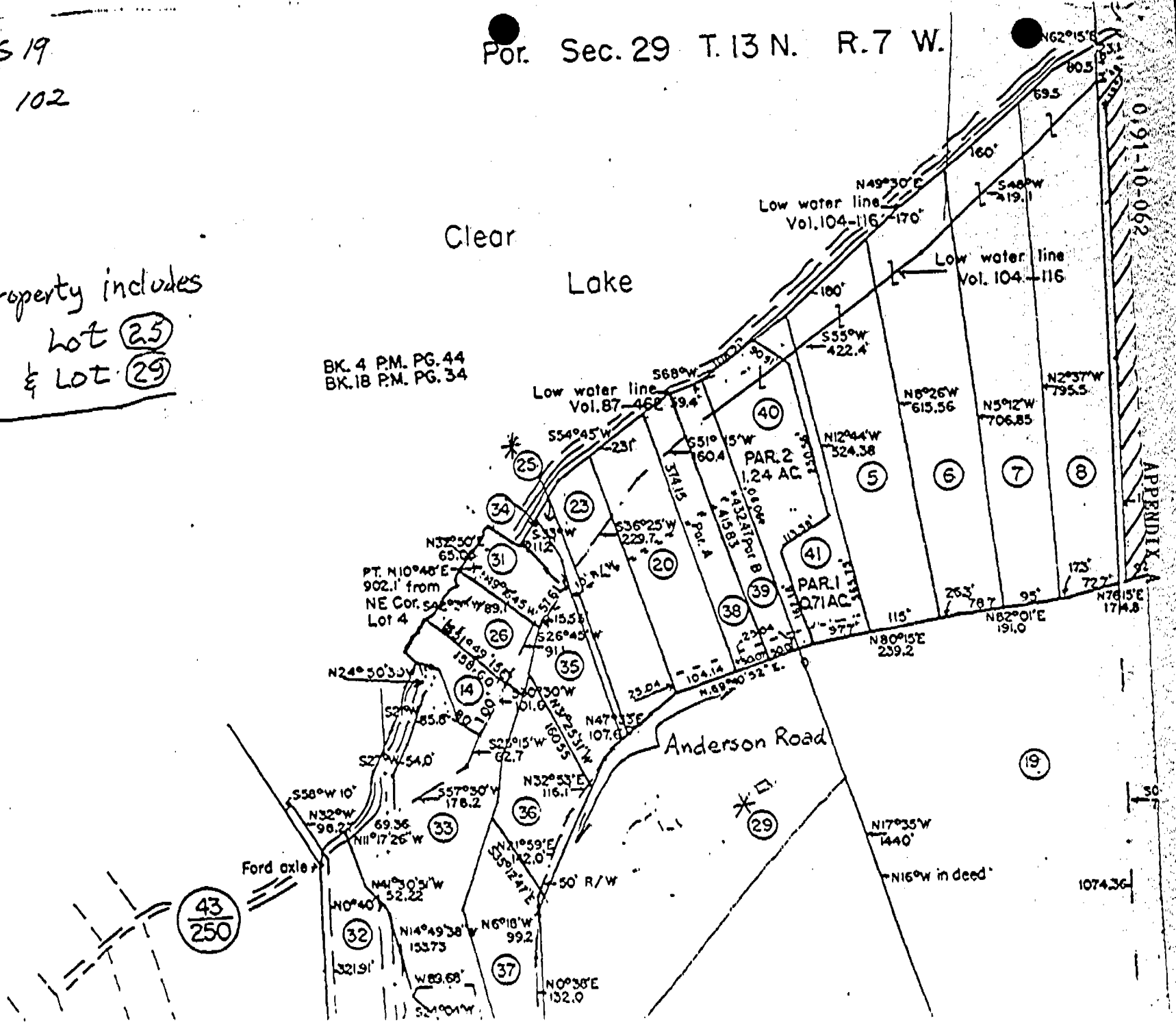

NEAL J. SHULMAN, Executive Director
PB

4 R/S 19
4 R/S 102

Por. Sec. 29 T.13 N. R.7 W.

Property includes
Lot (25)
& Lot (29)

(END OF APPENDIX A)



Clear
Lake

BK. 4 P.M. PG. 44
BK. 18 P.M. PG. 34

Low water line
Vol. 104-116

N49°30'E
Low water line
Vol. 104-116

Low water line
Vol. 104-116

PT. N10°48'E
902.1' from
NE Cor. of Lot 4

Anderson Road

43
250

1074.36

APPENDIX A

Excerpt from:

Konocti Bay Community Water System Feasibility
Study-Jan. 1991

Done for:

County of Lake-Special Districts
255 North Forbes
Lakeport CA 95455
Gary N. Brown, Utilities Director

By:

Winzler & Kelly, Consulting Engineers
495 Tesconi Circle
Santa Rosa CA 95401
(707) 523-1010

NAME OF WATER SYSTEM: Baycliff Subdivision (BC)

NAME OF REPRESENTATIVE: Mr. Peter Nolasco

MAILING ADDRESS: 13449 Anderson Road
Lower Lake, CA 95457

PHONE NUMBER: 994-5869

SOURCE: Wells

TREATMENT: Hypo-Chlorination

STORAGE: 15,000 gallon steel tank, 5,000 gallon redwood tank.

CURRENT CONNECTIONS: 45

POTENTIAL CONNECTIONS: 65

SUMMARY OF DEFICIENCIES:

This water system appears to be in compliance.

NARRATIVE:

This system is located to the west of Luebow Point, in the area known as Jones Bay, near the southeast corner of Clear Lake. There are evidently 45 customers with the potential for 65. One of two wells are used. One well has better quality and the second better quantity. The wells are chlorinated and storage is in a 5,000 gallon tank. Apparently, an additional 15,000 gallon galvanized steel storage tank was added prior to April of 1986. A 4 inch distribution line leads from that tank to Park Drive to reduce friction and increase pressure to the homes.

Water quality chemical analyses from old and new wells taken in 1985 are included.

The old well seems to have generally good water quality, with iron manganese within acceptable limits and hardness at 78. The color, however, is 15 and turbidity is .3. The new well has iron at 4.8 parts per million and manganese at .34 parts per million with a low hardness of 46. Turbidity is at 62. It is possible that this is indeed a "new well" and needs to be further pumped to remove turbidity while creating a natural sand pack around the screen or casing. This could improve the color and turbidity, but likely would not do much for the high iron and manganese.

A separate chemical analysis, taken in 1989 on a well head at 13449 Anderson, indicates iron at .1 parts per million, color at 3 and turbidity at 5.

A second chemical analysis from a hose leading from the new well indicates iron is now .44 parts per million and manganese is at .09. Zinc is at 1.6 parts per million versus the 1 part recommended as a maximum.

A review of several water system inspection reports by the County of Lake Health Department indicate that, in general, the system meets with their approval.