

ORIGINAL

Decision No. 92027 JUL 15 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of WILLIAM G. HAY and DELTA HAY,)	
doing business as POINT ARENA)	Application No. 59236
WATER WORKS to modify Ordering)	(Filed October 24, 1979)
Paragraphs 3 & 4 of Decision 49352.)	
<hr/>		

O P I N I O N

By this application Point Arena Water Works (Point Arena) seeks:

- "(1) an Order modifying Decision No. 43952 [sic - 49352] so as to delete ordering paragraphs 3 and 4 thereof; or, in the alternative, for
- "(2) an Order instituting an investigation by the Commission for the purpose of determining whether Petitioners need the water supply available at the McMillen spring together with the necessary easement and right of way to enable them to connect said spring to their existing water system."

In Ordering Paragraphs 3 and 4 in Decision No. 49352 dated November 24, 1953 we ordered:

"3. William G. Hay and Delia Hay, his wife, shall, within three months after the effective date of this order acquire the supplementary water supply available at the McMillen spring on Point Arena Creek together with the necessary easements and rights of way to enable them to connect said supplementary water supply to their existing system, or institute condemnation proceedings for the purpose of acquiring said water supply together with said easements and rights of way, and within thirty days after said acquisition of property or after the institution of said condemnation proceedings, file with this Commission copies of documents by which said properties were acquired, or copies of the pleadings filed to institute condemnation proceedings, as the case may be.

- "4. Within three months from the date William G. Hay and Delia Hay have the legal right to do so they shall install the necessary pumps, automatic chlorinator, mains and other equipment necessary to chlorinate the water and to connect said supplementary supply of water to their existing public utility water system, and within thirty days after the installation of said improvements, notify the Commission in writing of the completion of said installations."

Point Arena states that pursuant to our 1953 decision, it leased McMillen Spring from the owners of the property and continuously used the spring in its operation without interruption from about December, 1953 until June 1, 1978. On September 14, 1977 the owners of the spring advised Point Arena that they must discontinue use of said spring by no later than June 1, 1978. Point Arena states that it was unable to acquire the water supply available at the spring by negotiations between September 1977 and July 1978. On July 26, 1978, Point Arena filed a Complaint in Eminent Domain in Proceeding Number 40174 in the Superior Court for the County of Mendocino against the owners and all claimants to the property upon which the spring is located, for the purpose of acquiring an easement for the spring and a related water pipeline and a power line in order that a supply of water from the spring could be available to meet the public utility obligations of Point Arena.

On July 26, 1978, the Superior Court issued its Order Permitting Immediate Possession by Point Arena of the property sought to be condemned. As of August 22, 1978, upon application of the property owners, the Court issued its order staying the July 26 Order. On September 5, 1978, following a hearing on the owners' Demurrer to the Complaint, the Court vacated its order staying the Order for immediate possession and reinstated its July 26 order. Since September 5, 1978, Point Arena has maintained possession of the spring property and has used McMillen Spring in its operation.

Point Arena states the owners in the property eminent domain proceeding contend that public interest and necessity do not require the condemnation of their property as a source of water supply for Point Arena. Point Arena contends that the McMillen spring (together with easements for a water pipeline and utility service associated therewith) is necessary for its operation. Point Arena states that it is prepared to dismiss the eminent domain proceeding, to relinquish the spring property to its owners, and to discontinue to make the water supply from the spring available to it if the Commission relieves Point Arena from Ordering Paragraphs 3 and 4 of Decision No. 49352.

The Commission staff made an investigation in connection with this Application No. 59236. The investigation included a field investigation of the utility's properties, contacts with utility officials, review of Commission records, and collecting data on the adequacy of water supply and quality. The results of the staff's investigation are contained in a report by Utilities Engineer A. Chocas dated April 14, 1980, which report is received as Exhibit No. 1 in this proceeding.

The conclusions and recommendations contained in the staff report are as follows:

"Conclusions

"[1] The utility should continue to procure and purvey the water from the McMillen Springs because of the quality of water derived from this source. It is in the public interest to be furnished water of such quality that meets the standards of the California Safe Drinking Water Act of 1977 at the least possible cost.

- "[2] The McMillen Springs and the Red Pump Well together with the existing storage in general can meet the customers' demands but, in peak periods, may need to be supplemented.
- "[3] The Garcia River water should only be used as a supplementary source when the McMillen Springs and Red Pump Well cannot meet the demands of the system.
- "[4] The Garcia River water has enhanced the fire flow capabilities of the utility.

"Recommendations

- "[1] Ordering Paragraphs 3 and 4 of Decision No. 49522 [sic - 49352] should remain in effect.
- "[2] Garcia River water should only be used when the McMillen Springs and the Red Pump Well cannot meet the demands of the system." (Brackets added.)

The staff report was served upon all interested parties by letter dated April 14, 1980. Administrative Law Judge J. J. Doran by letter dated April 24, 1980 informed all interested parties that:

"It is planned to accept the staff report as an exhibit and then close the record in this proceeding. Please furnish any comments you may have on this procedure and on why the staff report should not be adopted by May 16, 1980."

No comments were filed by any party.

Finding of Fact

The water supply at McMillen Springs on Point Arena Creek is needed to furnish water service to the customers of Point Arena.

Conclusions of Law

1. Ordering Paragraphs 3 and 4 of Decision No. 49352 should remain in effect.
2. The petition for an OII is moot and should be denied.

O R D E R

IT IS ORDERED that:

1. Point Arena Water Works' petition to modify Decision No. 49352 by deleting Ordering Paragraphs 3 and 4 is denied.
2. The petition for an order instituting investigation is denied.

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

Dated JUL 15 1960, at San Francisco, California.

John E. Guyon
President
Richard L. Stinson
Richard D. Kowalski
Clarence J. Redfish
James M. Jensen
Commissioners