

JUL 23 1992

Decision 92-07-073 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Janet A. Webb,

Complainant,

vs.

Robert Ukestad, DBA West San Martin
Water Works, Craig Pierce, DBA
Briarwood Nursery, Earl Powell, DBA
San Martin Water Works, Inc.,

Defendants.

ORIGINAL

Case 92-07-013
(Filed July 7, 1992)

TEMPORARY RESTRAINING ORDER

Janet Webb filed a complaint on July 7, 1992 against West San Martin Water Works, Inc., Craig Pierce, doing business as Briarwood Nursery, and Earl Powell, doing business as San Martin Water Works, alleging that Pierce was about to cease allowing the use of his well, which provides a portion of the water necessary to provide adequate water to customers in the eastern part of the San Martin Water Works, Inc. system effective July 15, 1992.

By letter dated July 17 Janet Webb stated that on July 16 the Pierce well was tied off from the public utility system. Affidavits were executed on July 21 by two staff members, Jasjit S. Sekhon and Donald McCrea, declaring that, based upon telephone discussions with Janet Webb, and with Robert Ukestad, manager of San Martin Water Works, the Pierce well has been disconnected, and that the operation of the Pierce well is necessary for the health and safety of the customers in that area.

Public Utilities (PU) Code Section 216(c) provides as follows:

"When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

The information provided us by Janet Webb and staff members Sekhon and McCrear indicates that Pierce has dedicated his well to public use for the past several years, and falls within the purview of PU Code Section 216(c). Pierce has been acting as a public utility, and as such may not discontinue service without first securing the permission of the commission. In view of the emergency nature of the circumstances surrounding this proceeding, Pierce should be ordered to reconnect his well so as to provide service to the public utility system which he served up to the time he disconnected his well therefrom on July 16, 1992.

Therefore, IT IS ORDERED that:

1. Craig Pierce, a public utility water company within the meaning of Public Utilities Code Section 216(c), shall immediately reconnect his well so as to provide service to the customers of Earl Powell, doing business as San Martin Water Works.
2. Robert Ukestad (dba West San Martin Water Works), Craig Pierce, and Earl Powell (dba San Martin Water Works, Inc.) named defendants in this proceeding, shall appear at the public hearing to be set pursuant to this order.
3. Because of the emergency conditions stated herein this order is made effective immediately. As an unforeseen emergency situation, the provisions of Section 306(b) of the Public Utilities

Code relating to advance notice of Commission decisions are not applicable.

4. Public hearing shall be conducted concerning the circumstances surrounding this proceeding as soon as possible.

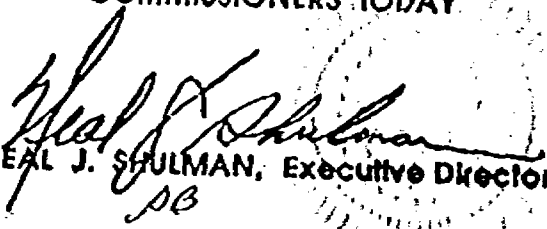
5. The Executive Director is directed to cause personal service of a true copy of this order on Craig Pierce immediately, and to also serve a copy of this order by mail on Robert Ukestad, the manager of West San Martin Water Works, Inc., and on Earl Powell (dba San Martin Water Works, Inc.).

This order is effective today.

Dated July 22, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
JB

**AFFIDAVIT
OF
JASJIT S. SEKHON**

JASJIT S. SEKHON, being first duly sworn, deposes and says:

1. I am employed as a Program and Project Supervisor in the Water Utilities Branch of the Commission Advisory and Compliance Division of the Public Utilities Commission of the State of California (Commission) with my business address at 505 Van Ness Avenue, San Francisco, California 94102.


2. On July 17, 1992 at about 11:30 a.m, I returned telephone message left by Jan Briody, attorney for San Martin Water District. She informed me that earlier she had received calls from two customers of San Martin Water Works indicating that the water pressure was low and at some times there was no water. She further stated that this problem was caused by discontinuance of a well owned by Mr. Pierce.

3. On July 17, 1992 at about 11:45 a.m, I called Janet Webb, complainant in Case No. 92-07-013 to enquire about the water supply situation in San Martin Water Works' service area. Ms Webb confirmed that there was almost no water pressure in her house.

4. On July 17, 1992 at about 1:30 p.m, I called Robert Ukestad, manager of San Martin Water Works to enquire about water supply situation. Mr. Ukestad confirmed that Mr. Pierce disconnected his well and the customers of this utility were experiencing low pressure problems during peak hours. Mr. Ukestad claimed that Mr. Pierce disconnected the well because the district did not give Mr. Pierce assurance that his well would not be condemned by the district when district initiated condemnation proceeding.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge.

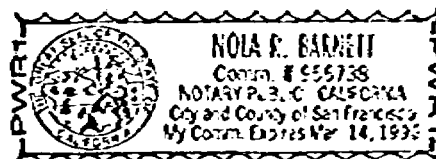
Executed on July 21, 1992.


JASJIT S. SEKHON

STATE OF CALIFORNIA)
CITY AND) SS.
COUNTY OF SAN FRANCISCO)

On this the 21st day of July, 1992, before me, Nola R. Barnett, the undersigned Notary Public, personally appeared Jasjit S. Sekhon, personally known to me to be the person whose name is subscribed above and acknowledged that he executed it.
WITNESS my hand and official seal.


Notary Public



AFFIDAVIT
OF
DONALD McCREA

DONALD McCREA, being first duly sworn, deposes and says:

1. I am employed as a Senior Utilities Engineer in the Division of Ratepayers Advocates of the Public Utilities Commission of the State of California (Commission) with my business address at 505 Van Ness Avenue, San Francisco, California 94102.

2. I appeared as a witness in the hearings regarding West San Martin Water Works, Inc. (West San Martin's) latest offset rate proceeding (A.91-11-009). In connection with that proceeding I examined both West San Martin's and San Martin Water Works (East San Martin's) facilities in the field. In this proceeding, I noticed Mr. Pierce is being paid for the use of his well.

3. East San Martin serves approximately 160 service connections. East San Martin has two sources of water; an interconnection with West San Martin, and the Pierce Well.

4. It is my professional opinion, as a licensed Civil Engineer, that the interconnection with West San Martin, alone, does not supply sufficient water to satisfactorily operate the East San Martin water system. It is also my opinion that the operation of the Pierce Well is necessary for the safe operation of the East San Martin water system and for the health and safety of the residents in the area.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on July 21, 1992.

Donald McCrea
DONALD McCREA

STATE OF CALIFORNIA)
CITY AND) SS.
COUNTY OF SAN FRANCISCO)

On this the 21st day of July, 1992, before me, Nola R. Barnett, the undersigned Notary Public, personally appeared Donald McCrea, personally known to me to be the person whose name is subscribed above and acknowledged that he executed it.
WITNESS my hand and official seal.

Nola R. Barnett
Notary Public

