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Decision No. 89867 JAN 16 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARLAND B. JONES,

Complainant,

vs.

SHASTA RETREAT WATER SYSTEM,  
HARRY H. GESTER, Owner  
P.O. Box 697  
Lafayette, California,

Defendant.

Case No. 8936  
(Filed July 15, 1969)

RAYMOND LINCOLN EBBE,

Complainant,

vs.

SHASTA RETREAT WATER SYSTEM,  
HENRY H. GESTER, Owner  
P.O. Box 183  
Alamo, California 94507,

Defendant.

Case No. 9487  
(Filed December 15, 1972)Investigation on the Commission's  
own motion into the practices,  
equipment, facilities, plant,  
storage, supply, and operations  
of Harry H. Gester, an individual,  
doing business as Shasta Retreat  
Water System.Case No. 9666  
(Filed February 20, 1974)

Arland B. Jones, for himself, complainant in Case No. 8936.  
Chris Stromsness, Attorney at Law, for Raymond Lincoln  
 Ebbe, complainant in Case No. 9487.  
Harry H. Gester, for himself, defendant and respondent.  
Wayne L. Booe, Attorney at Law, for Dunsmuir Water  
 Corporation; and Willis E. Thompson, for himself,  
 interested parties.  
Peter Arth, Jr., Ira R. Alderson, Jr., and Elinore C.  
Morgan, Attorneys at Law, and Francis S. Ferraro and  
John D. Reader, for the Commission staff.

O P I N I O N

Background

These consolidated proceedings concern serious and chronic service deficiencies involving the Shasta Retreat Water System (Shasta Retreat). The first of these proceedings was initiated in 1969, when Arland B. Jones filed a complaint (Case No. 8936) against Shasta Retreat alleging that water received from the utility contained dirt, small rocks, leaves, aquatic insects and animals, rotten wood, and pine needles. Mr. Jones requested that the Commission direct Shasta Retreat to install a filtration system.

A public hearing on Case No. 8936 was held in Dunsmuir on January 22, 1970 before Administrative Law Judge Coffey. In addition to the complainant's testimony being taken, a representative of the Siskiyou County Health Department testified that its tests of Shasta Retreat's water showed that it did not meet U.S. Public Health Service standards for bacteriological quality, and that filtration and disinfection would be required to make Shasta Retreat's water safe for public consumption. Decision No. 77017, issued March 31, 1970, in Case No. 8936, directed Shasta Retreat's owner Harry H. Gester, to install a screen and filtration gravel over the intake pipe in the stream serving as the utility's water source. Also, Shasta Retreat was directed to retain a local maintenance person and maintain records in accordance with rules for Class D water utilities.

Service problems on the Shasta Retreat system did not abate however.

On December 15, 1972 Raymond Lincoln Ebbe filed a complaint (Case No. 9487) against Shasta Retreat alleging that the utility had no resident manager to maintain the water system, and that broken water lines caused perilous ice conditions during periods of freezing temperatures.

On July 17, 1973, the Commission, by Decision No. 81607, issued an Order to Show Cause in Case No. 8936 (based on the application for an Order to Show Cause presented by the Commission Secretary and supported by affidavits) why Shasta Retreat's owner should not be found in contempt for violating Commission orders issued in Decision No. 77017.

A duly noticed public hearing on Cases Nos. 8936 (reopened) and 9487 was held before ALJ Jarvis in Dunsmuir on July 26, 1973. The matters were submitted on August 7, 1973. Before a Commission decision was issued, an Order Instituting Investigation (Case No. 9666) was issued because there was cause to believe that flooding during the winter of 1973 destroyed Shasta Retreat's water intake structure. The scope of Case No. 9666 is very broad, being an investigation to determine what Commission action is necessary to protect the utility's customers and insure that adequate public utility service is provided by Shasta Retreat.

Submission of Cases Nos. 8936 and 9487 was vacated by Decisions Nos. 82515 and 82516, and further hearing was held in Dunsmuir on June 26, 1974 before ALJ Jarvis, and the matters were submitted on August 5, 1974.

By Decision No. 84639 (an interim order) issued July 8, 1975, Shasta Retreat's owner was found in contempt for violating orders in Decision No. 77017 and was fined \$600. That decision also again directed Harry Gester (who resides in Contra Costa County) to retain a local Dunsmuir area maintenance person. With respect to bringing the utility's water into compliance with public health standards, Harry Gester was directed to apply for and obtain a water supply permit from the Siskiyou County Health Department and to advise the Commission when he obtained loans to construct chlorination and filtration facilities. At the hearing on June 26, 1974 testimony was again presented (as it was in 1970) that the bacterial count was routinely excessive according to Siskiyou County Health Department testing.

Developments Since the Issuance of Decision No. 84639

The Commission staff noted and advised that there appeared to be noncompliance with the Commission's orders in Decision No. 84639. And on September 2, 1977 the Siskiyou County Health Officer, R. W. Bayuk, M.D., by letter requested the Commission to enforce compliance with Decision No. 84639, warning that the occurrence of a serious disease outbreak was an ever-present possibility given Shasta Retreat's untreated surface water source.

On June 22, 1978 further public hearing was held in Dunsmuir before ALJ Fraser, with Commissioner Gravelle in attendance. Raymond Ebbe appeared and requested that his complaint (Case No. 9487) be withdrawn; accordingly, that matter should be dismissed. Harry Gester indicated that he was seriously negotiating with a possible purchaser to sell the water system.

The Commission staff presented testimony and Exhibit No. 1 (in Case No. 9666) through a Senior Utilities Engineer which indicated several bases for determining the value of the Shasta Retreat system. On a depreciated plant value basis he estimated the system (originally built in 1914) had a value of about \$460. He believed a reasonable estimate of "fair value" to be in the range of \$2,000 to \$2,500.

The hearing was adjourned with the expectation, based on Harry Gester's representation, that a sale of the utility to a more financially viable party was imminent.

After a lapse of time another duly noticed public hearing was held in San Francisco on December 18, 1978 before ALJ Alderson for the purpose of determining the status of Harry Gester's efforts to sell Shasta Retreat or to otherwise bring the system to the point of supplying safe drinking water, with the ultimate goal to bring the system into compliance with General Order No. 103.

It is apparent from a review of the evidence that Shasta Retreat, in its present condition and with the existing supply source, poses a significant public health threat. The problem has persisted for a number of years. The dilemma is one all too common in our

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experience. The utility has such a limited number of customers (now about 70) that it is virtually impossible to install chlorination and purification facilities, and new distribution lines (to insure that septic field leaching does not leak into the water lines), with the cost of such improvements being covered by customer rates. Our policy is not to certificate uneconomic water utilities, and we would be very rigorous in our analysis before certificating a new system of Shasta Retreat's size. One solution would be the formation of a water district, which could qualify for various grants and low interest loans, but that has not materialized for the Shasta Retreat customers. The dilemma seems a hoax on the affected customers, for whether they know it or not their health is in jeopardy, yet water rates would be near prohibitive if the utility raised capital to modernize the system and to install its own purification facilities, and rates were set to service the debt and provide a return on undepreciated plant investment.

The Proposed Sale and Transfer of the Shasta Retreat Water System

At the public hearing on December 18, 1978 Exhibit No. 2 (in Case No. 9666) was received, which is a copy of an executed Agreement of Sale between Harry H. Gester and the Dunsmuir Water Corporation which provides for the sale of the Shasta Retreat public utility facilities to a contiguous water utility, Dunsmuir Water Corporation. The purchase price is \$1,800, and the closing date is to be no later than twenty days after the Commission approves the sale.

The District Manager for Dunsmuir Water Corporation, Mr. Wayne Booc, testified and presented three maps as exhibits. They illustrate the locations of mains of Shasta Retreat and Dunsmuir Water Corporation and the approximate location where the two systems could be intertied, allowing Dunsmuir Water Corporation's water source to supply Shasta Retreat customers.

Exhibits Nos. 3, 4, and 5 are received in evidence. Mr. Booe testified that within a few days from the date the Commission approves the proposed transfer the intertie could be made (near the corner of Hemlock and Halt Avenues). Freezing weather could, he noted, cause some temporary delay. Further, Mr. Booe indicated that the increased water pressure in the Shasta Retreat mains resulting from the intertie could and probably would cause leaks, for the Shasta Retreat mains are very old and in ill repair. Efforts will be made to repair leaks expeditiously according to Mr. Booe. Mr. Booe testified that the Dunsmuir Water Corporation has an adequate water supply to serve Shasta Retreat. ✓

The Commission takes official notice of Dunsmuir Water Corporation's 1977 Annual Report and finds that the utility is financially viable and service to its customers will not be jeopardized as a result of its acquiring the Shasta Retreat system.

Notice of the Proposed Sale and Transfer and Protests

The Dunsmuir Water Corporation was directed to provide notice to all Shasta Retreat customers of the proposed transfer within five days from the public hearing. The Commission is advised that a notice was delivered door-to-door on December 20, 1978. A copy of the notice provided by Dunsmuir Water Corporation is received as Exhibit No. 4. Customers were directed to submit any comments or protests to the Commission on or before January 5, 1979. ✓

The Dunsmuir City Manager expressed concern about the magnitude of rate increases authorized and requested by Dunsmuir Water Corporation. He requested a public hearing in Dunsmuir to consider a recent rate increase request made by Dunsmuir Water Corporation, which is a separate matter apart from the transfer of Shasta Retreat.

Seven other letters of protest concerning the proposed transfer were received. Most expressed concern about possible metering of the Shasta Retreat system (it is now a flat rate system) and increases in water rates. Two parties expressed the opinion that employees of Dunsmuir Water Corporation were not skilled or knowledgeable enough to operate and improve the Shasta Retreat system. Finally, two parties indicated the time allowed to protest was too short. ✓

Discussion

We believe the sale of the Shasta Retreat system to the contiguous utility is in the public interest. Although Shasta Retreat's present owner, Mr. Gester, may have good intentions, the evidence in these proceedings over the years illustrates that he is unable to infuse needed capital to bring the system into conformance with applicable water quality laws and our General Order No. 103. If we did not approve the proposed transfer a public health time bomb would continue. Although it will take a number of years to fully modernize and rebuild the Shasta Retreat system, within days of our approval of the transfer, water which meets applicable public health standards can be distributed to Shasta Retreat's customers. (Dunsmuir Water Corporation possesses a water supply permit issued by the Siskiyou County Health Department.) ✓

Ordinarily a separate application is filed to request transfer of a water utility. In this instance time is critical and we will consider the proposed sale in Case No. 9666. Notice to affected utility customers has been provided and we have considered comments and protests. There is, we believe, no need for additional hearings. We are faced with the fortunate opportunity of having a viable alternative for improving service to Shasta Retreat's customers, and further delay would prolong exposure of the customers to a serious health threat.

The ALJ indicated at the December 18, 1978 hearing that he would recommend to the Commission that Dunsmuir Water Corporation be allowed a maximum of five years to bring the Shasta Retreat system into compliance with General Order No. 103 as a means of lessening the financial impact of essentially totally rebuilding the system. We believe that recommendation is reasonable. A review of the evidence in these proceedings shows that the Shasta Retreat system is in a dire state. The intertie with Dunsmuir Water Corporation will solve the most critical problem in that safe drinking water can be delivered to customers. The Shasta Retreat system's other problems can, as a matter of priority, wait for attention. We recognize that the rebuilding of the Shasta Retreat system will require a substantial investment and plant addition for a water utility of Dunsmuir Water Corporation's size. Accordingly, we will entertain for five years an advice letter filing no more often than every 12 months to provide offset rate relief to compensate for the new plant in service added to upgrade the Shasta Retreat system. ✓

The ALJ also announced at the hearing that he would recommend modification of Decision No. 84639, in the event the Commission approved the proposed transfer, to vacate Ordering Paragraphs Nos. 1 and 2 (which provided for fines, totalling \$600, as a result of Harry Gester's having been found in contempt). Mr. Arland Jones, the complainant who initiated the first of these proceedings, objected. We believe Mr. Gester has demonstrated a degree of good faith in seeking to sell Shasta Retreat to a purchaser who possesses the ability to provide adequate utility service. In view of these developments we conclude that Decision No. 84639 should be modified by vacating Ordering Paragraphs Nos. 1 and 2. Adequate notice has, under the circumstances, been provided that a prior decision may be modified. Also, we modify orders concerning a fine that was imposed at our instigation and such modification does damage to no other parties to these proceedings.



### Findings

1. Harry H. Gester has been the sole owner of Shasta Retreat, a public utility, since 1967, and from 1964 to 1967 owned the system in partnership with Gael C. Himmah.
2. The Shasta Retreat system's existing water source, and the lack of purification facilities, results in its customers' consuming water that does not meet applicable public health standards.
3. Despite the clear need for a source of safe drinking water and general system improvements, the owner of Shasta Retreat has not brought about such modifications to the system.
4. The Shasta Retreat system, because of its small size (about 70 customers), is financially nonviable; and the cost of constructing and operating purification facilities, when translated into rates, would be prohibitive to the customers.
5. An Agreement of Sale has been executed which provides for the transfer of the Shasta Retreat waterworks facilities to contiguous Dunsmuir Water Corporation, a public utility.
6. Dunsmuir Water Corporation possesses an adequate water supply, which meets public health requirements, to provide service to the Shasta Retreat customers by means of an intertie between the two systems.
7. Dunsmuir Water Corporation possesses the financial ability and fitness to assume providing public utility water service to the customers of the Shasta Retreat system.
8. Notice of the proposed transfer has been provided to Shasta Retreat's customers.

### Conclusions

1. The proposed transfer of the Shasta Retreat waterworks facilities to the Dunsmuir Water Corporation should be authorized.
2. Ordering Paragraphs Nos. 1 and 2 of Decision No. 84639 should be vacated.

3. The Dunsmuir Water Corporation, and any successors in interest, should be directed to bring the Shasta Retreat system into compliance with General Order No. 103 within five years from the effective date of the following order.

4. The Dunsmuir Water Corporation should be directed to intertie its system with the existing Shasta Retreat system to provide water that meets public health standards to Shasta Retreat's customers within thirty days from the effective date of the following order.

5. Case No. 9487 should be dismissed.

6. In view of the need to improve the quality of water and service to Shasta Retreat's customers at the earliest date the following order should be effective the date of signature.

O R D E R

IT IS ORDERED that:

1. On or before thirty days after the effective date of this order, Harry H. Gester may sell and transfer the Shasta Retreat Water System and other assets referred to in the record in these proceedings to the Dunsmuir Water Corporation.

2. As a condition of this grant of authority, purchaser shall assume the public utility obligations of seller within the area served by the water system being transferred and shall assume liability for refunds of all existing customer deposits and advances pertaining to the water system being transferred. Purchaser shall send notice of the assumption of liability for refunds to all customers affected.

3. Within ten days after completion of the transfer purchaser shall notify the Commission, in writing, of the date of completion and of the assumption of the obligations set forth in paragraph 2 of this order.

4. Purchaser shall either file a statement adopting the tariffs of seller now on file with this Commission or refile under its own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.

5. On or before the date of actual transfer, seller shall deliver to purchaser, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

6. Upon compliance with all of the terms and conditions of this order, seller shall be relieved of its public utility obligations in connection with the water system transferred.

7. Within five years from the effective date of this order purchaser, and any successors in interest, shall bring the Shasta Retreat Water System into compliance with General Order No. 103. The Dunsmuir Water Corporation is authorized to file an advice letter to increase rates as a rate base offset every twelve months to allow a return on plant additions to upgrade the Shasta Retreat Water System.

8. Decision No. 84639 is hereby modified in that Ordering Paragraphs Nos. 1 and 2 are vacated.

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9. Case No. 9487 is hereby dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th  
day of JANUARY, 1979.

Robert B. Berman  
President  
Robert D. Gable  
Clare L. DeRish  
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Commissioners