

ORIGINAL

Decision No. 88933 JUN 13 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM P. & MARIE R. BUTRICA, et al.,

Complainants,

vs.

DARRELL J. & RUTH E. BEASLEY, dba
PHILLIPSVILLE WATER CO.,

Defendants.

Case No. 10129
(Filed June 23, 1976)

O P I N I O N

This is a proceeding in which Darrell J. and Ruth E. Beasley were ordered to show cause why they should not be adjudged in contempt of the Public Utilities Commission and punished therefor according to law.

Decision No. 87364 was issued in this proceeding on May 24, 1977. The order to show cause was issued on August 23, 1977 and is based upon an affidavit of a staff engineer dated August 8, 1977, which asserts that a certified copy of Decision No. 87364 was served upon Darrell J. Beasley and Ruth E. Beasley on June 7, 1977 and that respondents have failed to comply with the requirements of Ordering Paragraph 1 of the decision, which states:

- "1. Darrell J. and Ruth Beasley, doing business as Phillippsville Water Company, shall within thirty days after the effective date of this order:
 - "a. Rearrange the piping in each of the small reservoirs so water will flow unrestricted into the town system rather than to the favored customers who now receive it.

- "b. Complete the metering of customers' services and notify the Commission in writing, when all features have been installed.
- "c. Survey all transmission mains to locate high points. Install air release valves thereon, and notify the Commission within ten days that the project has been completed.
- "d. Bill for past due accounts or credit for over-payments as appropriate, but issue no bills for service rendered prior to six months from the date of the request for payment, and notify the Commission within 10 days from the date the bills or credits are mailed.
- "e. File up-to-date rules and regulations with the Commission."

The affidavit states that the failure and refusal was and continues to be in violation of law and in contempt of the Commission.

The affidavit and order to show cause allege a second offense which concerns paragraph 4 of said decision which reads as follows:

"Defendants shall transfer and connect the (Murray) well to their public utility water system forthwith, and Darrell Beasley shall inform this Commission within 10 days after the transfer."

The affidavit states that Ordering Paragraph 4 has not been complied with.

A public hearing was held on September 7, 1977 in Garberville before Administrative Law Judge Fraser. Evidence was presented by the Commission staff and respondents. Several local residents who are served by the water system also testified.

The staff engineer who signed the affidavit and application for order to show cause testified that the change in piping required by Ordering Paragraph 1 of Decision No. 87364 was not completed on schedule and that the Commission has not been informed as required

by the other ordering paragraphs; that meters have been installed on all services (Ordering Paragraph 1.b); that water transmission lines have been surveyed and air release valves installed as required (Ordering Paragraph 1.c); that past due bills and credits have been mailed to customers (Ordering Paragraph 1.d); and that up-to-date rules and regulations have not been filed with the Public Utilities Commission (Ordering Paragraph 1.e). He noted that respondent Darrell has installed pipes and meters in the past and is capable of performing the necessary outdoor work required; whereas respondent Ruth has been handling the records and bills of the company and should be capable of mailing customer bills and credits.

The witness further testified that Ordering Paragraph 4 of Decision No. 87364 requires that the Murray well be connected to the system. The decision finds dedication of the well to the public and identifies it as part of the water system. He further testified that the PG&E records on power supplied to the Murray well show that all bills were sent to Darrell Beasley prior to April 1, 1977; after this date the bills were issued to Mauney Enterprises which was identified as the lessee of the well (Exhibit 2). The witness noted that the existence of the lease apparently first became known during the month prior to the issuance of Decision No. 87364; he advised there has been no indication that the ownership of the Murray well has been acquired by the utility.

On cross-examination the witness testified that the installation order concerns four meters and the staff has been informed that two are already in place. He also testified that one customer has told the staff that water bills are now being received. He admitted that Exhibit 2 shows the Murray well used 110 kilowatt-hours in June

and more than 1,000 kilowatt-hours in July and August and about 3,000 kilowatt-hours in September 1977. The witness stated that he was informed that the well was again connected to the water system. Although the staff is still receiving complaints on water outages, the witness stated that it may not be necessary to change the reservoir piping as required by Ordering Paragraph 1.a if the Murray well is connected to the water system. No change in piping would be necessary if the well could provide a sufficient volume of water to make up the difference.

A water utility customer testified that his meter and his next door neighbor's have been recently installed and that all parties are satisfied. One of the complainants in the original case testified that her husband has dug the necessary ditches and purchased the pipe required for the meter installation but it has not been done. She admitted that a man came to install the meter, and she told him that her husband preferred to do the work with Mr. Beasley. She stated that she has received a billing for six months from January 1 to the end of June 1977 as required by the Commission order, received a July bill about the 15th of July, no August billing, and a bill for both August and September during the first few days of September. She advised the system ran out of water twice for half-hour periods a few days before this hearing, but has no other complaints. The last witness was a customer served from one of the reservoirs whose piping was to be changed under Ordering Paragraph 1.a of Decision No. 87364. He testified that he will have poor service with frequent outages if the planned changes are made in the piping. He presented a letter to the Commission which expressed strong objection to any change in the reservoir piping and was signed by representatives of

all seven families who receive water by direct line from the smaller reservoirs. He further testified that he has worked on the system for many years and is familiar with its operation. If the pipes are changed according to the recommendation of the Commission staff, the seven families at the top of the hill will have no pressure and very little water due to air locks in the pipes. The town will receive all of the water which will be flowing out of pipes in the bottom of each reservoir. He emphasized that he and his neighbors plan to go to court for an injunction if any effort is made to change the pipes or to lessen their water pressure or water supply. He testified that respondents have been notified of this possible action and warned about the feelings of these concerned customers. He testified he is certain that connecting the well to the system will eliminate the need to change the reservoir piping.

Respondent Darrell Beasley testified that the system was purchased in July of 1971 and now serves approximately 62 customers; the income is \$300 and expenses about \$750 a month. He has never withheld any of the income available as either salary or return on investments, all of it has been spent on the utility; he has not changed the piping from the reservoirs due to continuous opposition from the customers involved; also, because the change in piping recommended will eliminate water service on fourteen connections most of the time; he has been installing meters, one of which was a type costing \$350 per unit excluding labor, as rapidly as possible, and is ready to install the Butrica meter whenever the complainants are ready; he has found that meters are touchy because installation has resulted in sudden changes in pressure and broken water lines; it is also difficult to meter two of the flat rate customers the Commission

recommended metering since a private water supply is connected to one of the lines; he claimed the transmission lines were surveyed with a staff representative several months prior to the hearing and that up-to-date rules and regulations were mailed to the Commission during the last week in August 1977.

He testified that the Murray well was leased by the owner (Mrs. Ellen B. Murray) to the Gary Mauneys and Mauney Enterprises of Phillipsville for the year 1977 at an annual rental of \$250; the well was reconnected to the water system in June 1977 and is providing service at a monthly rental of \$100 which he pays and a monthly pumping charge which is paid by collecting a small fee from each customer, his share last month was \$9. Outages have occurred since the automatic pump which is connected to a float in the tank was turned off due to the inability of the utility to pay its electric bills. Beasley testified he has not been able to pay the principal on the note which was executed to purchase the system; only the monthly interest is paid and an additional \$1,000 has been borrowed since the purchase to keep the system operating; the system will never produce sufficient revenue to make all of the improvements suggested by the Commission staff. A copy of the lease was filed as an exhibit. It transfers the land on which the well is located and all of the water under the land during the period from January 1 to December 31, 1977. Beasley admitted that the land and well were deeded to him by Mrs. Murray (his mother) in 1972 (Exhibit 16 in original Case No. 10129) that the deed was recorded and that he has never deeded the property back to Mrs. Murray.

Mrs. Murray made a brief statement that she originally allowed her son to use the well when another well was removed from the system years ago. She intended for him to use it temporarily and reserved her right to revoke her permission. She intends to sell the land where the well is located and cannot do so if the well is a permanent part of the water system.

Discussion

Respondents have substantially complied with Ordering Paragraphs 1.b, 1.d, and 1.e; there has been a partial compliance on Ordering Paragraph 1.c, and no compliance with Ordering Paragraph 1.a. Respondents' reasons for failure to comply are entitled to consideration. The record indicates that 7 to 14 customers will have a less efficient service if the requirements of Ordering Paragraph 1.a are enforced; also that 1.a may be disregarded if the Murray well is connected to the system and provides a normal flow. This theory seems sound as complaints have tapered off since the well was recently added to the system.

The Murray well is now a part of the water system. It cannot be transferred, leased, sold, or attached without first obtaining authority from the Public Utilities Commission (Public Utilities Code Section 851). The lease agreement, if ever effective, expired on December 31, 1977, and the well is in service.

Ordering Paragraph 4 has been substantially complied with as the well is connected to the system and respondent Darrell Beasley is still the legal owner. The record reveals there are other wells on or near the system. Respondents should apply for an increase in water rates and seek additional sources of water so the Murray well may no longer be needed.

Findings

1. Respondents were served with a copy of Decision No. 87364. Ordering Paragraph 1 states:

- "1. Darrell J. and Ruth Beasley, doing business as Phillipsville Water Company, shall within thirty days after the effective date of this order:
 - "a. Rearrange the piping in each of the small reservoirs so water will flow unrestricted into the town system rather than to the favored customers who now receive it.
 - "b. Complete the metering of customers' services and notify the Commission in writing, when all features have been installed.
 - "c. Survey all transmission mains to locate high points. Install air release valves thereon, and notify the Commission within ten days that the project has been completed.
 - "d. Bill for past-due accounts or credit for over-payments as appropriate, but issue no bills for service rendered prior to six months from the date of the request for payment, and notify the Commission within 10 days from the date the bills or credits are mailed.
 - "e. File up-to-date rules and regulations with the Commission."

The decision further ordered that a well which was identified as part of the water system and dedicated to public use be returned to the water system and connected to it.

2. An affidavit and an application for an order to show cause were filed by a staff engineer that charged respondents failed to comply with any of the ordering paragraphs referred to above and also failed to notify the Commission that any effort toward compliance had been made.

3. An order to show cause, re contempt of the Public Utilities Commission was issued on August 23, 1977 and a public hearing was held on September 7, 1977 in Garberville, California.

4. Respondents did not rearrange the piping in each of the small reservoirs as required by Ordering Paragraph 1.a of Decision No. 87364 due to strong opposition from customers whose water service would be affected thereby and a conviction that an adequate supply of water would eliminate the need.

5. Respondents have completed the metering of services and have substantially complied with Ordering Paragraph 1.b of Decision No. 87364.

6. Respondents have partially complied with Ordering Paragraph 1.c by surveying the transmission lines as required. No air valves were installed due to lack of funds and respondents' conviction that an adequate water supply would eliminate the need for air valves.

7. Respondents have substantially complied with Ordering Paragraph 1.d, by sending bills and credits to customers and by revising their billing procedures.

8. Respondents have substantially complied with Ordering Paragraph 1.e, by filing a copy of the Phillippsville Water Company rules and regulations with the Commission after conclusion of the September 1977 hearing.

9. There has been substantial compliance with Ordering Paragraph 4 of Decision No. 87364 which requires respondents to transfer and connect the Murray well to their public utility water

system forthwith, and then inform the Commission. Respondent Darrell J. Beasley is the legal owner of the well and the property surrounding it and is the co-owner of the Phillipsville Water Company; the well was connected to the water system prior to the September 1977 hearing.

10. The property on which the Murray well is located is described as:

"All that real property described in that Deed in which MARGARET E. COMBS is named as grantor, and ELLEN B. FLEMING is named as grantee, which deed was recorded on 2 August 1948, in book 58, at page 125, of Official Records, Humboldt County Recorder."

Conclusions of Law

1. Respondents have complied with Ordering Paragraphs 1.b, 1.d, and 1.e of Decision No. 87364.
2. Respondents have partially complied with Ordering Paragraph 1.c and have failed to comply with Ordering Paragraph 1.a of Decision No. 87364.
3. Respondents have substantially complied with Ordering Paragraph 4 of Decision No. 87364.

O R D E R

IT IS ORDERED that:

1. Darrell J. and Ruth E. Beasley have substantially complied with the requirements of Decision No. 87364 and are not in contempt of this Commission.
2. The Murray well will remain connected to the water system and will be continued in service without additional charge to the customers. No sale, lease, or other encumbrance will be placed on this well, nor on the real estate necessary for access and servicing, without prior Commission approval.

3. The Executive Director is directed to file a certified copy of this decision and order with the Recorder of Humboldt County.

The Executive Director of the Commission is directed to cause service of this order to be made upon each of the respondents.

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

Dated at San Francisco, California, this 13th day of JUNE, 1978.

Robert Bayman
President
William G. Jones, Jr.
Verion L. Steigler
Charles J. Howell
Paul D. Deibel
Commissioners