

Decision 83 05 013 May 4, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Luther Lee and Dorothy Lee,  
Complainants,  
vs.  
Cabazon Water Company,  
a California corporation,  
Defendant.

Case 82-08-12  
(Filed August 25, 1982)

In the Matter of the Application  
of CABAZON WATER COMPANY, a  
California corporation, to  
abandon surplus irrigation water  
service to its sole remaining  
irrigation customers, Luther T.  
Lee and Dorothy Lee.

Application 82-12-23  
(Filed December 9, 1982)

Art Bunce, Attorney at Law, for Luther  
and Dorothy Lee, complainants in C.82-08-12  
and interested parties in A.82-12-23.  
Best, Best & Krieger, by Elizabeth L. Hanna,  
Attorney at Law, for Cabazon Water Company,  
defendant in C.82-08-12 and applicant in  
A.82-12-23.  
Albert A. Arellano, Jr., for the Commission  
staff.

O P I N I O N

Introduction

This consolidated matter involves both a complaint and  
an application. The complaint, filed in August 1982 by Luther  
Lee and Dorothy Lee (the Lees), alleges that the Cabazon Water

Company (Cabazon), a public utility water corporation, is failing to provide them with "available irrigation water" as required by the Commission in two prior orders. They request that Cabazon be required to comply with these orders.

By answer to this complaint, Cabazon denies that it has failed to comply with the Commission's orders and affirmatively alleges that Cabazon allowed the surplus irrigation water (which the Commission ordered it to make available to the Lees) to enter the 14,945-foot-long gravity flow pipeline to the Lees' property. But, Cabazon adds that the pipeline is very old and maintenance of the pipeline "in a state of repair which plaintiffs apparently expect" would either require an expense which Cabazon cannot afford or would require Cabazon's domestic water customers to unfairly subsidize Cabazon's sole surplus water irrigation customer, the Lees. The answer implies that allowing water to enter the line is all Cabazon is required to do.

The application was filed in December 1982 by Cabazon. It requests an order from the Commission permitting it to abandon or terminate service to the Lees. The application alleges that the last 4,600 feet of 8-inch concrete pipe going to the Lees' property is over 60 years old and it has "numerous problems with sedimentation and other blockage", some of which arise at the point of the weir box<sup>1/</sup> which connects this 8-inch pipe to the less problem-prone length of 12-inch steel and cement pipe running to the source of the surplus domestic water. The application admits that some sort of blockage occurred in the 4,600-foot segment of this pipe some time after June 1981 and alleges that finding and repairing it would cost in excess of \$5,000--a cost

---

<sup>1/</sup> A concrete box open at two ends and at the top, and containing a weir for the measurement of water flowing through it.

which Cabazon states it cannot afford and which it claims would unfairly burden its regular domestic customers. No answer was filed to the application because counsel for the Lees received it too late to respond in writing prior to the consolidated hearing which took place before Administrative Law Judge Colgan on January 19, 1983 in the Commission's Courtroom in Los Angeles. The case was submitted that day pending the receipt of simultaneous briefs which were timely filed by February 7, 1983.

Background

According to the Commission's files in this matter, Cabazon has not filed an annual report with the Commission, as required by General Order (GO) 104, since 1978.

The 1978 filing indicates that majority ownership was transferred that year from Carl and Betty Johnson to Paul Hadley. However, no application for transfer of ownership was ever filed, as required by Public Utilities (PU) Code Section 851. According to the testimony of Cabazon's president and manager, Edmund Romberg, the majority stock is actually held by Paul and Peggy Hadley, who bought the Johnsons' shares, adding them to some "delinquent shares" they had purchased in the mid-1970s. When Romberg was asked about the parties' failure to properly apply to transfer ownership, he stated that the Johnsons no longer reside in California and he was not certain they are still alive. As to the Hadleys, Romberg stated that he had asked them on several occasions to complete an application to the Commission, but that they are quite elderly and, though they say they will do it, they have failed to follow through. This situation is analogous to one presented to us in a matter involving the Palo Mesa Water Company, Decision (D.) 89954, issued February 14, 1979. ✓

In that decision we said:

"Despite the fact that no application to transfer the water system properties to the Burnses was filed with the Commission at the time they acquired the water system, the Burnses appear to be the de facto owner. It would serve no useful purpose to insist on an application to transfer ownership to the Burnses at this time. As a practical matter...it probably would not be possible to arrange with the previous owner to join in a transfer request to the Commission. Therefore, the Commission will authorize the 1973 transfer...to the Burnses nunc pro tunc."

We believe that the best interest of the public will be served in the present matter as it was in the quoted case by exercising our authority under PU Code Section 853 and granting the transfer of Cabazon to the Hadleys "now for then" as if properly applied for in 1978. This does not relieve the new owners of their obligation to file proper, timely annual reports and other documentation required by GO 103 and GO 104. Our recognition of ownership does not resolve the major problems presented to us, however. It only clarifies who the parties actually are.

The Complaint

The parties agree that the Lees have not received any irrigation water for some time. Cabazon suggests the date was November 23, 1981 when the waterline was accidentally broken by a Southern California Gas Company (SoCal) worker. Mrs. Lee testified it was September 2, 1981. She also testified that the land in question consists of five acres with a small two-bedroom house, two sheds, a fruit orchard, a garden, "lots of shade trees", two horses, and eight miniature mules. She

stated that the water received from Cabazon was stored in a large reservoir on the property and used for irrigation and for the animals, but not for drinking or cooking as it was not drinkable. She explained that she and her husband brought in bottled water for these purposes. Mrs. Lee further testified that she and her husband sold the fruit, especially apricots, and also sold flowering plants at their nearby antique shop. She stated that all the plants, but the cactus on the property, have died and that she and her husband have moved themselves and their animals to their antique shop and a 20-foot, one-room trailer.

Except for the exact date that water service ceased, the parties do not disagree about these facts. Rather, they disagree in their interpretations of what duty Cabazon has regarding water service to the Lees' property. The rights and obligations of these parties are set out in two Commission decisions. The first, D.77457 (Application (A.) 51843) issued July 7, 1970, granted Cabazon's application to discontinue irrigation service to all but two customers and their successors in interest. At the time, they were Cabazon's only remaining irrigation customers. One of these customers was Carl Benson who, according to testimony, no longer receives irrigation water. The other was Leo Hurley. The Lees are successors in interest to Hurley. Under D.77457 Benson and Hurley should have received service under the same tariff though Cabazon apparently served Hurley differently.

The second decision, D.87613 (Case (C.) 10239) issued July 19, 1977, expressed approval of a stipulated agreement between Cabazon and the Lees which stated that Cabazon "would make a reasonable effort to provide [the Lees] with surplus water for irrigation purposes" and would charge the Lees \$12 per month for it. The decision ordered the Lees' property to be removed from the existing irrigation tariff and a new tariff, reflecting this monthly fee, to be established. (The tariff still applicable to Benson continued to charge per miner's inch received but it is not for surplus water as the Lees' new tariff was to be.)

The first issue raised is whether the above-quoted language about making a "reasonable effort" to provide surplus water permits Cabazon to forego expensive repairs to the line serving the Lees even though it appears that such failure to act will mean that water may never again reach the Lees' property.

It is clear from the pleadings filed in C.10239 that this was not the purpose or intent of the stipulation. It does not appear that there was any problem with blockage at that time. The dispute was about how the water flow was being measured, how much of it was being diverted into a flood canal before reaching the Lees' reservoir, and whether the amount billed to the Lees was appropriate. In its answer to C.10239, Cabazon admitted that it had not charged the Lees' predecessor in interest, Hurley, according to the tariff. Rather, Hurley had been charged a flat rate and Cabazon filled his reservoir once per month. The Lees wanted more water.

The new tariff authorized by D.87613 allows for this, "subject to the availability of surplus water." This language was plainly inserted to make it clear that Cabazon had no obligation to divert water from domestic customers to this irrigation customer if quantities were insufficient to produce a backup into the overflow line serving the Lees. Thus, as Ronberg testified at the hearing, the Lees' reservoir received water mostly at night when the domestic use was minimal. The language does not imply that surplus water should be considered "unavailable" when the line carrying it is clogged. Therefore, we conclude that D.87613 does not permit Cabazon to fail to restore water to the Lees under the presently existing circumstances. In passing, we note that even though Cabazon agreed to this new tariff and D.87613 authorized it, Cabazon failed to ever file the new tariff as we ordered. It should do so immediately.

The second issue raised is whether the Commission should permit Cabazon to abandon irrigation service to the Lees anyway because it is economically infeasible, or at least impractical, for Cabazon to do otherwise. Much testimony was offered to support the propriety of abandonment.

Testimony shows that the waterline running to the Lees' reservoir is nearly three miles long. The first part runs north-south and is the highest portion of this gravity flow line. It collects overflow water from the domestic line when that line is full enough to back up into it. The water then travels underground south beneath several roads and a railroad track and then turns east, running underground parallel to the railroad, crossing under the flood control channel, and continuing to a weir box accessible from above ground. At that point, the line turns south again and decreases from a 12-inch

steel and cement pipe to a 60-year-old 8-inch concrete pipe which continues running underground 4,620 feet, again crossing the flood control channel, and ending at the Lees' reservoir.

Romberg testified that after SoCal did excavation work near the area of the weir box in November 1981, he observed water flowing into the adjacent field from a break in the line. He stated that a contractor, paid by SoCal, fixed the line within a few days, but he observed that water continued coming out of the line near the weir box instead of flowing down the line to the Lees' reservoir. He said this indicated to him that there was a blockage, probably somewhere in the first 3,000 feet of this 8-inch line which was preventing water from flowing to the Lees. Romberg also testified that he obtained an estimate from a contractor for locating and repairing this blockage and was told it "could easily run as high as \$3,000." Romberg stated he did not request SoCal to pay for this too as he thought SoCal's responsibility for it would be too difficult to prove.

The entire 14,945-foot waterline serves only the Lees. Romberg testified that it has required \$2,000 in repair costs to Cabazon, excluding his own time, since 1969. He opined that, because of the line's age, its maintenance would be more expensive in the future, citing an apparent break in the first portion of the line which was observed by a Commission engineer. Romberg stated that that break would cost a minimum of \$1,500 to repair-- assuming it is not under a road or freeway, in which case it would be more. Romberg later testified that even if service to the Lees were terminated, Cabazon presently needs to maintain this line up to the second intersection with the flood control



channel, which is 2,000 feet from the Lees' reservoir, because that is the present site for release of surplus water. However, Romberg believes that Cabazon could get access to a ditch, near the very beginning of this line, which empties into the flood control channel further upstream. According to Romberg, no water is being released into the channel presently because it is overflowing near the highway at its northern end due to the blockage and apparent break near there that our staff engineer observed.

Additionally, Romberg testified that he is the sole employee and operator of Cabazon, that he has not billed any customers for many months (according to Mrs. Lee, some have never been billed), that he has another fulltime job and does not have time to keep up with both Cabazon's bookkeeping and its maintenance, that he has not been paid for his services, that even if all fees were collected, Cabazon would be operating at a loss, and that he has made personal loans to Cabazon to meet its expenses.

His testimony about the elderly majority stockholders indicates that they do not participate in the operation of Cabazon and are not responsive to his requests to comply with Commission rules.

These facts do not lead us to conclude that Cabazon's problems can be resolved by permitting it to abandon the Lees' irrigation service. We think the problem with service to the Lees is merely symptomatic of a larger problem which will undoubtedly arise in the future. So far as we can ascertain, Cabazon has no regular program to maintain its system, and has no available funds for maintenance. Furthermore, its owners are apparently unwilling or unable to adequately serve its customers. This will inevitably become a problem as time passes.

Also, although Cabazon has always had the right to apply to this Commission for a rate increase if its funds were insufficient for operation, its owners have failed to do so in many years.

We believe the actions of Cabazon's owners approach abandonment of the entire company. Therefore, we believe they should seek to divest themselves of Cabazon altogether. If they fail to do so within a reasonable time, then we will hold a hearing regarding the propriety of seeking to impose a receivership to assume possession and to operate Cabazon's system. Staff states that the Cabazon County Water District (District) already operates a large successful system in the vicinity of Cabazon and actually has mains parallel to Cabazon's in some locations. The District has expressed some interest in acquiring Cabazon.

As to the Lees' service, we believe Cabazon's tariff Schedule 4, authorized in D.87613, gives them a continuing right to receive irrigation water. In upholding the Lees' right to irrigation water, however, we feel compelled to note that this record indicates the Lees used their property as a residence though there was no potable water available to it. We suspect that such use might conflict with county health ordinances in which case the Lees ought to receive domestic service to this land if they plan to reside there again (a likely event since they have a two-bedroom house on the land, but are presently living in their antique store and a 20-foot trailer). In any case, Cabazon has merely shown that it has been lax in its maintenance and collections and may not have acted prudently when it failed to attempt to get SoCal to pay for unclogging a line SoCal appears to have been responsible for clogging. This evidence does not prove the economic infeasibility of continuing service to the Lees.

Findings of Fact

1. Cabazon has failed to file an annual report with the Commission since 1978.
2. Cabazon failed to file an application for transfer of ownership with the Commission in 1978 when Paul and Peggy Hadley bought controlling interest from Carl and Betty Johnson.
3. The Johnsons' whereabouts are no longer known.
4. Cabazon has failed to file Schedule 2 and Schedule 4 to its tariffs as ordered by D.87613.
5. Cabazon has failed, since November 23, 1981, to provide Luther and Dorothy Lee with available surplus irrigation water as required by its tariff Schedule 4.
6. Cabazon has failed to keep the 14,945-foot overflow line running between its domestic line and the Lees' reservoir in sufficient repair that water flows its entire length. Repair sufficient to restore service would now cost several thousand dollars.
7. Cabazon has failed to collect any authorized tariff amounts for many months. Even if such amounts were collected, Cabazon's maintenance expenses exceed those amounts.
8. Cabazon's owners do not participate in its operation.
9. Cabazon's manager and sole employee has another fulltime job and does not have adequate time to operate the system.
10. Cabazon's manager has not been paid on a regular basis and has loaned money to Cabazon to meet expenses.
11. The District operates in the vicinity of Cabazon, having some parallel lines.
12. The District has expressed to staff an interest in acquiring Cabazon.

Conclusions of Law

1. Cabazon has violated the requirements of GO 104 in failing to file timely annual reports.
2. Cabazon has violated PU Code Section 851 in failing to file an application for transfer of ownership.
3. Technical compliance with PU Code Section 851 can no longer be achieved as the prior majority stockholders' whereabouts are unknown, making application of PU Code Section 853 prudent and in the best interest of Cabazon's ratepayers.
4. Cabazon has failed to comply with this Commission's order to file new tariff schedules set out in D.87613.
5. Cabazon has violated its tariff Schedule 4 in failing to provide surplus irrigation water to the Lees.
6. Cabazon has failed to furnish and maintain "adequate, efficient, just, and reasonable service...necessary to promote the safety, health, comfort, and convenience of its patrons", in violation of PU Code Section 451.
7. Cabazon is unwilling or unable to adequately serve its customers.

O R D E R

IT IS ORDERED that:

1. C.82-08-12 is granted and A.82-12-23 is denied to the extent set forth below.
2. Authority is granted for the transfer of ownership nunc pro tunc of Cabazon Water Company (Cabazon) to Paul and Peggy Hadley, husband and wife, as if they had properly applied to the Commission upon purchasing a majority interest in Cabazon stock in 1978.
3. Cabazon shall immediately file the new tariff schedules as ordered in this Commission's D.87613.

4. Cabazon shall immediately commence negotiations with the Cabazon County Water District, or some other equally viable party approved by the Commission staff, for the purpose of transferring ownership of Cabazon.

5. Any agreement for transfer of ownership shall assure that the property owned by Luther and Dorothy Lee (the Lees) is furnished with irrigation or domestic water.

6. In the event its owners are unable to transfer Cabazon within 120 days of the date of this order, Cabazon shall immediately commence repairs sufficient to restore irrigation service to the Lees. In the alternative, Cabazon may provide the Lees, at Cabazon's expense, with water from another source.

7. If an agreement for transfer is reached, Cabazon shall immediately file an application with the Commission for authorization to transfer under PU Code Section 851.

8. If the owners of Cabazon are unable to transfer ownership within 180 days of the date of this order, in a manner approved by the Commission, this matter shall be reopened and a hearing held to take evidence on the propriety of the Commission petitioning the Superior Court for the appointment of a receiver to assume possession and operation of Cabazon.

9. Staff shall follow the progress of Cabazon's efforts as set forth in this order and file written progress reports at 60-day intervals with the assigned administrative law judge for a period of 180 days from the date of this decision.

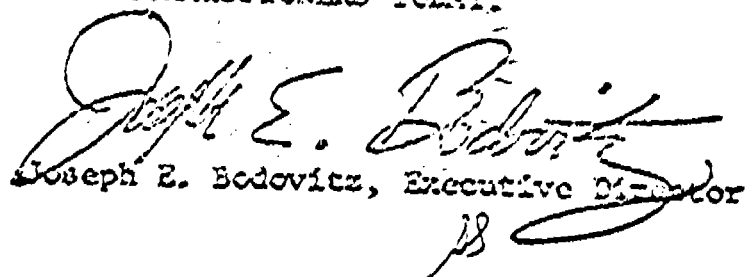
This order becomes effective 30 days from today.

Dated MAY 4 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director



ORIGINAL

Decision 83 95 018 MAY 4 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Luther Lee and Dorothy Lee, )  
 )  
 Complainants, )  
 )  
 vs. )  
 )  
 Cabazon Water Company, )  
 a California corporation, )  
 )  
 Defendant. )

Case 82-08-12  
(Filed August 25, 1982)

In the Matter of the Application )  
 of CABAZON WATER COMPANY, a )  
 California corporation, to )  
 abandon surplus irrigation water )  
 service to its sole remaining )  
 irrigation customers, Luther T. )  
 Lee and Dorothy Lee. )

Application 82-12-23  
(Filed December 9, 1982)

Art Bunce, Attorney at Law, for Luther  
 and Dorothy Lee, complainants in C.82-08-12  
 and interested parties in A.82-12-23.  
Best, Best & Krieger, by Elizabeth L. Hanna,  
 Attorney at Law, for Cabazon Water Company,  
 defendant in C.82-08-12 and applicant in  
 A.82-12-23.  
Albert A. Arellano, Jr., for the Commission  
 staff.

INTERIM OPINION

SS

Introduction

This consolidated matter involves both a complaint and an application. The complaint, filed in August 1982 by Luther Lee and Dorothy Lee (the Lees), alleges that the Cabazon Water



which Cabazon states it cannot afford and which it claims would unfairly burden its regular domestic customers. No answer was filed to the application because counsel for the Lees received it too late to respond in writing prior to the consolidated hearing which took place before Administrative Law Judge Colgan on January 19, 1983 in the Commission's Courtroom in Los Angeles. The case was submitted that day pending the receipt of simultaneous briefs which were timely filed by February 7, 1983.

Background

According to the Commission's files in this matter, Cabazon has not filed an annual report with the Commission, as required by General Order (GO) 104, since 1978.

The 1978 filing indicates that majority ownership was transferred that year from Carl and Betty Johnson to Paul Hadley. However, no application for transfer of ownership was ever filed, as required by Public Utilities (PU) Code Section 851. According to the testimony of Cabazon's president and manager, Edmund Romberg, the majority stock is actually held by Paul Hadley and his wife, Peggy, who bought the Johnsons' shares, adding them to some "delinquent shares" they had purchased in the mid-1970s. When Romberg was asked about the parties' failure to properly apply to transfer ownership, he stated that the Johnsons no longer reside in California and he was not certain they are still alive. As to the Hadleys, Romberg stated that he had asked them on several occasions to complete an application to the Commission, but that they are quite elderly and, though they say they will do it, they have failed to follow through. This situation is analogous to one presented to us in a matter involving the Palo Mesa Water Company, Decision (D.) 89954, issued February 14, 1979.

Conclusions of Law

1. Cabazon has violated the requirements of GO 104 in failing to file timely annual reports.
2. Cabazon has violated PU Code Section 851 in failing to file an application for transfer of ownership.
3. Technical compliance with PU Code Section 851 can no longer be achieved as the prior majority stockholders' whereabouts are unknown, making application of PU Code Section 853 prudent and in the best interest of Cabazon's ratepayers.
4. Cabazon has failed to comply with this Commission's order to file new tariff schedules set out in D.87613.
5. Cabazon has violated its tariff Schedule 4 in failing to provide surplus irrigation water to the Lees.
6. Cabazon has failed to furnish and maintain "adequate, efficient, just, and reasonable service...necessary to promote the safety, health, comfort, and convenience of its patrons", in violation of PU Code Section 451.
7. Cabazon is unwilling or unable to adequately serve its customers.

55 INTERIM ORDER

IT IS ORDERED that:

1. C.82-08-12 is granted and A.82-12-23 is denied to the extent set forth below.
2. <sup>authority is granted for the transfer nunc pro tunc</sup> Ownership of Cabazon Water Company (Cabazon) is transferred nunc pro tunc to Paul and Peggy Hadley, husband and wife, as if they had properly applied to the Commission upon purchasing a majority interest in Cabazon stock in 1978.
3. Cabazon shall immediately file the new tariff schedules as ordered in this Commission's D.87613.