

AUG 4 1981

ORIGINAL

Decision 93379

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of CITY OF SELMA,)
a Municipal Corporation,)

Complainant,)

vs.)

JAMES KITCHEN, dba WESMILTON)
WATER SYSTEM, and CALIFORNIA)
WATER SERVICE COMPANY, a)
Corporation,)

Defendants.)

Case 10872
(Filed December 5, 1980)

Paulette Janian, Attorney at Law, for the City
of Selma, complainant.
Charles W. Brewer and William G. Fleckles,
Attorneys at Law, for James H. Kitchen
and A. Crawford Greene, Attorney at Law,
for California Water Service Company,
defendants.

O P I N I O N

By its complaint the City of Selma requests that the Selma District service area of the California Water Service Company (Cal Water) be amended to include a proposed subdivision area that is presently located within the service area of James H. Kitchen, doing business as Wesmilton Water System (Wesmilton).

Public hearing was held before Administrative Law Judge Daly on March 17, 1981, at San Francisco and the matter was submitted upon concurrent briefs since filed and considered.

City of Selma's Presentation

The record indicates that the City of Selma is considering the annexation of approximately 106 acres of property located just north of the city limits. It is expected that the property referred to as the Dinuba-Thompson Annexation will be the subject of subdivision development within the near future. According to the City Administrator the property will not be developed unless it is annexed to the City because of a county policy which limits subdivision development to urban areas, and the City will not annex the area unless it is served by Cal Water. Under a subdivision ordinance passed in 1977 the City follows a policy of having the City's boundaries coterminous with the service area of Cal Water.

In an attempt to solve the problem, the City held a meeting in 1979, which was attended by Kitchen and the Selma District Manager of Cal Water. As a result of the meeting Cal Water made several attempts, over a three-month period, to negotiate an agreement with Kitchen for the transfer of the Dinuba-Thompson annexation property from the Wesmilton service area to the Cal Water service area. When these negotiations proved unsuccessful Cal Water, because of the City's inexperience in such matters and at its request, prepared the rough draft of a complaint which is the subject matter of this proceeding. According to Cal Water's Vice President in charge of regulatory matters, it is the policy of Cal Water to work closely with, and in support of, all public officials of the communities served by Cal Water.

The City contends that the existing facilities of Wesmilton are not only inadequate to meet the needs of the new development, but that the quality of the water is unacceptable because it contains excessive amounts of the pesticide Di-bromo-Chloro-propane (DBCP).

The Wesmilton system serves 265 service connections. It is supplied from three wells having a total producing capacity of 1700 gallons per minute (gpm). It has no elevated or ground level storage tanks and relies upon the pumping capacity of the wells and two small pressure tanks to meet the demands of the system. The distribution system consists primarily of 6-inch steel pipe with some 4-inch and 8-inch steel pipe. The pipe ranges from 25 years to 30 years in age and very little of the system is looped.

Following an inspection of the system the City Engineer for the City of Selma concluded that:

- "1. There is no storage, elevated, or ground level, in the present system.
- "2. The estimated peak demand (consumption plus fire) for the service area (within the proposed development) greatly exceeds the firm and total production capacities of the three wells.
- "3. The existing distribution system is not capable of delivering the water to the proposed development at the peak demand rates.
- "4. None of the wells is provided with standby power or with standby reciprocating engine devices.
- "5. Two of the existing wells exceed the 1.0 ppb (parts per billion) 'action level' for DBCP contamination set by the Department of Health Services.
- "6. Extensive efforts would be necessary to upgrade the system in order to correct deficiencies and to meet the estimated demand."

The Deputy Fire Marshall of the Mid-Valley Fire Protection District testified that the proposed Dinuba-Thompson Annexation is within the district, that (1) on January 22, 1981 he conducted an evaluation study of Wesmilton's 20 fire hydrants, (2) the District's minimum flow requirement is 500 gpm, (3) 11 hydrants exceeded the requirement and 9 failed to meet the requirement, (4) the tests disclosed a considerable amount of sand in the system which would be detrimental to the operation of fire hose nozzles and fire pumps on engines, and (5) the system as a whole is badly deteriorated due to rust and sand.

Cal Water's Presentation

Cal Water fully supports the request of the City that Cal Water be authorized to serve the new area. If the request is granted Cal Water would extend service under its filed main extension rule.

Cal Water's Selma District consists of 14 wells with a capacity of over 11,000 gpm. Distribution is made through 45 miles of mains ranging from 2-inch to 12-inch in size. The system serves 3,330 customers. The proposed Dinuba-Thompson Annexation is approximately 400 feet from Cal Water's facilities. To extend service to the new area would require extension of Cal Water's 8-inch main on Thompson Avenue and its two 6-inch mains on Howard Street and Wright Avenue. With existing facilities Cal Water could meet the need of the initial development of the subdivision including a fire flow of 2,000 gpm. In the later stages of development an additional well would be required and installed by the developer at his own expense on a donated site within the development.

Kitchen's Presentation

Kitchen also runs the Anoosh Van Water System, which serves 193 customers and was acquired in February 1978. He purchased the Wesmilton system in August 1976 because he believed it had good potential. For the next four years he was engaged in litigation with the prior owner, who, Kitchen claims, tried to rescind the agreement after Cal Water had made a substantially higher offer. During this period Kitchen had less than a free hand in operating the system and it was only in June 1980, when the litigation was resolved in his favor, that he took over full control of the system. He admits that the system was poorly managed under the prior owner. He testified that since taking over full control he has tried to operate the water system on a business basis and is determined to make Wesmilton a first-class water system. Included in a recently inaugurated program of improvements is a plan for weed control, maintenance of pumps, leak repair, cleaning and painting, corrosion control, monthly flushing of the system to remove sand, and water quality testing.

Kitchen admits to a DBCP problem, but he claims that this is a problem common to many wells throughout the San Joaquin Valley because the pesticide had been used extensively within the Valley for agricultural purposes. According to Kitchen the problem is gradually dissipating. As the result of tests conducted by the State Department of Health Services on January 12, 1981 his 3 wells indicated that only one was slightly above the 1.0 ppb "action level" established by the department and that two were below the level.

<u>Well</u>	<u>DBCP ppb</u>
1	1.2
2	0.68
3	0.87

Kitchen testified that shortly after acquiring Wesmilton he personally visited the Mid-Valley Fire District and requested that he be contacted if at any time fire flow problems were experienced. According to Kitchen he has never received any complaints from the District. Nor, he claims, has he ever been contacted by either the City of Selma or the District on whether he would be ready, willing, and able to provide fire flow to the Dinuba-Thompson Annexation in accordance with the requirements of General Order 103.

In response to being characterized as an "absentee owner" Kitchen admits that the Wesmilton system is operated by only himself and his son and that they are located in Fresno, 16 miles away from the system. But he contends that in the event of an outage or any problem relating to the system that he or his son can be readily contacted by telephone or through an answering service.

Kitchen further testified that (1) he is ready, willing, and able to provide service to the proposed new development, (2) he would extend service under his tariff main extension rule, and (3) he presently has on file with the State Department of Water Resources an application for a Safe Drinking Water Bond Act loan in the amount of \$200,000, which, when processed, will be used for the drilling and construction of two new wells. In connection with the construction of the wells Kitchen has consulted Kenneth D. Schmidt, Ph.D., a ground water hydrologist-geologist, who will assertedly supervise test drillings employing special techniques developed for drilling DBCF free wells.

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Discussion

The Commission's Rules of Practice and Procedure provide that a complaint "may be filed by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, setting forth any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of this Commission." The record fails to demonstrate any such act or omission on the part of Kitchen. ✓

At most, the record demonstrates that the existing facilities of Wesmilton would not be adequate to meet the needs and requirements of the Dinuba-Thompson Annexation when fully developed. Kitchen readily admits that the system was deficient when he acquired it and that it remained so during the period of litigation when he had less than full control over the system's operations. Since acquiring such control Kitchen has inaugurated a program of improvements including maintenance and water testing. In addition, he has made application for a safe drinking water loan for the purpose of drilling two new wells, which when completed will substantially contribute to the water production requirements to meet the fire flow and domestic requirements of the new development. Preliminary to the construction of the new wells Kitchen has sought the advice of a ground water quality consultant on hydrogeologic studies to assure the quality of the water developed. ✓

There is no question that the area to be annexed falls within the service area of Wesmilton, because, in addition to its inclusion in a tariff service area map on file, Wesmilton is presently serving a half dozen customers within the area. Based upon this record, Kitchen stands ready, willing, and able to serve the new area under his tariff' main extension rule. Except for a stated preference by the

City of Selma to have Cal Water provide water service within its boundaries, there is no reason to transfer the proposed area of development from the service area of Wesmilton to the service area of Cal Water. Although this Commission recognizes the City's right to grant a franchise to a utility operating within municipal limits it also is cognizant of the fact that such right may not be used, directly or indirectly, to abrogate the ultimate authority of this Commission to determine the service areas of public utilities operating within the State. (Bakman Water Company D.92606 dated January 21, 1981 in C.10524.)^{1/} We believe that a determination based upon a city's preference alone can lead to unjust and inequitable results. Until it can be established that a demand has been made upon Kitchen to provide service and that he is unwilling or unable to comply, this Commission will make no change in the service areas of the utilities involved.

Findings of Fact

1. The City of Selma is considering the annexation of approximately 106 acres of property located north of the City which will be used for the purpose of subdivision development. The area to be developed is within the service area of Wesmilton, which is owned by Kitchen.
2. By a subdivision ordinance passed in 1977 the City of Selma adopted a policy of having the city boundaries coextensive with the service area of Cal Water.
3. Because of a restriction against urban or subdivision development within unincorporated areas the development cannot be constructed under county authority and the City of Selma will not annex the area unless it is served by Cal Water.

^{1/} Although D.93033 later rejected Bakman's Advice Letter 29 (the subject of this I and S proceeding), D.92606 was not rescinded and the legal principles for which it stands are still valid.

4. Studies conducted by the City Engineer for the City of Selma and the Deputy Fire Marshall of the Mid-Valley Fire Protection District indicate that the present facilities of Wesmilton are inadequate to meet the fire flow and domestic requirements of the system when fully developed. A recent test conducted by the California Department of Health Services indicates that one of Wesmilton's three wells is slightly in excess of the 1.0 parts per billion "action level" adopted by the department for DBCP and that two wells were below the level.

5. Because of lengthy litigation with the prior owner, Kitchen exercised only limited control of Wesmilton operations from the time he purchased it in 1976. Since acquiring full control in June 1980, Kitchen has taken steps to improve the system by inaugurating a program for maintenance and water testing. System improvements include the construction of two new wells subject to hydrogeologic studies to be conducted by a ground water quality consultant. An application for a \$200,000 safe drinking water loan is presently on file.

6. Kitchen stands ready, willing, and able to extend service to the new development under his tariff's main extension rule.

Conclusions of Law

1. The complaint fails to allege, and the record fails to demonstrate, any act or omission on the part of Kitchen that is in violation of any provision of law or any order or rule of this Commission and the relief requested should be denied.

2. Because of our holding in this proceeding it would serve no purpose to consider the merits of a motion to dismiss, which was filed by the attorney for Kitchen on February 26, 1981, and was taken under submission pending final disposition. The motion will be denied.

O R D E R

IT IS ORDERED that the request to transfer the proposed Dinuba-Thompson Annexation from the service area of James H. Kitchen, doing business as Wesmilton Water System, to the service area of California Water Service Company and the Motion to Dismiss filed on behalf of James H. Kitchen are denied.

This order becomes effective 30 days from today.

Dated AUG 4 1987, at San Francisco, California.

John E. Boyer
President
Charles A. Powell
James W. ...
Arthur ...
Paul ...
Commissioners