

Decision 83 05 031 MAY 4 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EARL WITHYCOMBE,

Complainant,

vs.

LOEFFLER WATER SYSTEM, c/o
VERNIE J. VEALE,

Defendant.

Case 82-09-05
(Filed September 27, 1982)

David A. Van Note, Attorney at Law, for
Earl Withycombe, complainant.
William Robert DeVine, Attorney at Law
(Colorado), for Loeffler Water Supply,
defendant.

O P I N I O N

Nature of Proceeding

Earl Withycombe (Withycombe), complainant, asks that the Commission order defendant, Loeffler Water Supply (Loeffler), to completely enclose its water system and to establish regular chlorination so that the water supplied will be free of contamination.

Withycombe cites Public Utilities (PU) Code §§ 701 and 761 as the statutory authority under which relief is sought. Loeffler, by its answer, alleges that the Health Department of the County of Sierra (health department) has primary jurisdiction over the subject matter of the complaint. Loeffler states that it has made improvements to the water system, including enclosing the system, and has satisfied the requirements of the health department as to

improvements required until the site is accessible again in the spring of 1983. Loeffler alleges that it will proceed with diligence, to the extent economically feasible, to meet the health department's requirements. Loeffler asks that the complaint be dismissed and that the matter be referred to the health department for any further action.

Public Hearing

A public hearing was held in San Francisco on January 10, 1983. Both Withycombe and Loeffler were represented by counsel. Withycombe, the County Sanitarian of Sierra County, Elizabeth Ann Greenberg, and Loeffler's representative, Carleton Hansen, testified. The matter was submitted for decision after closing statements by counsel.

Location and History of Water System

Loeffler provides water service to 56 flat rate customers in the unincorporated community of Sierra City, Sierra County. Sierra City is located approximately 12 miles east of Downieville on Highway 49. Loeffler is only one of 13 small water systems serving the community. One of the other systems, the 70-customer R. R. Lewis Small Water Company (Lewis) is also a public utility operating under the jurisdiction of the Commission. The other water systems are either mutual water companies or informal arrangements.

The Loeffler water system is very old, having been acquired by Mr. and Mrs. Loeffler from Mrs. Loeffler's parents in 1908. Mr. and Mrs. Loeffler died in 1947 and responsibility for the system passed to one of their four daughters, Mrs. Hansen, and then when Mrs. Hansen died after about 20 years, to another Loeffler daughter, Vernie J. Veale, who was until recently executrix of the Loeffler estate. The estate, consisting of two parcels of land in Sierra City and the Loeffler water system, has not been settled because none of the titles are clear.

Mrs. Veale, a resident of Auburn, is over 80 years old and is no longer acting as executrix. Mrs. Veale and the other two surviving daughters have recently asked the court to substitute Carleton Hansen, the son of the Loefflers' deceased daughter, as executor. Mr. Hansen hopes to settle the estate and sell the system.

Although admittedly a public utility, Loeffler operated unbeknownst to the Commission from 1912 until 1981, when, as a result of informal complaints, the utility submitted to Commission jurisdiction by filing tariffs.

According to Loeffler's most recent annual report filed with the Commission the net investment in water plant in service amounted to \$10,956 as of December 31, 1981. In 1981, gross revenues were \$1,440 and expenses \$1,931 for a net loss of \$491.

Description of System

The system lies along the north bank of the North Fork of the Yuba River, at the base of the Sierra Buttes. The Sierra Buttes are a volcanic mountain and parts of the slope are covered by rockslide areas of fractured volcanic rock which overlies an impervious igneous formation. Water percolates down one of these rockslide areas until it reaches the impervious layer and then flows underground horizontally to a zone, about a third of a mile up the hill from Sierra City, where the impervious layer becomes exposed to the surface. The percolating water there manifests itself as a series of springs in a line about a half a mile long. These springs are the source of supply of the various Sierra City water systems.

The springs that are the primary source for the Loeffler system's water are located at the boundary of a forested area and of an open space to the north which was logged in 1973. Water comes to the surface at the northern boundary of the open space, runs along the surface for approximately 20 feet, and then re-percolates down into another rubble bed with a thick soil mantle before resurfacing at the southern boundary as the spring serving as the Loeffler supply.

The water from this spring is, at the present time, intercepted by a collection device consisting of a small concrete dam, six-inches high, six-inches thick, and three-feet long, located about four feet downstream from the spring. A small natural depression behind the dam, covered with strips of corrugated roofing iron, serves as a collection reservoir.

A transmission main composed of four-inch polyvinylchloride (PVC) pipe extends approximately 90 feet down hill to a small tank which is used as a settling tank to remove sediment. The settling tank is also covered by small sheets of roofing iron. A presently unused unimproved alternate source of supply could also discharge through a four-inch PVC pipe to the settling tank.

The water from the storage tank is conducted a short distance through another four-inch PVC pipe to a redwood storage tank approximately nine feet high and 10 feet in diameter with approximately a 5,000-gallon capacity. From there the water is conveyed through a six-inch PVC pipe and an older metal pipe to the distribution system. The system is entirely a gravity system.

The Loeffler system does not own the property upon which the supply facilities have been constructed and has not as yet contacted the owner, the Bush Estate, to obtain a leasehold interest.

Withycombe Family's
Problems with Water Supplied

Withycombe has been a customer of the Loeffler system periodically since 1957. During 1978 he became concerned about ongoing family health problems. His four daughters, at that time ranging in age from two through ten, were experiencing symptoms that appeared to be chronic in nature, and consisted of intestinal disease, diarrhea, lassitude, and lack of vitality.

About two years before, he had begun to discuss the problem with the local health provider, Frank Lang, RN, a family nurse practitioner who operates and staffs the Western Sierra Medical

Clinic.¹ Withycombe and Lang were unable to determine the origin of specific diseases, although the symptoms seemed somewhat consistent in two of the daughters, aged two and eight, in 1978.

After a series of unsuccessful treatments, Lang and Withycombe concluded that the daughters' ailments resulted from environmental conditions, were ongoing, and could not be cured at any one point. Lang suggested that the health department test the water consumed by the daughters. This was done. One sample was taken from the Withycombe residence and four others from other points on the Loeffler system. All were found to be in violation of the nonfecal coliform level standard.²

At that time Withycombe contacted Mrs. Veale about a leak in the system and he took the opportunity to discuss the water quality problem with her. As a result of this conversation, improvements were made. The settling and storage tank described above replaced earlier facilities; the PVC pipe was laid in the open ditches; and use of the alternate spring was discontinued in favor of the one behind the intake structure that currently is being used.

Despite the improvements, water samples continued to fail to meet State standards. In 1980, all members of the Withycombe family submitted stool samples to the health department in response to a request by the department. The county health officer indicated to Withycombe that there was a strong possibility that there might be widespread water-borne disease in Sierra City.

The results of the tests showed that the two ailing daughters were suffering from a form of *dientamoeba fragilis*, a protozoal parasite. The health officer informed Withycombe that *dientamoeba fragilis* is a water borne disease but Withycombe could

¹ There is no practicing physician in the western half of Sierra City.

² The significance of this test will be discussed later in this opinion.

not say exactly which of the water systems in Sierra City may have contributed to it.³ The source of 98% of the water consumed by his family was the Loeffler system, however. Also, Withycombe testified eight of his personal friends have been treated for Giardiasis or dientamoeba fragilis.

Withycombe said that the health officer had informed him that technology has not progressed sufficiently to identify protozoa in water samples and that tests of water from the Sierra City systems were inconclusive.

Withycombe recognized that improvements made to the system have assisted marginally by protecting the intake portion of the system but the improvements still leave a lot to be desired. He requested:

"...that the Public Utilities Commission order the utility to provide and implement the necessary corrective actions to safeguard the intake portion of the system and install whatever additional equipment is necessary to allow the system to comply with state water quality standards, to establish a timetable for that action, and also to guarantee that the funds that we as ratepayers pay for the system will be predominantly reserved for that activity."

Withycombe recognized that improvements would be costly. He estimated a water treatment system, consisting of filtration and chlorination would cost a minimum of \$10,000. Should it be necessary to locate a new spring box at the higher elevation where the spring first comes to the surface, the cost could be \$25,000.

³ The complaint states that the infection was diagnosed as Giardiasis, a protozoal infection caused by fecal contamination by both humans and animals. (Giardiasis is common in communities in the western United States depending on untreated water taken from mountain streams.) At the hearing Withycombe stated that when drafting the complaint, he had erroneously supplied his counsel the name of the other of the two parasite diseases found at that time in Sierra City.

County Health Department

The County Sanitarian of Sierra and Lassen Counties, Elizabeth Ann Greenberg, R.S., testified in support of Withycombe's request.

As county sanitarian, Greenberg is responsible for the enforcement of the Health and Safety Code with respect to food sanitation, water, housing, and sewage disposal. She assumed her duties for the two counties in November 1980, and inherited a file relating to the Loeffler and other Sierra City water systems which dated back to 1978. This file indicated a continuing problem with the quality of water supplied to the public in the Sierra City area.

Greenberg systematically samples the water from the Sierra City systems. The four largest she samples monthly. The others, with 15 customers or less, she samples quarterly.

None of the samples of the Loeffler system met standards for total coliform counts, although after the improvements described earlier were made, the fecal coliform counts were eliminated.

The state standards for total coliform content are 2.2 coliform organisms per 100 ml of water. If the total coliform result of a test is positive, then a test is made for fecal coliform. Coliform organisms are naturally occurring bacteria. Nonfecal coliforms may live in the soil but fecal coliform are from the intestine of an animal or human. There is a recognized correlation between a high fecal count and cases of dientamoeba and Giardiasis, although the technology for identifying those two organisms in water samples has not been perfected.

In the spring of 1980, prior to Greenberg's employment, a systematic study was made of the residents of Sierra City by the health department and the presence of intestinal parasites that could seriously affect human health was found in many people. The department issued a public notice which declared, in part:

"Recent bacteriological water tests indicate that Sierra City's various water supplies are subject to contamination. In addition, the presence of intestinal parasites, that can

seriously affect human health, have been found in many of Sierra City's residents.

"The available evidence indicates that the most probable source of these parasites (Giardia) is from the unprotected drinking water sources that are in use in Sierra City. In the interest of good public health and particularly for the protection of tourists who will have no possible naturally developed immunity to the effects of Giardia (as some residents of Sierra City seem to have)... The Sierra County Health Department directs you to do the following until your water supply is completely protected from external contamination:" (Instructions omitted.)

During the winter following her employment, Greenberg was unable to gain access to many of the Sierra City water systems, and she did not inspect the Loeffler system until April 14, 1981.

The report of this inspection, signed by John Linder of the State Department of Health Services who accompanied Greenberg, noted the public health deficiencies of the system and required the utility to notify its customers that the water did not meet bacteriological standards and that customers should boil water before drinking it.

The utility responded with a plan for improving the water system, including provision of chlorination. Greenberg and Linder again inspected the system in May 1982. They found that some improvements had been made to enclose the transmission and storage plant, as described in the summary of Withycombe's testimony, but there was still an open intake from the surface source, and no chlorination.

In August 1982 Greenberg sent a copy of her report to Mrs. Veale. In this report Greenberg required the utility to develop a spring source meeting capacity requirements, as well as bacteriological chemical and physical standards, or in the alternative, to provide for coagulation, filtration, and chlorination. Greenberg testified that chlorination alone is not sufficient to kill Giardia. If surface contaminants can get into the water, full treatment, including filtration, is necessary.

Greenberg informed Mrs. Veale that, should treatment be used, the plant should be designed by an engineer having experience in treatment and design of public water systems using surface water as their source. Further, a certified operator would be required and complete operating records would need to be maintained.

Greenberg asked that a proposed plan for compliance be submitted to the county health department by September 20, 1982, or in the alternative, considering that other water suppliers in the community faced the same situation, the Loeffler system become part of a community system.

Greenberg received no reply to her letter.

On October 4, Greenberg and Lang sent a registered letter to the property owners of Sierra City, pointing out that grant and loan funds from the California Safe Drinking Water Bond Law of 1976 (bond law) were available to a community system. They stated that, should the grant and loan not be accepted by the community, the public water suppliers would be required to bring their systems into compliance with health standards.

Loeffler responded by means of a handwritten letter by Hansen dated October 9, 1982, which said:

"This is to inform you that the owners of the Loeffler Water System will bring our system up to standards set by you.

"We have started improvements already with plan to follow."

The day before the date of the letter, Greenberg and Hansen had made a follow-up inspection of the system together. Greenberg testified that she was impressed by the corrections that Hansen had made. The inlet to the storage tank was properly installed and sealed and a weatherproof cover for the tank had been provided with screening for ventilation. The extensive flow over the surface of the ground had been reduced by extending plastic pipe up to the newly installed collection device at the spring.

Greenberg stated she was impressed that Hansen was acting to reduce the contamination. As mentioned previously, there have been no fecal bacterial counts in the samples taken from the Loeffler system recently, but the total coliform count still exceeds standards.

Since the alternative of a community water system financed by a state grant and loan has been rejected, Greenberg stated she will proceed to enforce the California Safe Drinking Water Act (Health and Safety Code Sections 4010 through 4037). She proposes, in the near future, to send out a letter to all of the Sierra City water systems, including the Loeffler system, setting out dates for the submittal of plans. Exact dates had not been scheduled because Greenberg wanted to discuss the matter with the Sierra County district attorney. She was determined, though, that the systems be brought into compliance by October 31, 1983.

Loeffler's Response

Hansen's testimony provided much of the history of the system as related above. He described the improvements that had been made since he became responsible for the operation and maintenance of the system in September 1982 and his future plans for obtaining an augmented and more secure water collection system. The funds for the improvements have been supplied by the family since Hansen has collected very little revenue. About half of the customers have not been paying bills.⁴

Hansen did not know the cost of constructing the required improvements or how the funds could be raised. He was confident that he could raise \$700 or \$800 for a chlorinator and that he could afford to enclose the system. He hoped to sell the system upon the settlement of the estate to the person in Sierra City who occasionally performs repair services on the system for the estate.

⁴ The rate filed by Loeffler when it came under Commission jurisdiction in July 1981 is \$6 a month. Prior to that time it had been charging \$2 a month.

Sierra County Service Area No. 2

As Withycombe's and Greenberg's testimony progressed it became evident that their efforts to secure a better water supply for Sierra City residents had not been confined merely to correcting the deficiencies of the Loeffler and other existing systems.

Withycombe, a MIT graduate, is a registered civil engineer and practiced that profession until 1979. He has been active in county affairs and, at various times between 1973 and 1979, served in county government as public guardian, public administrator, civil defense administrator, and air pollution control administrator. He is also a member of the Sierra City Volunteer Fire Department and is thus familiar with the community's water systems. Since 1979 he has been a member of the Sierra County Board of Supervisors and was reelected in November 1982. He terminated his civil engineering practice in 1979 to avoid conflict of interest and currently makes his living as a consulting engineer in the field of air pollution. While practicing as a civil engineer, he was primarily involved in home design and design of on-site water supply and waste water systems.

As a county supervisor, Withycombe has endeavored to improve the quality of life within his supervisorial district by allocating personal time to community problems. He felt that the most important problem in Sierra County was the improvement of the various water systems so that they would meet state water quality standards.

Withycombe, working through the Board of Supervisors, was instrumental in the formation of County Service Area Number 2 (service area) for the purpose of establishing a community water system. In the fall of 1981, the service area submitted an application for funding under the bond law and was awarded first

priority for the entire state.⁵ In September 1982, the county was notified that Sierra City qualified for a grant of \$400,000 and a low interest loan of \$100,000. A decision whether to accept the funds had to be made by October 15, 1982.

Upon receiving news of the approval for the bond law grant and loan, Greenberg, by her October 4, 1982 registered letter, notified the property owners of the problems of the Sierra City water systems and stated that all exceeded bacteriological water quality standards. She also defined what would be necessary to bring each of the systems into compliance, such as by treatment or the proper development of a spring service.

Greenberg informed the property owners that, should the grant and loan funds not be accepted by the community, the public water systems would be required to bring their own individual systems into compliance by October 31, 1983. She chose this date because, if the community system were to be accepted, the improvements would be completed by that time. She thought that it was only reasonable that the individual systems be allowed the same time.

The bond law grant from the Department of Water Resources was to include a water intake system that would meet water quality standards, and also would include such money as might be available to purchase portions of the Loeffler system. The water utility indicated to the health department that it was not interested in the service area solution.

The grant and loan proposal was submitted to the property owners and was voted down. Thus, Greenberg's remaining alternative was to enforce the state statutes and regulations, which, as described earlier, she resolutely intends to do.

⁵ A Department of Water Resources priority list in the files of the Commission's Financial Analysis Group dated April 1982 confirms that the service area was indeed number one on a list of 596. The R. R. Lewis Small Water Co., also of Sierra City, was number two.

Concurrent Commission -
County Jurisdiction

Withycombe's complaint stated that Commission jurisdiction was invoked under PU Code § 701⁶ and § 761.⁷

Loeffler's answer, among other things, alleged "that the County Health Department has primary jurisdiction over the subject matter of this action." Loeffler asked that the complaint be dismissed and "the matter be referred to the Sierra County Health Department for further action."

The staff of the Commission concurred with this assessment, and, on November 16, 1982, the Commission's Chief Hydraulic Engineer (CHE) informed the assigned Commissioner and administrative law judge (ALJ) that:

"The requested system improvements are essentially those proposed by Sierra County Health Department (See Exhibit B-1 of Complaint). Since the proposed system

⁶ 701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. (Former § 31.)

⁷ 761. Whenever the commission, after a hearings, finds that the rules, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and, by order or rule, fix the rules, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed. The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity, or render such service within the time and upon the conditions provided in such rules. (Former § 35.)

developments relate to water quality, they fall within the sphere of primary responsibility of the Department of Health. Therefore, we do not believe that a staff investigation is warranted."

The CHE indicated that the extent of the Hydraulic Branch's participation would be to review the decision draft.

Withycombe testified that he had periodically discussed progress with the health department and sent communications of concern to the health department and also to the district attorney. His very limited success in securing other than marginal improvements led him to seek the assistance of the Commission.

The ALJ asked Withycombe why he, as a county supervisor having two children infected with a form of amoebic dysentery, and having a strong cause to believe that the source of that infection is the water system, was unable to prevail upon the district attorney to render such assistance as might be required to enforce the Health and Safety Code, instead of having to travel several hundred miles to San Francisco to seek an alternative form of aid.

Withycombe replied that the district attorney had explained that the prospects of successfully prosecuting an 80-year old lady before a jury were dim. Withycombe said that he continued to be frustrated by the lack of significant progress by Sierra County to solve the problem.

As legal authority for unilateral Commission action, Withycombe's counsel cited Decision (D.) 87860 dated September 13, 1977 in Case (C.) 10286 and C.10318, in re San Martin Water Works (82 Cal PUC 590, 603). The San Martin cases resulted from an investigation on the Commission's own motion and from a complaint by the Fire Marshall and the Environmental Health Services of Santa Clara County. The utility had a history of severe service deficiencies and, among other derelictions, had refused to comply with an order of the Morgan Hill Justice Court that water from a contaminated spring source be chlorinated. The Commission stated:

"However, while the potability and purity level of a utility's water supply are in the first instance within the jurisdiction of appropriate health authorities (Van Fleet v Pierson (1965) 65 CPUC 1, 6), in this instance the County Health Department, this Commission shares a responsibility under the law [PU Code § 761] to see that defendant safely operates its water utility."

The Commission ordered the utility to resume chlorination or to cease use of the spring source.

Counsel for Withycombe declared that he and his client had considered court action but had not followed through after the limited improvements were made. A Commission order would have the same effect as a mandatory injunction in a nuisance action, and the relief that they were seeking was to ask the Commission to apply additional pressure on the owners and operators of the Loeffler system to bring the system into compliance as quickly as that can be done.

Counsel for Loeffler relied on PU Code § 2902 which reads:

"This chapter shall not be construed to authorize any municipal corporation to surrender to the commission its powers of control to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."

Loeffler's counsel argued that Sierra County could not yield its jurisdiction over health matters. He cited the case of Van Fleet v. Pierson cited by the Commission in D.87680, and quoted the concluding paragraph of the Commission's opinion.

"The potability and level of purity of defendant's water supply is, in the first instance, within the jurisdiction of the appropriate health authorities. We have been advised by the County Health Department that this water supply is under investigation and

that a program for improvement of water quality in the area is in progress. Accordingly, specific action on that issue by this Commission does not appear appropriate at this time."

Counsel for Loeffler said that he interpreted a letter from Greenberg of January 3, 1982, to Loeffler's attorneys, and Greenberg's testimony as demonstrating that she is pleased with what Hansen has done and that he will continue to make his best efforts to complete whatever is necessary to clean up the system. He stated that he and his client felt that it would be inappropriate for the Commission to establish some different guidelines or different dates than the health department has already set. He also said that he felt it best to allow the health department and Hansen to deal with this problem and resolve the issues.

The ALJ asked Loeffler's counsel to justify his contention that a county is a municipal corporation and received this reply:

"MR. DEVINE: I think in light of the statute and the way it is written in terms of the delegation of authority and the powers that are delegated, I think that clearly the county, in this case the county health department would fall within the category of this type of regulation."

Discussion of Facts

The record of this case, as summarized in detail in the preceding portions of this opinion, shows clearly and convincingly that the residents of Sierra City and particularly the customers of Loeffler are, and for an undetermined time in the past have been, subjected to extreme public health hazards insofar as the quality of their water supply is concerned.

Although not developed in the record, the Commission may infer from the position of the community on the bond law priority list that the DWR and State Department of Health recognized Sierra City as having the most critical water supply situation in the state as of April 1982.

The record in this case is not complete, however, with respect to exactly what measures should be taken to eliminate the critical public health hazards, insofar as the Loeffler system is concerned, or of the economic consequences of taking such measures.

Discussion of Law Applicable to Case

The Commission has expressly recognized the primary jurisdiction of the state and local public health departments in its General Order (GO) 103, Rules Government Water Service Including Minimum Standards for Design and Construction. GO 103 requires as follows:

"II. STANDARDS OF SERVICE

"1. Quality of Water.

"a. General. Any utility serving water for human consumption or for domestic uses shall provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color and turbidity. Any utility supplying water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Public Health. It is not intended that any rule contained in this paragraph II 1 shall supersede or conflict with an applicable regulation of the State Department of Public Health. A compliance by a utility with the regulations of the State Department of Public Health on a particular subject matter shall constitute a compliance with such of these rules as relate to the same subject matter except as otherwise ordered by the Commission."

A check of the two sections of the PU Code dealing with surrender of municipal control, moreover, refutes the Loefflers' counsel's construction of § 2909. These two code sections specifically limit the surrender prohibition to the state's incorporated cities and its one city and county. The two code sections immediately following § 2902 read as follows:

"§ 2093. Unless the context otherwise requires, the definitions and general provisions set forth in this article govern the construction of this chapter.

"§ 2094. 'Municipal corporation' means a city and county or incorporated city."

It is clear that California law does not preclude the Commission from acting independently in the Loeffler public health situation. Should the county abrogate its primary responsibility, the Commission is in a position to grant relief.

Policy Considerations

The Commission is responsible for ensuring that the water utilities it regulates provide their customers with healthful water supplies when local authorities do not assert their jurisdiction to do so. It is evident that Loeffler's water supply is not healthful. Moreover, efforts on the local level to remedy contamination have failed in spite of Withycombe's attention to the matter over a five-year period.

Withycombe's request for us to order system improvements has the support of the county sanitarian, who is familiar with the contamination levels in Loeffler's water supply. Her own enforcement efforts have been significant, but constrained by the situation locally. For whatever reasons, the community rejected consolidation of the local water utilities and an associated low-cost loan offered by the state. According to Withycombe, the district attorney does not wish to enforce the pertinent provisions of the Health and Safety Code. The utility has made some progress voluntarily, but does not appear to be willing to complete needed improvements expeditiously. We do not foresee that these conditions, which impede enforcement of health department requirements, will change significantly in the near future.

Loeffler asks the Commission to leave this matter to the county for resolution, and asserts that the appropriate guidelines and scheduling are those that have already been established by the health department. We agree that the health department's guidelines for system improvements are the appropriate ones. We are not convinced, however, that a timely resolution of this matter will occur if we do not take action. Loeffler has had ample opportunity to make necessary system improvements and to consult with the Commission staff about ways to overcome financing difficulties that might arise.

We will order Loeffler to submit within 7 days of the effective date of this order the health department's requirements to our staff, and to complete those improvements according to a construction schedule proposed by staff.

We will also order Loeffler to submit to staff a report specifying how those improvements will be financed, and a monthly progress report until the required improvements are completed. We see no reason why Loeffler would not qualify for a low-cost state sponsored loan through the Department of Water Resources. If it is necessary, we expect Loeffler, with the help of our staff, to attempt to obtain such a loan to finance its improvements.

We understand that small water utilities, such as Loeffler, are commonly hardpressed to finance system growth or improvements. In this case, the record does not reveal the specific costs of the changes proposed by the health department, or the effects on the utility's financial condition and on its ratepayers. Accordingly, we will consider a rate increase immediately following the completion of the improvements.

We do not expect that a rate increase resulting from system improvements will impose a hardship on Loeffler's customers, but will consider that matter when it comes before us. We note that any increase in rates to finance system changes will be at least partially offset by the benefits of a healthier water supply.

Findings of Fact

1. The water supplied by Loeffler does not comply with the laws and regulations of the state and local departments of health, as required by this Commission's GO 103.
2. The water supplied by Loeffler, and other purveyors in Sierra City, constitutes a public health hazard.
3. The record does not provide adequate information regarding the cost of system improvements required by the health department.
4. Efforts at the local level to eliminate contamination in Loeffler's water supply have not produced satisfactory results.

Conclusions of Law

1. The primary responsibility for the wholesomeness and potability of the water supplied by Loeffler belongs to the County of Sierra.
2. The Commission retains jurisdiction should the County fail to act.
3. Loeffler should be ordered to submit to staff within 7 days of the effective date of this order a report outlining the system improvements proposed by the health department.
4. Loeffler should be ordered to comply with a reasonable schedule for completion of system improvements required by the health department, as proposed by staff.
5. Loeffler should be ordered to submit to staff within 30 days a report presenting a method by which needed system improvements will be financed.
6. Loeffler should be ordered to submit monthly progress reports until the construction of required system improvements has been completed.

O R D E R

IT IS ORDERED that:

1. The relief requested in this complaint is granted to the extent set forth in this opinion.
2. Loeffler shall submit to staff within 7 days of the effective date of this order a report outlining the system improvements proposed by the health department.

3. Loeffler shall make the system improvements required by the health department under a construction schedule proposed by staff.

4. Loeffler shall submit to staff within 30 days a report presenting a method by which required system improvements will be financed.

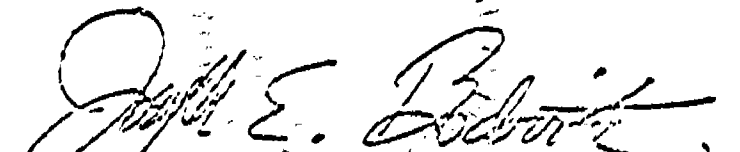
5. Loeffler shall submit to staff monthly reports of the progress of its construction program until required improvements have been completed.

This order becomes effective 30 days from today.

Dated MAY 4 1983, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director



Loeffler asks the Commission to leave this matter to the county for resolution, and asserts that the appropriate guidelines and scheduling are those that have already been established by the health department. We agree that the health department's guidelines for system improvements are the appropriate ones. We are not convinced, however, that a timely resolution of this matter will occur if we do not take action. Loeffler has had ample opportunity to make necessary system improvements and to consult with the Commission staff about ways to overcome financing difficulties that might arise.

We will order Loeffler to submit within 7 days of the effective date of this order the health department's requirements to our staff, and to complete those improvements according to a construction schedule proposed by staff.

We will also order Loeffler to submit to staff a report specifying how those improvements will be financed, and a monthly progress report until the required improvements are completed. X

We understand that small water utilities, such as Loeffler, are commonly hardpressed to finance system growth or improvements. In this case, the record does not reveal the specific costs of the changes proposed by the health department or the effects on the utility's financial condition and on its ratepayers. Accordingly, we will consider a rate increase immediately following the completion of the improvements.

We do not expect that a rate increase resulting from system improvements will impose a hardship on Loeffler's customers, but will consider that matter when it comes before us. We note that any increase in rates to finance system changes will be at least partially offset by the benefits of a healthier water supply. 124

X We see no reason why Loeffler would not qualify for a low-cost state sponsored loan through the Department of Water Resources. If it is necessary, we expect Loeffler, with the help of our staff, to attempt to obtain such a loan to finance its improvements.