

MAY 20 1980

ORIGINAL

Decision No. ~~91806~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
Robert F. Popp for an exemption to
the building moratorium, Tulare Co.)

Application No. 59158
(Filed September 24, 1979)

JOHN T. BEGLEY, AUDLEY R. CAMPBELL,
J. C. EVANS, CARLOS B. MORRISON, AND
BERTHA HUTCHINS,)

Complainants,)

vs.)

Case No. 10763
(Filed July 26, 1979)

GERALD WEDEL, doing business
as PINE MOUNTAIN WATER CO.,)

Defendant.)

PINE MOUNTAIN RANCH PROPERTY
OWNERS ASSOCIATION,)

Complainant,)

vs.)

Case No. 10775
(Filed August 24, 1979)

GERALD WEDEL, doing business
as PINE MOUNTAIN WATER CO.,)

Defendant.)

C. B. Morrison, for himself, a complainant
in C.10763; for Pine Mountain Ranch
Property Owners Association, complainant
in C.10775; and for Robert F. Popp,
applicant.

Dale Rowden, for Tulare County Health
Department, interested party.

Joseph G. Giuffre, Attorney at Law, for
derendant.

Herbert R. McDonald, for the Commission
staff.

O P I N I O N

Present Operations

Gerald Wedel, dba Pine Mountain Water Company (PM), supplies water to an isolated mountain community located near the unincorporated community of Pine Flat in Tulare County partially bounded by the Sequoia National Forest. Elevations within PM's service area range from approximately 3,820 to 4,160 feet above sea level. PM serves four of the five subdivisions in its certificated area. As of October 1979 PM served 56 customers. The following tabulation shows the occupancy level within the service area:

<u>Subdivision</u>	<u>Customers</u>	<u>Lots in Certificated Area</u>
Tract 416 (Rainbow Ranch)	4	4
Tract 455 (Rainbow Ranch)	23	25
Tract 438 (Pine Mountain)	12	44
Tract 454 (Pine Mountain)	<u>17</u>	<u>83</u>
Total	56	156

Summary of Complaints

Complainants in C.10763 and C.10775 allege that water service provided them by PM has been defective as follows: (a) PM failed to provide an adequate water supply, subjecting complainants and their homes to health and safety hazards from lack of water or no water at all, including a three-to four-day-long outage, and to extreme fire hazard because there was no water for fire protection; (b) PM has not properly maintained its system and has not resolved problems brought to its attention by numerous telephone calls; and (c) PM has not put

a second well and a 64,000-gallon storage tank into service pursuant to Ordering Paragraph 9 of D.73312^{1/} dated November 7, 1967 in A.49328.

Complainants request an order from this Commission requiring defendant to activate Well No. 2 and install a 64,000-gallon storage tank. Complainants in C.10763 also request that the Commission consider authorizing the Pine Mountain Ranch Property Owners Association to "assume maintenance and/or certificate of tariff" if PM did not install these facilities.

1/ "9. Applicants shall install their planned water supply and storage facilities to provide for the reasonable continuation of an adequate water service to their certificated areas in the following manner: When the number of customers reaches 40, applicants shall have equipped Well No. 2 with a pump capable of discharging at least 17 gpm to the distribution system. When the number of customers reaches 50, applicants shall have installed a second storage tank of 64,000 gallons. When the number of customers reaches 200, applicants shall have developed and connected to the system an additional source of water supply and/or storage facilities or a combination thereof."

Summary of Application

Applicant, Robert F. Popp, requests an exemption from the moratorium ordered by D.89266²/ dated August 22, 1978 in A.57439 to permit the reconnection of his residence to the PM system. The application states that "Mr. Begley was the contract builder for our residence...and in this capacity he was responsible for obtaining all the necessary permits in order to build this structure. At no time were we informed that a building moratorium was in effect. The electric power was connected in June of this year without any comments from the power company."

Discussion of Moratorium

Begley, a complainant in C.10763, is a local builder, builder. Begley testified that he operated the PM system before it was acquired by Wedel. Begley believed that Wedel violated the moratorium by providing service to a property. He felt that if Wedel could violate the order, he could also violate the order, and he proceeded to connect the Popp residence to the PM system (RT 57-59). Wedel testified that water service had been provided to a trailer on the property before the moratorium was imposed (see late-filed Exhibit 3-A). Wedel reconnected the service to supply a residence under construction on that lot. Begley denies making other unauthorized connections

2/ "3. Purchaser shall make no new connections until such time as it can demonstrate a sufficient water supply to provide for additional customers without adversely affecting service to existing customers. Purchaser shall exempt therefrom all applicants for service having a building permit issued prior to August 25, 1978."

to PM's system. Wedel disconnected Popp's service to comply with the moratorium. None of the parties objected to providing water service to Popp and to four other applicants for service, William R. Stark, Lee R. Hubner, Lawrence A. Fry, and Robert Head, who own homes (or homes being built) in PM's service area.

Begley requests a lifting of the moratorium because it affected his livelihood. He contends that the moratorium prevents him from working, collecting money for work done on unoccupied houses with no water connections, or from making new building commitments. He further contends that the moratorium was due to the Commission's not enforcing its own orders and that the moratorium violated his rights under the Tenth and Fourteenth Amendments to the U.S. Constitution.

Other Background Information

D.70198 dated January 11, 1966 in A.47946 granted the initial certificate of public convenience and necessity for this utility to a partnership of N. Johnson and L. King dba Pine Mountain Water Company.

Issues concerning the adequacy of supply and storage for the PM system have been raised in other applications, complaints, and in a Commission investigation. In addition to the above cited decisions restricting the utility, D.82179 dated November 27, 1973 in C.9355 directed that no water service be provided outside of the PM's present service area.

Johnson subsequently left California and authorized King to act for her with respect to the utility. D.89266.

dated August 22, 1978 in A.57439 authorized King to sell the water system to Wedel. Inter alia, D.89266 contains the following findings:

"3. Under the present system, the available water supply is insufficient to meet peak water needs of existing customers."

* * *

"5. Wedel is financially able to operate the water system.

"6. Wedel is operationally capable of running the water system.

"7. Wedel owns property, within the water system's service area, which he intends to develop and sell.

"8. Wedel has evidenced his intentions of devoting his serious efforts to operate the water system by his advancement of \$5,000 for the maintenance and repair of the system and the furnishing of a part-time employee to keep the system in operation.

"9. Wedel is a superior alternative to having the water system under the control and operation of a lifeless partnership."

* * *

"11. While Wedel was shown to have had something to do with the operation of the water system beginning around December 1976 which may have bordered on the unlawful assumption of control of the water system, his actions under the circumstances spoke more of his being a caretaker of the water system rather than the ultimate controller of it."

Hearings

The original consolidated hearing^{3/} in these proceedings was held in the city of Porterville on January 22, 1980 before Administrative Law Judge Levander (ALJ). The Commission process office inadvertently failed to mail hearing notices to the parties. The staff notified some of the parties of the hearing, by telephone, before the hearing. In order to preserve the rights of the parties to be heard, the ALJ issued a ruling permitting complainants, defendant, applicant, and four additional individuals seeking water service to submit additional written information for the record in these proceedings and/or to request that a further hearing be scheduled; and to provide the parties with an opportunity to respond to the additional information submitted. None of the parties requested further hearing. Comments, additional evidence, and a response were received. These proceedings are submitted.

Several customers testified that electrical outages had resulted in interruptions of service by PM. After the hearing the ALJ requested Southern California Edison Company (SCE) to furnish a log of electric service interruptions to PM's well pumps. The ALJ distributed the service interruption log, maps, and SCE's explanatory cover letter to the parties as proposed Exhibit 7. None of the parties objected to the receipt of Exhibit 7. However, complainant Morrison stated that a 92-hour outage affecting his residence was not listed. SCE stated that there were prolonged interruptions of its service due to high winds that were not included in Exhibit 7 (see Exhibit 7-1).

^{3/} Complainants requested and were granted a continuance of a hearing scheduled for December 11, 1979 after a staff report (Exhibit 5 herein) was distributed to the parties.

McDonald, a staff engineer, is a registered civil engineer who has a Water Treatment Operators Certificate issued by the State of California. He testified that: (a) when built, the distribution system was designed by a registered civil engineer in accordance with the Commission's General Order No. 103 (GO 103), i.e., no fire-flow requirements were mandated;^{4/} (b) PM has connected a second well to its system; (c) the "reported" capacity of Well No. 1 is 26 gallons per minute (gpm), but the well is equipped with a 16 gpm pump which operates approximately 12 minutes out of every 42 minutes,^{5/} which equates to an average production rate of 4.6 gpm; (d) the comparable "reported" and average production rates of Well No. 2 are 17 gpm and 7.7 gpm; (e) another well, the Rainbow Ranch well, with a "reported" capacity of 15 gpm, is inoperative due to pump damage; (f) the operative production capacity of 12.3 gpm can supply approximately 300 gallons per day (gpd) for each of the 56 customers served, but it is insufficient to meet estimated peak per customer summer demands of 750 gpd or a total of 42,000 gpd; (g) the peak demand exceeds PM's supply by 24,300 gpd, which would deplete the existing 64,000-gallon storage tank in 2.6 days; (h) he recommends that PM develop another source of water sufficient to meet its peak daily demands and to enhance the system supply assuming another main break or a pump failure; (i) a hydropneumatic system provides service to two customers whose homes are above the storage tank; (j) other customers in the Pine Mountain Ranch

^{4/} Any extension of service would have to meet fire-flow requirements.

^{5/} Low water probes shut off the submersible well pumps when the water levels in the wells drop.

area are supplied from the storage tank and wells system; (k) the Rainbow Ranch area is supplied from the main system using a 4-inch and a 1½-inch pressure-reducing valve; (l) an outage occurred in June 1979 when a water main break above the pressure reducing valve vault caused the draining of the storage tank; (m) Well No. 1 was the only well in service during June and July 1979; (n) during this period there were low pressures and water outages in the Pine Mountain area; (o) PM tried to apportion its supply by temporarily cutting off service to the Rainbow Ranch to supply the upper portion of its system; (p) after Well No. 2 was placed in service, the storage tank was filled, low pressures and outages were eliminated, and there was sediment in the water for a short period of time; (q) it is more important to have an increased water supply than to add the additional storage at this time; and that (r) installation of the additional storage tank could be safely deferred until there were 100 customers on the system.

McDonald also testified that it would be difficult to measure the fluctuating capacity of PM's wells, but that installation of a production meter on each well would enable PM to measure the output of its wells during longer periods of peak demands and that measurement of such production was required by GO 103.

He suggested that two new potential well sites, restoration of the Rainbow Ranch well or development of a spring, could be investigated to secure additional water for

the system.^{6/} He conditioned his recommendation for supplying service to five additional customers upon the connection to PM's system of an additional source of supply. His recommendation for permitting service, within the existing service area, of up to 100 customers was based upon an addition of a new water supply of at least 15 gpm. He recommended that PM file a study showing its system requirements and PM's proposal to meet the requirements of over 100 customers either with storage, an additional water supply, or with a combination thereof.

McDonald stated that there was no indication of an abandonment of service by Wedel. He recommended that the requested transfer of maintenance of the system and/or certificate or tariff should be denied.

Complainants reiterated the contentions in the complaints. Morrison, a registered industrial engineer, prepared a schematic of the system and made an analysis of various supply and storage scenarios in support of complainants' request that PM be required to promptly install an additional 64,000-gallon storage tank as well as a second source of supply. Complainants reiterated the need for PM to promptly resolve service problems brought to its attention, including making a leak repair to avoid again draining PM's storage tank. They reiterated the need for additional storage because of the loss of well production due to extended power outages.

^{6/} Wedel could also explore the possibility of deepening or enlarging his existing wells.

Wedel is a well driller who controls the Pine Flat Water Company and PM. He concurs with the staff recommendations. He is willing to hook up the five applicants for service with Commission approval. He testified that his well production is greater than indicated by the staff due to the rapidity with which PM's storage tank was refilled after Well No. 2 was placed in service--at a rate greater than the staff estimate of production, absent any consumption.

Wedel attributed the delay in putting Well No. 2 in service to resolve problems with clay material in the water-bearing zones,^{7/} which required repeated blowing out of the well, and to delays in getting a power line to the well, which included right-of-way problems.

Wedel proposes to repair and connect the Rainbow Ranch well to his system (by about June 1, 1980). He desires to isolate the Rainbow Ranch area from the rest of the system by connecting the Rainbow Ranch well to the water system in that area and to a 30,000- or 33,000-gallon hydropneumatic tank by about July 1, 1980. He would install the tank, which he owns, on a parcel in Unit 3 of the Pine Mountain Ranch. This tank would provide a minimum pressure of 45 psi to the Rainbow Ranch if used as a gravity feed tank. He would also provide an air-gap feed to a 12,000-gallon tank for fire fighting purposes.

^{7/} This problem is a recurring one. Well No. 2 was again out of service at the time of hearing. The well production was being wasted until it ran clear.

The existing pressure regulators could supply the area if the Rainbow Ranch well was taken out of service. McDonald testified that if Wedel implemented his plan it would be desirable to provide a means of supplying water from the Rainbow Ranch well to the Pine Mountain Ranch area by installing a booster pump for use if Well No. 1 or Well No. 2 was out of service. He testified that the pressure-reducing vault was near a power pole and he believed a booster pump could be installed in the vault.

Wedel's responses to the complaints contend that:

- (a) the requirement for installation of a second 64,000-gallon storage tank, when 40 customers are served, pertains to customers in the Pine Mountain subdivisions;
- (b) PM serves 29 customers in the Pine Mountain subdivisions and does not have to add the 64,000-gallon tank to its system at this time;
- (c) there is insufficient water to fill both storage tanks and health hazards would develop due to contamination of water stored for a greater length of time than necessary;
- (d) if another storage tank were required, it would cost \$25,000 to \$30,000 which would require a large increase in water rates;
- (e) PM showed an \$8,000 deficit in 1978; and
- (f) Begley has PM's "lay maps" (maps of PM's water mains as built) and its wrenches for turning water on and off, and Begley has completed hookups without Wedel's permission.

Wedel requests a Commission order directing Begley to furnish the as-built maps and wrenches to him, together with a restraining order preventing Begley from opening, closing, or in any way interfering with PM's water flow.

Complainant Campbell testified that (a) he, Wedel, and Mr. Tibeau were trying to connect Well No. 2 to the system but could not locate an existing 6-inch main; (b) Wedel said Begley had the as-built map; (c) he and Tibeau sought the map from Begley; (d) Begley said he ran the system for three years without pay but with an arrangement for being paid for his work by King when the system was sold; and that (e) Begley felt the map was the only leverage he had to get paid for operating the system.

Begley testified that (a) King and Johnson abandoned the system; (b) "we on the ranch had to have some way of maintaining a water system that was abandoned,"; (c) he had installed mains in the system; (d) he purchased a local map and located water lines and valves on the map; (e) he still possessed the map; (f) he believed the map was his personal property; (g) he did not believe that King filed maps with the Commission, as ordered; and that (h) he was not required to give up his map to anyone.

Dale Rowden, a senior sanitarian for the Tulare County Health Department (HD), expressed concern for the health of water users on PM's system due to service interruptions. He stated that: (a) given the elevation changes in PM's system, these interruptions pose a serious threat of back-syphoning of contaminants into the system; (b) PM's recent experience with Well No. 2 has shown that it may not produce clear water at all times and the well may be subject to contamination during wet seasons; (c) most of the outages were attributable to PM's marginal water supply; (d) the recently adopted State Health Department Standards specify a minimum source production of 85 gpm for 55 customers and

50,000 gallons of storage exclusive of fire flow; (e) current Tulare County Improvement Standards require a fire flow of 500 gpm for two hours (60,000 gallons) for new systems; and that (f) HD supports Commission action to increase PM's water supply and storage.

Discussion

PM's present water supply is inadequate. The aquifer supplying Well No. 2 contains materials which can contaminate the supply following heavy rains.

Wedel's proposal for serving the Rainbow Ranch area is reasonable. The proposal should result in lower total power consumption since pressure reduction of high pressure water from the main system to the Rainbow Ranch system would be unnecessary under normal operations. However, the pressure regulators should be kept in an operable condition and provision should be made for boosting water into the main system from the Rainbow Ranch well to provide an alternate supply for both pressure zones for meeting emergency conditions and to provide an alternate supply when a well is temporarily taken out of service.

D.72007 authorized the utility to extend into Tract 454 in the Pine Mountain area and to extend into the Rainbow Ranch area.^{8/} The subsequent requirement for added storage and supply contained in D.73312 also authorized the extension of the system into Pine Mountain Ranch Unit 3 subdivision provided that the developer waived refunds on advances for construction until the ratio of advances for

^{8/} Pursuant to an agreement, backup facilities were to be contributed by the developers and in-tract facilities were to be reconstructed to comply with GO 103.

construction to depreciated plant dropped below 50 percent. Pursuant to D.73312 PM is now obligated to add 64,000 gallons of storage to its system. If possible, this additional storage should be designed to supply the main system and to provide pressure for the Pine Mountain Unit 3 subdivision. The prolonged outages of power supply^{9/} to PM's wells, together with the sub-marginal supply, also justify requiring PM to install the added 64,000 gallons of storage at this time.

We will permit PM to connect the above-mentioned five potential customers to its system after PM certifies that it has placed a third well or a spring in service. However, we will not further lift the restriction on adding customers until PM submits a study prepared by a registered civil engineer demonstrating PM's ability to meet its peak flow needs, together with an as-built system map. This study should be promptly reviewed by the Commission staff. If modifications are necessary, the staff should advise PM and/or its engineer of its suggestions. If the study or revised study is satisfactory, the staff should advise the Executive Director of the Commission of its recommendation to lift or partially lift the restriction. The Executive Director will then advise PM of the modification to the restriction.

^{9/} SCE states that it takes 1½ to 2 hours to dispatch its crews to the PM area during regular working hours and another hour outside of normal hours. SCE usually dispatches two crews to the PM area when there is an outage to expedite the return of service because the local mountainous terrain is slow to traverse. SCE does not re-energize circuits until the affected area is patrolled and the fault is determined and corrected.

D.89266 contains no provision for or indication that money was owed Begley by King in the transfer proceeding (A.57439). It appears that Begley is seeking to obtain a ransom from the present water system proprietor for the as-built water system map he possesses. Begley could have sought relief from the prior owner of the system through the courts, or if an employee, through the State Division of Labor Standards Enforcement. Instead, he holds on to the map to the detriment of water service reliability and, as a complainant, attacks Wedel for not meeting his water company obligations.

We do not have sufficient information to determine title to the map and equipment held by Begley. If Wedel has proof of ownership, he can use the courts for recovery. Wedel can also sue in civil court or file criminal charges to prevent unauthorized connections and he can discontinue such service pursuant to Sections I.6.d. and I.7. of GO 103. Begley is not a utility under our jurisdiction.

The location of mains installed in the system deviated from the plans prepared by the design engineer. Apparently line locations were shifted to avoid the great expense of removing underground rocks in the mountainous terrain served by PM. Wedel's equipment for locating buried valves and valve covers was inadequate. He should explore whether more sensitive valve or metal locator equipment is on the market or explore the possibility of using a surveyor's dip needle for this purpose.

PM should file a description of its present procedures for normal operations of its system and for responding to service complaint calls. PM should set forth modifications to its procedures to more expeditiously respond to and correct service complaints, breakage, or leak calls.

PM may need rate relief to fulfill its utility obligations. Wedel, as a developer, could reduce PM's future revenue requirement if the cost of future extensions of service (i.e., to the Pine Mountain Unit 3 subdivision) are accounted for as contributions in aid of construction.

Findings of Fact

1. PM's present water supply is inadequate.
2. PM now serves 56 customers.
3. PM is obligated to install an additional source of supply and 64,000 gallons of storage to its system pursuant to Ordering Paragraph 9 of D.73312. The evidence on water supply, water requirements, and outages in this proceeding reinforces the need for installing these facilities to comply with GO 103.
4. If PM expands its service into the Pine Mountain Ranch Unit 3 subdivision, PM would have to meet the fire-flow requirements of GO 103 or of Tulare County in that subdivision. The existing 64,000-gallon tank and the new 64,000-gallon tank could be utilized to meet domestic and fire-flow requirements.
5. PM should be authorized to add the above-mentioned five customers to its system after filing its certification that it has added another source of supply to its system.

6. It is not possible to measure the output of PM's sources of supply at this time. Such measurements are required pursuant to Section II.4. of GO 103. This requirement can be met by metering PM's sources of supply.

7. PM's proposal for service to the Rainbow Ranch area is reasonable with the modifications described herein.

8. PM should file a description of its present normal operating procedures and its procedure for processing service complaints, breakage, and leak reports. PM should submit a description of changes in its procedures to more expeditiously respond to and correct service complaints, breakage, or leak calls.

9. Complainants provided no basis for transfer of control of PM.

Conclusions of Law

1. PM should connect an additional source of supply and an additional 64,000-gallon storage tank to its system to meet the requirements of its customers in compliance with GO 103.

2. PM should be authorized to supply water to the five customers now requesting service upon its certification that it has added another source of supply to its system.

3. PM should not be authorized to serve any other new customers until it files an as-built map, completes the design work and staff review process described herein, and obtains the Executive Director's authorization.

4. The request for transfer of control of PM should be denied.

5. PM should meter its sources of supply.

6. PM should file an as-built system map prepared in compliance with Section I.10.a. of GO 103.

7. The Commission concludes that the effective date of this order should be the date hereof to expedite the installation of needed facilities.

O R D E R

IT IS ORDERED that:

1. Gerald Wedel, dba Pine Mountain Water Company (PM), shall install an additional metered source of supply to the system as expeditiously as possible, but not later than sixty days after the effective date of this order. Within eight days after the supply is placed in service, PM shall file a written completion notice with the Commission, together with the output rate measured over seventy-two hours.

2. PM may supply the applicants, Robert F. Popp, William R. Stark, Lee R. Hubner, Lawrence A. Fry, and Robert Head, water service upon compliance with Ordering Paragraph 1 herein.

3. PM shall not supply service to any other new customer until authorized to do so by the Executive Director of the Commission based upon the procedures set forth in Conclusion 3 herein.

4. The request for transfer of control of PM is denied.

5. PM shall meter its Well No. 1 and Well No. 2 output within ninety days after the effective date of this order. Within eight days after the meters are placed in service,

PM shall file a written completion notice with the Commission, together with seventy-two-hour well production rates.

6. PM shall install an additional storage tank with a capacity of at least 64,000 gallons as expeditiously as possible, but not later than ninety days after the effective date of this order. Within five days after the new tank is placed in service, PM shall file a completion notice with the Commission.

7. PM shall file an as-built system map prepared in compliance with Section I.10.a. of General Order No. 103 within one hundred eighty days after the effective date of this order.

The effective date of this order is the date hereof.

Dated MAY 20 1980, at San Francisco,
California.

John E. Byron
President

Veronica L. Sturgeon
Richard W. Goodie

Paul J. D. Smith

Samuel Davis
Commissioners