

ORIGINAL

Decision 93596 OCT 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation)
to Determine Whether Meadowbrook)
Water Company, Inc. is Unable or)
Unwilling to Adequately Serve)
its Ratepayers or is Unresponsive)
to the Rules or Orders of the)
Commission Pursuant to Section 855)
of the Public Utilities Code.)

OII 96
(Filed September 1, 1981)

JACK EDWARD and NANCY RUTH MOORE,
et al.,

Complainants,

vs.

Case 11025
(Filed September 3, 1981)

MEADOWBROOK WATER COMPANY, INC.,
a Corporation,

Defendant.

Ernest E. Hansen, for himself, respondent in
OII 96.
Jack E. Moore, for himself, complainant in
C.11025 and interested party in OII 96.
Raymond B. Rucker, for himself; and Stuart J.
Long and Peter S. Brierty, for San
Bernardino County Department of Environmental
Health Services; interested parties.
Alberto Guerrero, Attorney at Law, for the
Commission staff.

O P I N I O N

Order Instituting Investigation (OII) 96 is an investigation on the Commission's own motion into the operations of Meadowbrook Water Company, Inc. (MB). MB is a public utility water corporation furnishing water service to approximately 146 customers in the Crest Park subdivision in the Lake Arrowhead area of San Bernardino County. MB is legally owned by Ernest E. Hansen and managed by John F. Rausch. Rausch serves as president of MB.

The purpose of the investigation in OII 96 is to determine:

1. Whether MB is providing the proper level of service to its customers.
2. Whether MB is unwilling or unable to adequately serve its ratepayers.
3. Whether MB has been actually or effectively abandoned by its owners.
4. Whether management has conducted the affairs of MB in such a manner as to render MB incapable of being responsive to the rules or orders of the Commission.
5. Whether there is reasonable cause to petition the Superior Court of the County of San Bernardino for the appointment of a receiver or receivers under Public Utilities (PU) Code § 855.
6. Whether the Commission should order such other relief as may be appropriate under the circumstances.

Case (C.) 11025 is a complaint against MB filed by several customers of the water system. The complaint states:

"Due to a recent letter sent by Meadowbrook Water Company, Inc. to its customers, we are concerned that Meadowbrook Water Company is attempting to divest itself of the operation leaving its customers in the following dilemma: Non-payment

of current yearly billing [for water provided by Crestline-Lake Arrowhead Water Agency] results in termination of service. However, payment of bill may result in double billing by another company if Meadowbrook Water Company, Inc. divests itself of the company or abandons operation."

Among other things, the complaint asks that moneys forwarded to the Commission covering disputed water bills be held by the Commission and not be disbursed to MB until the question of divestiture is resolved. The list of MB customers who sent checks to this Commission is set forth in Appendix A.

Because of the similarity of the issues, the two proceedings were consolidated for hearing on a common record. Rausch, as president of MB, was directed to answer the complaint at the hearing.

Public hearing was held before Administrative Law Judge Mallory in Los Angeles on September 15, 1981. C.11025 was submitted and OII 96 was temporarily removed from the calendar to a date to be set.

Evidence was adduced by M. J. Purcell, an analyst in the Commission's Policy Division; Arthur B. Jarrett, associate utility engineer in the Hydraulic Branch of the Commission's Utilities Division; Hansen, as a respondent named in OII 96; Jack E. Moore, a customer of MB and a complainant in C.11025; Raymond B. Rucker and Viola Hauser, customers of MB; and Stuart Long, a sanitarian employed by San Bernardino County Department of Environmental Health Services (Health Services).

Background

On May 31, 1978 MB filed an advice letter seeking to increase rates for water service. By Resolution W-2393, dated September 6, 1978, the Commission granted the increase subject to refund if satisfactory progress was not made on a five-phase series of improvements to MB's distribution system. On October 3, 1979

MB filed Application (A.) 59182 requesting modification of Resolution W-2393, seeking to delay the schedule of system improvements until MB entered into a loan agreement with the State Department of Water Resources (DWR) under the State Safe Drinking Water Bond Act of 1976. Hearings on A.59182 were held in San Bernardino on February 14, 1980 and in Los Angeles on February 15, 1980. On June 3, 1980 the Commission issued an interim opinion, Decision (D.) 91855, denying MB's petition for modification of W-2393 and ordering MB to amend its application to conform to one of the three options presented by the Commission:

- a. A request for authorization to convey the MB system to the Crestline-Lake Arrowhead Water Agency (CLAWA);
- b. A plan to fund and construct the five-phase improvement plan set forth in W-2393, modified to provide for completion of Phases I and II (installation of some 2,700 feet of 6-inch main) by September 30, 1980; and
- c. A filing explaining why MB was unwilling or unable to proceed with the ordered plan of improvements.

Instead of amending its original application, MB filed a second petition on July 3, 1980, seeking to delay implementation of the five-phase plan for another year. Hearings were held in San Bernardino on July 14 and 15, 1980. Evidence developed at the hearing indicated that MB had taken steps to improve water service to its customers, including transferring two large water users from its system to the CLAWA system and installing 500 feet of 6-inch main only days before the commencement of the hearings. Although MB argued that these improvements resulted in a significant increase in water pressure throughout the system, other evidence, including testimony of MB customers, suggested that while some

improvement was apparent, water pressure was still inadequate in many areas.

On October 8, 1980, the Commission issued D.92307, which found, among other things:

1. That W-2393 gave conditional authorization to MB to increase rates, subject to satisfactory completion of the five-phase system of improvements specified in that resolution;
2. That MB had installed some 500 feet of 6-inch main to improve water pressure and volume;
3. That the improvement did not bring the system up to General Order (GO) 103 standards; and
4. That MB had not complied with any of the three options presented by D.91855.

Accordingly, D.92307 ordered MB to roll back its rates to the level in effect on September 5, 1978 and to refund to customers the additional revenues generated by the conditional rate increases granted by W-2393. MB's petition for rehearing of D.92307 was denied by D.92543 dated December 16, 1980. MB then filed a petition for a writ of review with the California Supreme Court, which was denied on April 1, 1981.

On December 23, 1980 Hansen, owner of all the capital stock of MB, sought authority to transfer the outstanding shares of MB stock to Rausch. D.93195 dated June 16, 1981 denied that request. D.93195 ordered as follows:

- "2. MB is directed through its legal owner, Ernest E. Hansen, to comply with D.92307 by filing the revised tariff as specified in Ordering Paragraph 1 and by paying the total amount of customer refunds no later than 30 days from the effective date of this decision.

"3. MB is directed to notify the Commission when the refunds ordered in the preceding paragraph have been made no later than 10 days from the date of refund."

D.93488, issued September 1, 1981 in A.60769, denied MB's request to eliminate or modify the requirement that MB make refunds to its customers. That decision shows that a tariff was filed by MB reducing its rates in partial compliance with Ordering Paragraph 2 of D.93195.

Staff Evidence

Purcell introduced into evidence Exhibit 2, a memorandum addressed to her from Barbara Cross, chief of the Local Projects Section of DWR, which indicated that Rausch was orally informed on June 26, 1980 that MB's application for Safe Drinking Water Bond Act loan was incomplete. Followup letters were sent to Rausch on March 26 and June 18, 1981, and no response was received by DWR.

The Lake Arrowhead Fire Protection District's letter to Purcell (Exhibit 3) states that the present ownership of MB allegedly has been detrimental to the fire safety of the service area because of inadequate storage and no operable fire hydrants. The letter states that the District wholeheartedly supports any change in the leadership of MB which may lead to a more positive and progressive approach to improvement of the water system.

In a letter to Purcell (Exhibit 4) dated September 14, 1981, Robert L. Hammock, chairman of the Board of Supervisors of the County of San Bernardino, stated that a community meeting was held at which 90% of the property owners in MB's service area in attendance at the meeting supported alternatives to the present system. He asked that Purcell "ensure that proper evaluation is given to the needs of the residents to improve service or provide an alternate to the current water system in existence."

Purcell concluded from the past history of the system and actions of its management as set forth in the evidence adduced in past proceedings, the findings and conclusions in Commission's orders, and the facts set forth in Exhibits 2, 3, and 4 indicate that MB has shown an unwillingness to adequately serve its customers. The failure to make improvements and refunds to its customers assertedly demonstrates MB's unresponsiveness to Commission orders. Purcell recommended that the Commission petition the Superior Court of the County of San Bernardino under "PU" Code § 855 for the appointment of a receiver or receivers over MB in order to make the needed system improvements to assure adequate service to its ratepayers.

Arthur Jarrett, an engineer in the Hydraulic Branch of the Commission's Utilities Division, presented Exhibit 5, which contains the report of his investigation of the adequacy of service provided by MB. The report states that MB's only source of water supply is from CLAWA through a 2-inch meter located adjacent to MB's storage tank of 170,000-gallon capacity. MB's distribution system consists of 1- and 2½-inch mains, with the exception of 500 feet of 6-inch main installed in July 1980.

Jarrett conducted a field investigation on September 3, 4, and 8, 1981.

In the course of that field investigation, Jarrett obtained pressure measurements, which showed that:

1. At lower elevations pressures ranged from 40 to 70 psig; customers were satisfied with water pressure and had no outages.
2. At higher elevations in the system, customers are constantly experiencing operating pressures as low as 8 psig. Low pressures are experienced in the northwest and southwest corners of the service area. Pressure readings taken in those areas ranged between 8 and 35 psig. In

Tract 3044 (northwest corner of the system), customers complained of substantial losses of water pressure. Pressure readings taken in Tract 3044 at approximately 10 a.m. on September 8, 1981 showed operating pressures below 20 psig, which is below minimum standards for good utility practice.

3. The installation of 500 feet of 6-inch main improved pressures in just one small portion of the service area.

The witness also testified that MB's water system does not meet the current requirement of GO 103 - Rules Governing Water Service Including Minimum Standards for Design and Construction in the following respects:

1. Cannot maintain 1,000-gallon per minute minimum fire flow requirements for a sustained period of two hours as required by paragraph VIII 1.a.
2. Cannot maintain 40 psig of normal operating pressure as required by paragraph II 3.a.
3. Inadequate distribution mains to accommodate fire flow requirements per paragraphs II 3.a and VIII 1.b.

The witness pointed out the program ordered in Resolution W-2393 required replacement of 3,585 feet of approximately 20,000 feet of total undersized distribution mains. With the exception of 500 feet of 6-inch pipe installed in July 1980, the utility has not complied with any of the system improvements required by Resolution W-2393.

Jarrett concluded as follows:

1. The utility has no established program to improve its deteriorating water system. In the absence of this program, the water system and service to customers are continuing to deteriorate.

2. The sizes of distribution mains are inadequate to provide reasonable level of water service to the customers.
3. The distribution system of 1-inch and 2-inch mains is incapable of supplying water for fire flow.
4. The distribution system is in urgent need of upgrading.
5. The utility has failed to make necessary improvements required by Resolution W-2393. The improvements required by this resolution would have resolved some of the fire flow and low pressure problems.

Hansen's Evidence

Hansen stated that as he has had no management or ownership authority over MB for several years, he was testifying as a respondent in OII 96, but not as the owner or manager of MB. That role assertedly has been exercised by Rausch since the time that Hansen transferred ownership and control to Rausch in 1977.

Hansen testified that as putative owner of the system (D.93488) he is willing to do whatever the Commission believes is necessary and appropriate to provide adequate service and which is in the best interest of MB's customers.

Hansen introduced two letters into evidence. Exhibit 7 is a letter from Hansen to Rausch dated September 4, 1981 stating as follows:

"The Public Utilities Commission sent me a copy of their decision number 93488.

"I do not agree with the Commission's contention that I am 'owner' of the Meadowbrook Water Company, Incorporated. However, if their contention is valid, then I, as a stockholder, request you, as Chief Operating Officer, to comply with the Commission's various requirements and decisions.

"During our August 27 meeting with Mr. Doyle [staff representative] you voiced a desire for divesture [sic]. If you decide in favor of divesture [sic] and if the divesture [sic] is approved by the commission and if the commission requires my concurrence, it will be granted regardless of wheather [sic] the commission's ownership contention to [sic] correct or not.

"If, as I believe, the commission's contention is not correct, you can of course conduct operations and/or divesture [sic] without need of my concurrence and my request has no validity."

Exhibit 8 is a letter to Hansen signed by John F. Rausch and Violet M. Rausch dated September 9, 1981. The letter, in part, states as follows:

"I resign as President and Board Member; and, Violet resigns as Secretary and Board Member of Meadowbrook Water Company, Inc. The effective date of these resignations is midnight of September 14, 1981, or sooner if you prefer. It is appropriate to review your attempt to sell the company to me, your committments [sic] to improve the system, and how your failures in these areas have affected my own ability to perform and to satisfy the California Public Utilities Commission."

* * *

"The Company Is Yours. The Bills Are Yours

"Enclosed is a CLAWA water bill for \$1,983.23. You would be well-advised to pay it promptly. Pay it from your profits. Remember that you removed \$19,200.00 from the company's account. A full year of receivables, leaving 10 months of your unpaid bills for me to pay. You secured an additional \$3,000.00 from a sale that never occurred. That's an illegal total of \$22,200.00.

"It is your company. It is your bill. If the water is turned off, the consequences will be yours to explain. Failure to pay your water

bills will certainly prejudice any plea you may wish to enter for relief respecting your obligation to repay your customers' \$22,000.00.

"All of these undesirable consequences to you, as well as ourselves, were completely avoidable. You should have secured C.P.U.C. approval prior to your sale to me in accordance with the State of California Public Utilities Codes."

Hansen testified that all customer records of MB and all MB's funds are in the possession and control of Rausch, and that he was not prepared to control, operate, or manage the water system. As putative owner, he would be willing to appoint new officers at a stockholders' meeting but would not be willing to serve as an officer of the company in any capacity.

Rucker and Moore's Testimony

Raymond B. Rucker testified that he is a resident of Crest Park and a customer of MB. As a result of an informal meeting of MB's customers, an ad hoc committee was formed to study the alternatives to the present operation of MB. Rucker was appointed to head the committee. The committee determined that alternatives available were to form a mutual water company or to seek service from CLAWA. Upon an informal inquiry to CLAWA, the committee was informed that CLAWA could provide service to MB's customers if the majority sought such service and that a one-time charge of approximately \$1,038 would be assessed by CLAWA to all active customers of MB. Owners of unimproved lots would not be assessed a hookup charge. The charge could be paid at one time or spread over a period of years. The committee viewed the formation of a mutual as impractical and uneconomic because of the need to spend substantial sums to replace water mains and to make other necessary improvements.

The foregoing information was presented at a meeting of MB's customers. Over 90% present at the meeting voted to join CLAWA. A poll was taken to the 194 property owners in MB's service area. The results were tabulated by Rucker as follows:

For joining CLAWA	138
Against joining CLAWA	25
Undecided (cast ballot with majority)	19 1/2

Rucker stated that based on the response at the meeting and the result of the poll, the ad hoc committee recommended that CLAWA be authorized to serve MB's customers.

Jack E. Moore confirmed the testimony of Rucker and emphasized the long history of customer dissatisfaction with MB. He also strongly recommended that CLAWA serve MB's customers.

Moore asked that the Commission impound the checks sent to the Commission by MB's customers in payment of disputed bills and to disburse those funds only to a receiver or a person other than Hansen or Rausch appointed to operate MB. This request was made so that the funds would be available only to pay for MB's operating expenses and could not be diverted for other purposes.

Health Services

Stuart Long, the witness for Health Services, testified as follows: Health Services manages water quality and maintains standards set by statute for water purveyors within San Bernardino County having 200 customers or less. Because of the perceived inadequacies of the water system, Health Services has asked the County Building and Safety Council not to issue new building permits within MB's service area because additional connections would lower the quality of service for the existing 145 customers connected to MB's system. The witness knew of only one permit that was issued in

MB's service area since the requested moratorium and that permit had been issued in error.

The witness also explained that Health Services and DWR are concerned that there is no responsible person in MB to which these agencies can relate, which has prevented DWR from acting on loan requests for improvements to MB's system recommended by Health Services in order to improve water pressure to 20 psig and to provide better fire protection. The witness stated that MB applied to DWR for a loan of \$245,000 in 1980. At current prices, the needed improvements to MB's system would cost about \$586,000, including installation of new mains, storage facilities, and meters.

The witness recommended:

1. That a person or entity be designated to which Health Services and DWR can relate, and
2. That the system be brought to up the standards established by the American Water Works Association or the requirements of San Bernardino County ordinances, which generally call for pressures of not less than 20 psig. (The Commission's GO 103 requires new systems to be able to maintain pressures of not less than 40 psig.)

Discussion

The evidence clearly shows that MB's water pressures are inadequate and that there is insufficient flow to provide even minimal fire protection. MB has not complied with prior orders of this Commission directing that it replace mains to provide better flow and pressure, that it make refunds to customers, and that it attempt to obtain a Safe Drinking Water Bond Act loan to pay for needed improvements. From this, we can safely conclude that MB is not providing the proper level of service to its customers, that MB is unwilling or unable to adequately serve its customers, and that MB has been unresponsive to orders and directives of this Commission.

On the question of abandonment, the evidence shows that Hansen, MB's owner of record, and Rausch, MB's president and manager until September 14, 1981, both have declined to exercise further control or to be responsible for the management of MB in the future. These facts establish the effective abandonment of MB by the persons formerly exercising control and management of the corporation. Hansen, as owner of 100% of the capital stock of MB, is willing to call a stockholders' meeting to appoint new management, if required or directed by the Commission. In fact, Hansen has agreed on the record to do whatever is directed by the Commission in the best interest of MB's customers.

We believe abandonment has occurred and an emergency exists. There is no present management of MB. We will direct our staff to seek a temporary manager to operate the system until a court-appointed receiver is placed in charge.

The record shows that MB's books, records, corporate seal, and bank accounts were in Rausch's possession at the time of hearing. If these items have not already been turned over to our staff, it should pursue whatever action is necessary to obtain them from Rausch.

Several of MB's customers have sent checks in the amount of their current water bills to the Commission, in lieu of making payment directly to MB. These moneys are being held by our Consumer Affairs Branch. We will direct the staff to impound these moneys and to disburse these moneys to the temporary manager.

No reason appears to keep these matters open and both should be closed.

Findings of Fact

1. MB has not complied with the order in Resolution W-2393 directing a five-phase series of improvements to its water system.
2. MB has not complied with the order in D.93195 and D.93488 directing refunds to customers for failure to comply with the order in Resolution W-2393.
3. Except for 500 feet of 6-inch diameter main, MB's water distribution system consists of 1-inch and 2½-inch distribution mains, which are inadequate to provide satisfactory water pressures and flows for its residential customers.
4. The 1-inch and 2½-inch mains do not provide even minimally necessary flows and pressures for fire fighting purposes.
5. MB's water service continues to be subject to unreasonably low water pressures (below 20 psig) in the higher elevations of its water system.
6. MB has not furnished sufficient information to DWR to enable that agency to process MB's application for a Safe Drinking Water Bond Act loan to pay for needed improvements to MB's water system. MB has not responded to inquiries from DWR concerning the processing of its loan request.
7. Hansen, owner of all of the capital stock of MB (D.93488), will not exercise direct control over or management of MB's operations.
8. Rausch has resigned as president and board member of MB, and his wife Violet Rausch has resigned as secretary and board member of MB, as of September 14, 1981. Rausch will exercise no control over or management of MB after that date.
9. As of the date of hearing, the Rauschs have in their possession all cash, bank account records, other books and records, and the corporate seal of MB.

10. The customers of MB listed in Appendix A have sent checks to the Commission in the amount of their current water bills, in lieu of making payment to MB. Those checks are being held by our Consumer Affairs Branch.

Conclusions of Law

1. MB is not providing the proper level of service to its customers.
2. MB is unwilling or unable to adequately serve its customers.
3. MB is unresponsive to the rules and orders of this Commission.
4. As no responsible person exercises control over MB and no responsible person manages the day-to-day operations of that system, MB's system has been abandoned by its owner.
5. An emergency condition exists as there is no person responsible for the day-to-day operations of MB.
6. This Commission should direct its staff to immediately seek a qualified person or entity experienced in the management of water systems to act as temporary manager of MB until a receiver is appointed. Our staff should arrange that adequate funds should be made available from the resources of MB for this purpose.
7. Our staff should be directed to immediately take possession of all cash, bank accounts and books and records, and the corporate seal of MB, and turn over such items to the temporary manager.
8. Pending appointment of a temporary manager, all funds forwarded to this Commission by MB's customers should be impounded. Upon appointment, these funds should be disbursed to the temporary manager.
9. Reasonable cause has been shown to petition the Superior Court of the County of San Bernardino for the appointment of a receiver under PU Code § 855, and our Legal Division should be directed to file an appropriate action.

10. This order should be effective today so that immediate remedial actions may be taken. ✓

O R D E R ✓

IT IS ORDERED that:

1. The Executive Director of this Commission is directed to immediately seek and appoint a qualified person or entity to manage the affairs of Meadowbrook Water Company, Inc. (MB) until a court-appointed receiver assumes those duties.

2. The Legal Division is directed to petition the Superior Court of the County of San Bernardino for the appointment of a receiver for MB.

3. Pending the appointment of a permanent receiver by the Superior Court, the temporary manager shall serve under a surety bond in the amount of \$5,000 to ensure that funds of MB are properly received and disbursed. ✓

4. Our staff is directed to take possession of all cash, bank accounts and books and records, and the corporate seal of MB and to turn such items over to the temporary manager, when appointed. ✓

5. The checks and moneys forwarded to this Commission by the persons shown in Appendix A are impounded. The staff is authorized to make such disbursement to the temporary manager when such an appointment has been made. |

6. The proceedings in OII 96 and C.11025 are closed. ✓
This order is effective today.

Dated October 6, 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

*I certify that this decision was
approved by the above Commissioners
today.*

Joseph E. Bodwin


APPENDIX A

Meadowbrook Water Company, Inc.

The following is a list of customer checks and informal complaints on file with the Consumer Affairs Branch in Los Angeles:

<u>Name</u>	<u>Address</u>	<u>Amount on Hand</u>
Andrews, Alan G.	P.O. Box 246 Crest Park, CA 92326-0246	\$212.34
Asher, Eileen	27486 School Road Crest Park, CA 92326-0159	62.00
Brown, John R.	P.O. Box 953 Sky Forest, CA 92385	62.00
Diehl, Helen A.	P.O. Box 203 Crest Park, CA 92326	62.00
Koontz, Cecil M.	P.O. Box 173 Crest Park, CA 92326	137.17
Patterson, Michael P.	P.O. Box 5154 Blue Jay, CA 92317	62.00
Porter, Carl V.	P.O. Box 502 Culver City, CA 90230	62.00
Roberts, Remus E.	P.O. Box 194 Crest Park, CA 92326	62.00
Schnurr, Jack A.	P.O. Box 170 Crest Park, CA 92326	62.00
Rucker, Raymond B.	P.O. Box 178 Crest Park, CA 92326	62.00
Mueller, Alan	P.O. Box 193 Crest Park, CA 92326	62.00
Moore, Jack E.	P.O. Box 221 Crest Park, CA 92326	137.17

(END OF APPENDIX A)