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ORIGINAL

Decision No. 86646

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NORMAN ADAMS, LLOYD L. CAHOON, BOB
HIGHT, RICHARD McCULLOUGH, JACK
PINEO, ROY ST. MARTIN, PAUL SPRATT,
and VON TWITCHELL,

Complainants,

v.

YUBA INVESTMENT COMPANY,

Defendant.

Case No. 9711
(Filed April 16, 1974)

John L. Guth, Attorney at Law, for
complainants.

Bruce McDonough and Martin McDonough,
Attorneys at Law, for defendant.

Cleo D. Allen, for the Commission staff.

OPINION ON ORDER TO SHOW CAUSE

Yuba Investment Company supplies water for agricultural irrigation purposes in the portion of Yuba County known as Loma Rica. By this complaint filed April 16, 1974, the complainants alleged that they were users of water supplied by defendant; that defendant had failed to supply each of them with the full amount of water ordered and paid for; that defendant knew that its main irrigation ditch was in disrepair and clogged with grass and weeds; and that defendant had failed to take the necessary action to remedy this situation. Decision No. 84667 dated July 15, 1975 directed defendant to clean and repair its canal, establish a program of inspection and

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maintenance to assure a sufficient flow of water in the canal, provide a constant flow delivery to its customers, and release sufficient water into the canal to assure that customers would receive the amounts of water they ordered.

A Request for an Order to Show Cause was filed on October 9, 1975 by five of the complainants and two interested parties. It asserts that defendant has not cleaned a substantial or visible amount of vegetation from the irrigation ditch and has not made any visible attempt to repair the leaks in the canal; that at no time has there been sufficient water in the canal to assure that all customers receive the amounts of water defendant has agreed to furnish them; that defendant has not complied with the other requirements of Decision No. 84667; and that defendant's disobedience of the order has been willful. It requests that the Commission issue an order requiring defendant to show cause, if any it has, why it should not be adjudged guilty of contempt by reason of its willful disregard of the directives in Decision No. 84667. An affidavit in support of the Request for an Order to Show Cause was filed on October 20, 1975 by three of the complainants and an interested party. The affiants state in the affidavit that they had personally inspected the irrigation canal on October 5, 1975 and observed that only the first customer on the system was receiving any water whatsoever and that there was no water in the canal beyond his service box. An Order to Show Cause directing defendant to show cause why it should not be found guilty of contempt was issued by the Commission on January 9, 1976.

Public hearing on the Order to Show Cause was held before Examiner Arthur M. Mooney in Marysville on January 29 and February 19, 1976. The matter was submitted upon the filing of written closing statements on March 1, 1976.

Water for the system is stored in a reservoir known as Lake Mildred and is released from there into Dry Creek. A short distance below the reservoir there is a diversion dam in the creek. From there the system consists of approximately seven miles of irrigation ditch with seven flumes and a 12-inch syphon approximately 1.7 miles downstream from the diversion dam. The first five or six miles meander through relatively hilly terrain to a metal flume which crosses a ravine. No customers are served along this stretch. From the metal flume, the canal extends approximately 1.5 miles, and this is the section that serves the customers. This part of the ditch is irregular in size ranging from 12 to 24 inches in depth, and the width at the bottom is from 6 to 12 inches and at the top is approximately 16 inches. The customers obtain delivery through wood gates with appropriate size openings cut into each gate.

Defendant utility has been under Commission jurisdiction since 1913. It has been operated under several different names over the years. The present shareholders of defendant utility are Earl W. Cates and Lawrence Santi. Defendant's rate to its customers is \$67.50 per miner's inch. The customers pay two-fifths of their bill at the beginning of the irrigation season and the remaining three-fifths in August.

Complainants' Evidence

Following is a summary of the testimony presented by five of the complainants or their representatives: All could use more water than defendant agreed to furnish them. Each had regularly observed all or part of the service area of the system. Defendant had done some clearing and repairing in this area prior to July 15, 1975, and the ditch appeared to be in reasonable condition at that time. However, since that date there has been no evidence of any work or inspection by defendant in this area. It has become overgrown and is in disrepair, and the condition is as bad as it was in 1974. Most agreed that Mr. Campbell, who was taking care of the

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system for defendant, had been trying to make the canal service-able at the beginning of the 1975 irrigation season. One asserted that enough water was not being released from Lake Mildred into the system. Several had personally done some work in clearing rocks and debris from the syphon and repairing some leaks. The last customer on the system asserted that, except for one several hour period when all other customers were shut off, he had received no water during the 1975 season, and that he received no water at all during 1974. All were of the opinion that the irrigation season extended until the first rains in November or December, and they asserted that they had never been informed that defendant's tariff provided that the season ended on October 15. There had been meetings at various times between the customers and with Mr. Campbell regarding the condition of the ditch and the availability of water. Some had received more water than they ordered at the beginning of the season, but most had received little or no water later in the season.

The ditch tender for defendant from approximately 1971 through 1973 was called as a witness by complainants and testified that while he was employed by defendant, his paychecks, which were \$500 per month, had the name Royal Pines Lake Club printed on them; that his duty was to keep water flowing to defendant's customers during the irrigation season; that during the month prior to the commencement of the irrigation season he would clean the ditch by hand with a shovel and burn the vegetation; that he requested lumber and cement for repairs from his employer and was given old Royal Pines Lake Club signs and very little cement; that when he was not working on the canal, he did various jobs for the Royal Pines Lake Club; that except for those at the end of the service area to whom he could not furnish all the water they had ordered, he was able to take care of the needs of the customers; that defendant's

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manager informed him that he wanted to conserve the water in Lake Mildred; that one year while he was engaged as canal tender, the irrigation season extended into November; and that in his opinion, the season extends until the first rains.

A teacher from Marysville High School who holds an advanced degree in geography testified that he has surveyed the soil in the vicinity of the irrigation system; that based on soil types mapped by the Department of Soils and Plant Nutrition of the University of California and the county of Yuba and published in Soils of the Yuba Area, California, 1969, the only vertical area in the system is at the diversion dam, most of the balance of the area is not too steep, and the type of Auburn-Sobrante soil through which most of the canal flows is not too rocky and would not cause difficulties in performing the type of work that must be done on the canal; and that this information is detailed in Exhibit 7.

A registered civil engineer presented the following evidence on behalf of complainants: Defendant's system was sold by the Carmichael family to Earl W. Cates and Lawrence Santi about 1964. Problems of receiving irrigation water arose after that time. On January 31, 1976, he walked the entire length of the ditch with complainants' attorney and several of the complainants. The inspection took eight or nine hours, and he noted that the flumes and syphon were in poor condition; that much of the construction was faulty; that the sides of the ditch had collapsed in certain areas due to road construction and other work nearby; that parts of the ditch were overgrown with water weed growth, and there was no evidence of weed control at least for the past one or more seasons; that gravel in the ditch near the Marysville Road had not been cleaned out; that the parts of the ditch that were in sound condition were also overgrown with vegetation; and that in general, maintenance of the system was poor. The witness recommended that immediately

all temporary repairs to the ditch be made permanent; that the banks be repaired where necessary; that all debris and gravel be cleaned from the ditch; that the flumes and syphon be repaired; that a program of weed control be instituted; and that other necessary repairs and vegetation clearing be undertaken. He suggested four long-term alternatives. The first would be to abandon the ditch and use well water for irrigation, which he stated would not be a viable alternative for this area. The second was to negotiate for use of the Browns Valley Irrigation District facilities and construct a new ditch and syphon to tie in with the existing ditch to the service area. He estimated the cost of the second alternative would be \$45,000. The third alternative would be for defendant to operate the ditch so that it would provide enough water on a steady basis for a viable system which would produce sufficient revenue along with recreation rental from Lake Mildred to amortize its operation. The fourth alternative would be for the landowners to reach an agreement with defendant to assume ownership of the defendant's system, Lake Mildred, the diversion works, and the distribution system. He estimated that the cost of bringing the entire system up to a workable system would be approximately \$26,065, which includes the salary of a maintenance man at \$700 per month for eight months. He also recommended that the 12-inch syphon be replaced with a 24-inch syphon.

Defendant's Evidence

Mr. Allen Campbell presented the following evidence: He is an engineering and general building contractor. For the year 1975, he had a contract with defendant to perform the maintenance and administration of the irrigation system. He was at the ditch at least three days a week for ten months. Up to June 30, 1975, he spent over \$15,000 on the ditch and was paid \$4,537 in money and equipment by defendant. The balance of his cost was to be credited

towards the purchase of the system by him for which he had a tentative agreement with defendant. He attended various meetings with the customers to keep them informed with what was going on. The terrain in which the system is located is 40 percent vertical and the soil is 60 percent rock. He had tractors, a backhoe, a weeder, fire equipment, and other necessary equipment for the job. The work he performed was in conformity with the recommendations of the Commission engineer at the original hearing in the complaint. The number of employees he had working on the ditch were five between April 8 and May 15, three from then to July, and two thereafter. The initial work was performed in the service area. After July 15, 1975, 95 percent of the work was upstream from the service area which is where the major problems were located. The customers were apparently not aware of this work and did not see it. He used a substantial amount of lumber and other material in the upstream area. The customers complained that the syphon was the main problem source so he fixed it. He maintained a daily log and sent a monthly report to defendant. Much of the vegetation in the system is fast growing and must be cleared every month or so. His contract with defendant was for \$6,000 plus certain equipment. The tentative agreement he had with defendant to purchase the system did not include Lake Mildred. There has always been sufficient water in Lake Mildred for the system, and he has never been refused water for it by the manager of the Royal Pines Lake Club. Although he has performed substantial work on the system, additional repairs are required. He estimates that it will take approximately four years to bring the system up to a condition where it can function efficiently. This is mainly due to the amount of money and equipment required to accomplish this. He is continually making repairs to make it as operational as possible.

At the second day of hearing in this matter, Mr. Campbell stated that he had withdrawn his offer to defendant to purchase the system. He stated that in his opinion neither the customers nor defendant were making a substantial effort to solve the problems of the irrigation system and that he was no longer interested in it.

A professional engineer appearing on behalf of defendant testified that he had inspected defendant's irrigation system on February 12, 1976 with defendant's vice president and Mr. Bob Posey. He testified that he saw leaks out of rocks near the diversion dam, metal flumes that required repair or alignment, and many other areas that required repairs and cleaning of vegetation. He stated that in some areas it would be advisable to install additional flumes. He recommended that emergency repairs be made as soon as possible and that a flow measurement then be made to determine what further repairs would be necessary and the cost thereof. He testified that he agreed with the recommendations of the staff engineer. He asserted that the cost of the new flumes he suggested would be between \$4,000 and \$5,000 for the material only. The witness stated that he did observe some evidence of work having been done in the upper reaches of the canal.

The vice president of defendant presented the following evidence: He engaged Mr. Campbell, whose home is located on the canal, to service and maintain the system for 1975. He had periodic reports and telephone calls from Mr. Campbell, and visited him at the ditch from time to time. In mid-summer of 1975, he sent a letter to all customers to determine if they were satisfied with Mr. Campbell. He had been negotiating with Mr. Campbell for his services for the 1976 season, but has been informed by him that he is no longer available. He will go along with the recommendations of the professional engineer who made the survey for him and will look to loans for financing. He contemplates seeking a rate increase in the

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near future. At present defendant has no money. If defendant cannot economically operate this system, it will explore the possibility of the customers taking over the system, and, failing this, may contemplate abandoning the system. The Royal Pines Lake Club, which is under substantially the same ownership as defendant, has contributed substantially to the costs of defendant's operations. During the 1975 season, defendant's gross operating revenue was approximately \$1,100, which included the money to be refunded to its customers. The balance of this income was paid over to Mr. Campbell. The Royal Pines Lake Club pays all insurance, including workmen's compensation, for defendant and has paid for its hand tools and equipment. It also maintains the dam at Lake Mildred, keeps the lake free of debris, and maintains and patrols the spillways. Additionally, it pays approximately \$2,000 property tax for defendant each year. Defendant has made a serious attempt to comply with the Commission's order in Decision No. 84567. The Royal Pines Lake Club's gross income for 1975 was approximately \$37,000. This included annual dues and payments by members for camping, fishing, swimming, guest privileges, and general use of Lake Mildred which is owned by defendant. If the customers were to take over the irrigation system, this would not include Lake Mildred. The ownership of the Royal Pines Lake Club, which was founded in 1965, is one-third each by Mr. Cates, Mr. Santi, Sr., and the Royal Pines Lake Company. Defendant is owned by the Royal Pines Lake Company which is a limited partnership of Mr. Santi and a number of other individuals. The cost of maintaining the lake and defendant's system is approximately \$10,000 per year and has been paid by the Royal Pines Lake Company. Defendant's assets are Las Verjeles Dam and the Dry Creek Irrigation System. To his knowledge there is a fine line as to whether Lake Mildred is utility property or real property.

A former employee of Mr. Campbell was called as a witness by complainants to show that Mr. Campbell's testimony regarding the amount of money he paid to his employees was inaccurate.

Staff's Evidence

The following evidence was presented by an associate utilities engineer of the Commission's Utilities Division: He investigated the condition of the ditch on November 17 and 18, 1975 and contacted defendant's personnel and some of the complainants. The engineer stated that during his inspection he noted that there was evidence that there had been clearing of brush from the vicinity of the ditch; that some of the flumes had been repaired or rebuilt; and that the ditch had been cleaned out, deepened, and/or rebuilt at various locations. He asserted, however, that the ditch was partially overgrown with brush and that he noted a metal flume had been installed improperly and was incapable of conveying the quantity of water it should have. He pointed out that the reservoir owned by the utility is used for recreational purposes and that there was no record of payment to the utility by the recreational entity for use of the reservoir. It is the staff conclusion that defendant did clean the ditch but did not maintain this clean condition; that some maintenance work was done on the structures and the ditch; and that the recreational entity should be paying a reasonable rental value for the use of the reservoir owned by defendant. The witness stated that in his opinion there was a competing interest between the Royal Pines Lake Club and the defendant regarding Lake Mildred, the club attempting to maintain the level of the lake, and defendant requiring water from it for irrigation purposes. He stated that the 12-inch syphon is not adequate under existing conditions to convey water in sufficient quantities to users to make it possible for defendant to earn a reasonable rate of return. He urged that defendant undertake all necessary work on the system as soon as possible.

Recommendations

Counsel for complainants in his closing written statement recommended that defendant be fined \$500 per day from July 15, 1975, the date of issuance of Decision No. 84667, to November 1, 1975, the end of the 1975 irrigation season; that the fine be suspended upon a condition that defendant do whatever is necessary to provide the same amount of water during 1976 to its customers as was contracted for during the 1975 season; and that this amount of water be furnished during the entire 1976 irrigation season; and that in the event defendant failed to meet these requirements, the entire fine in the amount of \$33,500 should be placed in a trust administered by complainants for the repair and maintenance of the system.

In his closing written statement, counsel for defendant urged that defendant not be held in contempt of the order in Decision No. 84667. He recommended that defendant be directed to file an application for rate relief so that it may perform the necessary repairs and maintenance work and construct capital improvements; that defendant be directed to continue its program of cleaning and repairing the ditch in accordance with the recommendations of the Commission staff and its own engineer and within the financial parameters of any rate relief accorded by the Commission; that defendant be directed to report to the Commission semiannually; and that the customers be restrained, for a reasonable period of time, from bringing any further complaints or contempt proceedings so that defendant may direct its full attention and resources towards the operation, maintenance, and repair of the ditch.

The Commission staff recommended that defendant be required to continue with the cleaning and repairing of the ditch, install adequate size pipe in the areas of excessive leakage, maintain the canal in proper condition after clean out and repair, take action,

including litigation if necessary, to obtain any necessary rights-of-way to permit access to the canal, obtain a reasonable rental fee from the recreational entity using the reservoir, and report semiannually to the Commission of its progress in complying with the directives of this Commission.

Findings

1. Defendant operates a water system in Yuba County and furnishes water for irrigation purposes to a limited number of customers located between Loma Rica Road and Las Verjeles Road. The system extends approximately seven miles, and the customers are located along the last one and one-half miles of the system. The canal is a relatively shallow and narrow earthen ditch and includes a 12-inch syphon and flumes.

2. A complaint filed on April 16, 1974 by some of the customers alleged that they were receiving none or only part of the water defendant had agreed to furnish them and that defendant's irrigation system was not maintained in an adequate manner.

3. Decision No. 84667, issued July 15, 1975 in this proceeding, directed defendant to clean and repair the ditch, establish a program of inspection to insure a sufficient flow of water in the canal to furnish all customers with the amount of water it had contracted to furnish them, provide constant flow deliveries, release sufficient water into the canal to accomplish this, accept no new customers, and discontinue service to any customer who obtained service by fraudulent means.

4. In response to a Declaration and Request for an Order to Show Cause filed by several customers of defendant, the Commission issued its order requiring defendant to appear before it and show cause why it should not be held in contempt for willfully disobeying the order in Decision No. 84667.

5. Defendant hired an engineer and general building contractor to repair and maintain its irrigation system during the 1975 season. The number of employees he had working on the system from time to time ranged from two to five.

6. There was some clearing of vegetation, cleaning of the canal, and repair work done by defendant in the service area prior to July 15, 1975.

7. Subsequent to July 15, 1975, defendant did do some clearing, repair, and maintenance work in the upper area of its canal between the diversion dam and the service area.

8. Much of the vegetation that was cleared by defendant prior to July 15, 1975 has regrown.

9. Substantial additional repairs, construction, clearing, cleaning, and maintenance work is required on the irrigation system to bring it to a satisfactory condition where it can furnish defendant's customers the amount of water it has agreed to furnish them.

10. Defendant is the owner of Lake Mildred. The lake is used by the Royal Pines Lake Club for recreational purposes. Defendant receives no remuneration from the club for the use of the lake.

11. Defendant should receive a reasonable rental value from the Royal Pines Lake Club for the use of Lake Mildred for recreational purposes.

12. Defendant is in a poor financial condition.

13. While defendant has not substantially complied with the order in Decision No. 84667, it has made some attempt to comply with these requirements.

14. It has not been shown that defendant's failure to comply with the requirements in Decision No. 84667 has been willful.

15. The recommendations by the staff in this matter are reasonable and should be adopted.

16. Defendant's tariff provides that the irrigation season ends with October 15. ✓

Conclusions

1. Defendant should be directed to continue with the repair and cleaning of its irrigation ditch.
2. Defendant should be directed to install adequate size pipe where there is excessive leakage and new flumes and other structures where necessary.
3. Defendant should be directed to maintain the canal in a proper condition after it has been cleaned and repaired.
4. Defendant should be directed to obtain any necessary right-of-way to the irrigation canal and to take any necessary action, including litigation if required, to accomplish this.
5. Defendant should be directed to obtain a reasonable rental fee from the Royal Pines Lake Club for the recreational use of its reservoir.
6. Defendant should be required to report, semiannually, to the Commission concerning its progress in complying with the directives of the Commission regarding the operation of its utility system.

O R D E R

IT IS ORDERED that:

1. Defendant shall continue to clean and repair its irrigation ditch and repair, replace, and install all necessary structures and appurtenances in connection therewith.
2. Defendant shall maintain the canal in a proper condition after it has been cleaned and all necessary repairs and construction have been completed.
3. Defendant shall obtain any necessary right-of-way to its canal and shall take any action, including any litigation required, to accomplish this.


4. Defendant shall take the necessary action to obtain a reasonable rental fee from the recreational entity using its reservoir and any other facilities it owns.

5. Defendant shall report at the beginning and end of the irrigation season each year to the Commission of its progress in complying with all orders of the Commission regarding the condition and operation of its irrigation system.

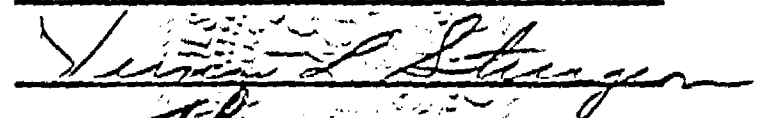
6. In the event defendant does not promptly, diligently, and in good faith comply with the requirements set out in the above ordering paragraphs, this matter will be reopened to determine what sanctions, if any, should be imposed on defendant.

The effective date of this order shall be twenty days after the date hereof.


Dated at San Francisco, California, this 16th day of NOVEMBER, 1976.



President



Commissioner



Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.