

ORIGINAL

Decision No. 89664 NOV 28 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charles E. and Ann Johnson  
Donald D. and Bonnie MacAllister,  
Complainants.

vs.

Mrs. Jewel French and Miss  
Mary Westerfield, dba Audrain  
Water Company,  
Defendants.

Case No. 10426  
(Filed September 27, 1977)

Charles E. Johnson and Donald D. MacAllister, for themselves, complainants.

Donald J. Peterson, for defendants.

Lawrence Braun, for himself; Virginia Huber, for El Dorado County Environmental Health Department; and James H. Ingram, for El Dorado County Local Agency Formation Commission; interested parties.

William C. Bricca, Attorney at Law, and Leslie Hay, for the Commission staff.

O P I N I O N

Audrain Water Company is located in an unincorporated area approximately two miles west of Echo Summit on U.S. Highway 50.

Complainants allege:

- A. The springs have never been developed properly, and the water tanks used for storage have not been properly maintained. One tank has been cut out of the system and will not hold water.
- B. Plastic lines serving as inlet and outlet pipes for the tanks are lying on top of the ground and will freeze whenever water flow is stopped in the winter time.

- C. Offers made by the Audrain Subdivision property owners to help put the water system in satisfactory condition and to purchase a 50' x 50' lot owned by the utility for purposes of digging a well have been refused.
- D. A letter of complaint to the Public Utilities Commission written by a customer this year resulted only in one of the tanks being cut out of the system but not repaired.
- E. The utility property reportedly has been sold and the purchasers now occupy the property and state they have no money or time to improve the situation.
- F. There was little or no water in the system during the month of August 1977. Water supplied from the spring is utilized by the persons who claim to be the new owners and by other claimants of water rights to the springs.

Defendants did not file an answer to the complaint.

Public hearing was held before Administrative Law Judge O'Leary at South Lake Tahoe on March 28, 1978. The matter was submitted with the filing of late-filed Exhibit 6 on April 3, 1978.

Evidence adduced discloses that in August 1977, Jewel E. French and Mary E. Westerfield (French & Westerfield) sold their property and the water system to Lawrence D. and Robyn L. Braun (Brauns). An application to transfer the utility was filed in October 1977 but was deficient and, therefore, was returned for correction of the deficiencies. The application was not refiled. Water is obtained from springs located on the property sold by French & Westerfield to the Brauns. Water flows by gravity from the springs to two 2,600-gallon redwood storage tanks, both of which are in need of repair. From the storage tanks water flows by gravity into the distribution system through a series of 3-inch plastic and galvanized pipes and 2-inch plastic pipes. Water pressure varies according to elevation of the lots within the system, the lot at the highest elevation receives approximately 30 psi at the lot line. The system presently serves

nine customers, of which seven are part-time residents (summer and weekends) and two are full-time residents. The 50' x 50' lot referred to in Allegation C was also purchased by the Brauns from French & Westerfield, said lot was to be drilled for the purpose of developing a well to supplement the water supply from the springs. The well has never been drilled. The charge for water to the customer is a flat rate of \$18.00 per year. Said rate has been in effect for approximately 20 years.

One of the complainants, Mrs. Ann Johnson, whose property is at the highest elevation, testified that normally the water system is sufficient for her needs; however, during the summer months, when the part-time residents occupy their residences on the weekends, there are usually water outages on Monday morning. This is especially true after a three-day weekend. On one occasion, the pipe supplying her house was frozen for four and one-half months, which was caused by a visiting relative's turning off the water supply faucet. Had the faucet not been turned off, she does not believe the freezing would have occurred.

Another complainant, Mr. Donald D. MacAllister, testified that one of the reasons the instant complaint was filed was to establish the water rights to the springs. The testimony of another witness, Robert P. Shorrocks, discloses that two or three parties have prior rights and that Audrain Water Company is entitled to the overflow from the parties with the prior rights. This Commission has no jurisdiction in this regard. Jurisdiction rests with the courts. ✓

Mr. Donald J. Peterson, who appeared on behalf of defendants testified that when French & Westerfield bought Audrain Water Company in approximately 1958, he became the caretaker of the system until approximately 1967 at which time a Mr. Clint Byron assumed the duties of caretaker. He also testified that he handled the sale of the property to the Brauns, which sale included the sale of the Audrain Water Company, subject to approval of the Public Utilities Commission.

An assistant utilities engineer prepared a report which was received in evidence as Exhibit 2. One of the complainants testified that Exhibit 2 was true and complete and covers the situation completely with the exception of a ruling of prior water rights. We have previously stated herein that jurisdiction over water rights questions rests with the courts. Exhibit 2 sets forth the following conclusions:

1. The facilities which were installed to serve the customers of this utility are adequate only to the extent that a very minimal service can be provided. Pipelines are small and in some cases lie aboveground so that freezing occurs resulting in water outages.
2. The utility facilities have been transferred along with the sale of the residence on one of the properties without any authorization having been obtained from the Commission.
3. The absentee ownership of sellers French & Westerfield has resulted in very poor service being rendered to the customers in recent years.
4. Apparently, the best procedure for the customers to follow in resolving the problem would be to form some type of assessment district under authority of the Water Code of the State of California. This would necessitate separating the spring sources of supply from the property on which the residence is now situated and deeding the springs and the 50' x 50' lot to the district.

#### Discussion

The evidence adduced supports staff Conclusions 1, 2, and 3. We concur with staff Conclusion 4; however, until such time as the residents take the initiative to either form an assessment district, or in the alternative, a mutual water company, the present public utility must meet its obligations to the public. Section 851 of the Public Utilities Code provides:

"No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell,

lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. . . ."

An application to transfer Audrain Water Company should be filed with this Commission expeditiously. The storage tanks should also be repaired immediately. It is apparent that there is not sufficient income derived from the system to adequately maintain the system. An application should be filed to increase rates to a level which would enable the utility to maintain the system adequately in the future and to develop the well on the 50' x 50' lot as an alternate water supply. No new customers should be added to the system without approval of this Commission.

#### Findings

1. French & Westerfield sold their property and public utility water company to Brauns.
2. The transfer of the public utility water company has not been approved by this Commission.
3. Water is obtained from springs located on the property set forth in Finding 1 and flows by gravity to two 2,600-gallon redwood storage tanks which are in need of repair.
4. The system presently serves nine customers, of which seven are part time residents (summer and weekends) and two are full-time residents.
5. Customers are charged a flat rate of \$18.00 per year for water.

6. Outages occur during the summer months, especially after a three-day weekend.

7. On one occasion a pipe supplying one of the complainants' residences froze; however, it would not have frozen had a visiting relative not turned off the water supply.

#### Conclusions

1. An application to transfer the water system from French & Westerfield to Brauns should be filed within 30 days after the effective date of this order.

2. The two 2,600-gallon redwood storage tanks should be repaired so that they will hold water to satisfy the needs of the customers.

3. No new customers should be added to the system without approval of the Commission.

#### O R D E R

IT IS ORDERED that:

1. An application to transfer the Audrain Water Company from Jewel E. French and Mary E. Westerfield to Lawrence D. and Robyn L. Braun shall be filed no later than thirty days after the effective date of this order.

2. Upon approval of the transfer application ordered in paragraph 1 of this order, the transferee(s) shall have the two 2,600-gallon storage tanks repaired so that they will hold water to satisfy the needs of the system's customers.

3. In the event the application ordered to be filed in paragraph 1 is not filed, the transfer of the water system will be null and void, and Jewel E. French and Mary E. Westerfield shall effect the repairs ordered in paragraph 2 of this order.

4. No new customers shall be added to the system without approval of the Public Utilities Commission.

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

Dated at San Francisco, California, this 28th day of NOVEMBER, 1978.

Commissioner Vernon E. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Robert Bateman  
President  
William J. ...  
Richard D. ...  
Clive T. ...  
Commissioners