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Decision 96-09-043 September 4, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Strawberry Property Owners
Association,

Complainant,

vs.

Conlin-Strawberry Water Company,
Inc.,

Defendant.

ORIGINAL

Case 95-01-038
(Filed January 20, 1995)

George I. Deane, Attorney at Law, for
complainant.
Ralph Brick and Danny Conlin, for
defendant.

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us adaequat minister **INTERIM OPINION** Jacobio (200) aperte
quodammodo recte est de fideiiorum hisc necessitate est patitur et debet
ad remanentem sibi restitutam **bulletin Summary** impetrare quod inde ut mox ad
interrogatione respondatur et cum approbatum sit obtemperat. Hic deinde responde-

In this interim decision, we find that there are problems with every major aspect of this company as a result of the management of Conlin-Strawberry Water Company, Inc. (Conlin-Strawberry, defendant). The system suffers from pump failures, water supply deficiencies, lack of system alarms, inaccurate monthly water quality reporting, questionable daily monitoring, and nonuse of an automated control system to allow precise water use.

at all. In addition, defendant has not complied with numerous past Commission and DHS orders, and we have cautioned defendant for several times, that such noncompliance can have serious consequences. Indeed, this noncompliance contributed to a serious system outage in 1994, and we find that defendant's failures of noncompliance provide sufficient grounds to immediately replace Danny Conlin as the system manager and order him to show cause why he should not be held in contempt for noncompliance with past Commission orders, and the company fined pursuant to Public Utilities Code §§ 2111 and 2113. In addition, there is ample cause to order an investigation into defendant's operations, including an audit. Therefore, we issue an interim decision and order: ordering the immediate replacement of the current system manager and a response to our order to show cause pending further investigation and audit by the Commission Staff; no just cause to issue

The Strawberry Property Owners Association (SPOA), complainant, requests that a receiver be appointed to operate Conlin-Strawberry because of inadequate management and persistent noncompliance with prior Commission and Department of Health's orders.

Services (DHS) orders. Alternatively, complainant requests an order transferring the operation and control of the water company to an entity that can properly operate and maintain the system in a manner that will insure that customers have a reliable, adequate, and healthy supply of drinking water.

In addition, complainant requests that the Commission investigate and audit defendant's financial history (including general compliance with required accounting principles, verification of its company manager and staff work hours, reasonableness of expenses as reported in Commission advice letter proceedings, and the propriety and accounting records of the interrelationship with Conlin Logging Company). Conlin Logging Company is owned by Danny Conlin who is the sole shareholder of the water company, so DHS has no access to Conlin.

Complainant emphasizes that the trust account established in 1982 to collect a rate surcharge has never been audited by DHS or the Commission. The notes to the bill of sale indicate that the amount in the account is \$10. Defendant denies all allegations and Conlin requests full authority to continue to operate the water system, pay out what it has collected.

A hearing was held in Strawberry, California, on July 13 and 14, 1995. During the two days of hearing, approximately 100 customers attended each day. Eighteen customers gave statements and during the two days, seventeen customers supported the complainant and one opposed it. Several customers described and presented their photographs of ongoing repair problems in the service territory.

Complainant called six witnesses: Carl L. Carlucci, a bus senior sanitation engineer at DHS; Timothy R. McCullough, general manager of the Tuolumne Utilities District; Leonard Dotem, president and general manager of the Pinecrest Permittees Association;¹ Bill Rugg, president of SPOA; Neal Turner, long-

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1. The association operates a nonprofit water service corporation to fund the Pinecrest water system. The association is funded by members of the Pinecrest community.

time resident, and Ed Lodi, past president of a SPOA as Complainant's request that official notice be taken of other following Commission decisions and resolutions involving defendant was granted in the off 1982 general rate case order, (Decision (D) 83-05-052); a 1989 no advice letter order, Resolution No. W-3445; and a 1992 advice letter order; Resolution No. W-3827. Complainant's witnesses described circumstances surrounding and reasons for prior Commission orders; the past and present relationship between the company and its long time customers; the past and current condition of the service area in the current status of defendant's compliance with Commission and DHS orders, and the readiness of two other qualified entities to operate the water system. Turner, a long-time resident, presented a videotape of the system taken in September 1994. He said during a break, defendant called three witnesses: (1) Danny Conlin, owner of Tom Brick, superintendent; and Ralph Brick, Fire Chief. These three witnesses contend that defendant has completed or nearly completed all Commission and DHS orders. They assert that Conlin has done an exemplary job improving the water system and has been nominated for the Edmund G. Pat Brown Resource Leadership Award for these efforts. Defendant addressed the complaints of individual customers presented at the hearing.

Complainant and defendant submitted concurrent opening briefs and closing briefs on September 22, 1995. After briefs were filed, complainant submitted three letters containing updated information regarding the status of the company. Complainant filed ex parte notices regarding these letters on February 7, 13, and March 11, 1996. Defendant did not respond to any of these notices.

In response to a question at the hearing, Conlin stated that he is the only employee of the utility. In his opinion, the utility is well run and efficient. The utility has a good relationship with the county and state agencies. The utility is located in the town of Conlin, Strawberry, located 30 miles northeast of the city of Sonora. This location in the Sierra foothills is noted for its winter ski resorts and summer campgrounds. The population of

the community experiences significant seasonal increases due to tourists and the presence of owners of second homes in the area. The water company serves 343 customers, 235 on flat rates and 108 on metered rates. The customers can be classified as moderate-to-low fixed-income families.

Danny Conlin has operated the company since 1963. In 1980, he inherited the water company and became its sole proprietor. In 1986, he incorporated the company in order to obtain funds under the Safe Drinking Water Bond Act to improve the system. He is the sole shareholder and member to make decisions.

The company's administrative and operations staff are: Danny Conlin, president and manager; Delores Conlin, secretary; and a part-time office worker. Conlin contracts with the Conlin Logging Company for part-time laborers. The part-time laborers who work for both the logging company and the water company are: Ralph Brick, superintendent; Ray Christy, meter reader; and Tom Bricky, general laborer. This year, 200 bus loads of logs were hauled from the sawmill to the water company. The defendant need not bus logs to the water company due to existing railroads.

Subsequent to Commission Orders in 1963

In defendant's certification proceeding in 1963, we again ordered defendant to use a 2.20% composite depreciation rate.

(D.66037.) In 1989, we disallowed defendant's depreciation rates due to noncompliance with the 1963 order and again ordered defendant to use a 2.20% composite depreciation rate. (Resolution No. W-3445.) Bus #14 request no rate of paid subscriber section

In 1994, during the investigation of a 1992 advice letter rate increase request, staff noted defendant's history of ignoring our order to use a 2.20% composite depreciation rate. We reiterated this order. We placed defendant on notice that continued disregard of Commission orders would result in fines or other sanctions. (Resolution No. W-3827.) Bus #14 request no rate of paid subscriber section to not include the 1992 advice letter rate increase in the minimum rate

Since there has been no recent audit of defendant's books and records, we do not know if defendant is using the ordered composite depreciation rate as asserted at the hearing in this proceeding. This is an item of compliance that needs further investigation by Commission staff.

After being certified to operate the system in 1963, defendant was authorized to extend service to a noncontiguous area in 1969. In 1982, defendant filed its first request for rate relief.

During the 1982 rate increase proceeding, which was consolidated with a request to borrow funds for improvements, we concluded that the company was badly in need of repair. We authorized a rate increase (\$8,660 and a 9.5% return on rate base), an improvement loan (\$411,000 under the Safe Drinking Water Bond Act (SDWBA)), and a surcharge to repay the loan. The total increase was 200% greater than the existing rates culminating in the culminating D.83-05-052, we issued the following orders:

"2. Company shall undertake the following measures to improve service, under the following schedule:

a. Improvement of pump efficiency to 50% of better for both pumps; one year from the date of this order.

b. Purchase of turbidity² monitor; three months from the date of this order.

c. Use of telephone answering device or answering service; 30 days from the date of this order.

2 Turbidity is a measure of the clarity of water usually recorded in nephelometric turbidity units (NTU).

and at a time deb Main flushing programed 30 days from the date of this order.
herefore all parts of Incodition 11 would now be dropped but
and not purposed. Replacements of worn pipes as necessary etiagron
to prevent service breakdowns, pending
addititl effec engineering study. To make the etiagron
engineering study.

"3. Company shall, within 30 days of the date
of this order, contract with a licensed
civil engineer to formulate a plan for
plant improvement and proper progressive
maintenance, as set forth in Finding 7.
A copy of the engineering report shall be
furnished to this Commission, Attention
Hydraulic Branch, and to the Department of
Health Services (DHS) in the above, 8801 11. A copy of

"4. Company shall make prompt and accurate
new reports as required by DHS." 8801 11. Differ
on a timely basis to the public and to the
public to be in viled as soon as the condition
(and after no later than 6 months) is reached
such that piping will be replaced 8801 11. The
3 "Finding 7: The company should be ordered to retain a
licensed civil engineer within 30 days of the date of this decision
to formulate a plan for upgrading the company's plant and services.
The plan should be completed within 120 days and should include (as
is more fully discussed in the opinion):

- a. Pump efficiency improvement and maintaining a standard of
at least 25 psi at the lowest pressure point at all
times;
- b. A plant which will permit that pressure standard to be
maintained as the system expands to full use of the
vacant lots;
- c. Reduction of siltation and turbidity;
- d. Development of a proper main flushing program;
- e. A schedule for replacement of worn pipe, and
recommendations on upgrading pipe or other plant
equipment where necessary; and
- f. Any other recommendations on general maintenance and
upkeep, and plant improvement, if recommended at the

Section 657(b) Company shall establish and maintain guidelines which shall provide for a separate balancing account in which shall be recorded all billed surcharge revenue and interest earned on deposits made to the fiscal agent. The balancing account shall be reduced by the payment of principal and accruing interest to the California Department of Water Resources and by any charges for the services of the fiscal agent. A separate statement pertaining to the surcharge shall not appear on each customer's water bill issued by the company.

"10. To assure repayment of the loan, Company shall deposit all rate surcharge and upfront cash payment revenue collected with the fiscal agent approved by Department of Water Resources. Such deposits shall be made within 30 days after the surcharge and upfront cash payment money is collected from customers.

"11. Company shall establish and maintain at said facilities a separate bank account to ensure adequate accountability for deposits and credit disbursements of SDWBA loan construction funds advanced by Department of Water Resources to the utility."

The new treatment plant and accompanying storage tank were completed in 1989-90. However, in this proceeding, complainant alleges that the remaining system improvements ordered in 1983 have not been completed. We discuss those below. Without a Commission staff audit, we do not know if the above accounting requirements for the surcharge are being followed.

A. Service Improvement and Maintenance Plan

Bill Rugg, witness for complainant and its president, personally checked the status of defendant's compliance with the above items. In checking the Commission public records, he found no record of defendant submitting the ordered civil engineering plan. The plan would have scheduled the ordered pipe replacement by

main flushing program, improved pump efficiency, methods to reduce siltation and turbidity, and other ongoing maintenance, upkeep, and plant improvements. Although no hearing record has

In response to Rugg's accusation that there was no civil engineering improvement plan, Ralph Brick, defendant's part-time superintendent, testified that the Commission approved the plans for the treatment plant, as evidenced by later decisions to revise the plans. Brick testified that the system has been constantly changed and upgraded to comply with new rules and regulations. However, he does not mention seeing or having a copy of the improvement plans ordered in 1983.

Conlin indicated if he had not complied with the 1983 order to submit an engineering plan, staff in later cases would have undoubtedly mentioned this noncompliance. Since there is no mention of it, he presumes the plan was submitted. However, he has no independent recollection of hiring a civil engineer within the specified time period to prepare the plans.

Brick and Conlin are confusing the system maintenance and improvement plans with treatment plant construction plans. These are not the same. The plans we ordered in 1983 were those to incorporate specifically mentioned improvements and maintenance into the system operations. It is obvious that these plans were never prepared or implemented since Brick admits there is no regular program to replace pipe or flush mains. Therefore, we conclude that the engineering plans were never drafted. As a result, defendant has not complied with Ordering Paragraph 3 of D.83-05-052.

In later citations discussed below, DHS addresses the same issue by ordering that defendant submit temporary and permanent plans for system operations.

B. Pump Efficiency

We ordered defendant to improve pump efficiency of both pumps 50% or greater within one year from the May 18, 1983

decision. Defendant filed no reports regarding this matter from 1983 to 1989. In defendant's 1989 advice letter proceeding, staff noted reported that defendant had rebuilt one of the two pumps and relocated it to the new filtration plant. Staff reported that the efficiency of the other pump had not been improved. Defendant again failed to provide efficiency test results for the pumps requested by staff during the advice letter proceeding. Thus, in 1989, when staff investigated this issue, defendant had failed to comply with Ordering Paragraph 2a of DL83-05+052 as staff's recommendation for this violation was to adopt specific accounting treatment to prevent unreasonable rates until defendant complied with this biannual order. Staff proposed to impute a "fair" efficiency rating to the second pump and calculate electric power usage accordingly, thereby disallowing excessive power expenses. We agreed because this did not prevent excessive charges to customers from 1989 until the pump's efficiency was improved. However, staff's resolution did not call for removing the requirement for defendant to improve its pump's efficiency and staff reviewed it. The customer now adds water to the pump. In 1995, the unimproved pump was still in place at the bottom foot of an incline on George's Drive. At the hearing, customers on George's Drive complained of low pressure and inadequate water flow. DHS witness, Carl Carlucci, testified that this same pump had failed to pump water during 1994 when supply was low. Both pumps still are now so unreliable that DHS has ordered defendant to install safe stand-by pumps at all pump stations. Defendant has not complied with this DHS order, as discussed below.

C. Turbidity Monitor On 9/16/88, ordered defendant to add turbidity monitor. In 1989, staff reported that defendant purchased and then installed a turbidity monitor in 1988. (Resolution No. 2 W-3445, G at p. 3.) However, we ordered defendant to install this equipment within three months after our May 18, 1983, ordering. Therefore, defendant did not comply with Ordering Paragraph 2b of DL83-05+052.

D. Answering Machine witness reported report on both installed telephone

In 1989, staff reported that defendant had purchased a set telephone answering machine, was ordered in Ordering Paragraph 2c of D.83-05-052, but had never put it in service. Therefore, on May 10, 1989, we issued Resolution No. W-3445 granting a rate increase of .72.7¢ land a .10/50¢ return on base, but making the rate increase effective only after staff confirmed the company had installed the answering machine. witness said that he had made up his mind in the hearing in this proceeding individual customers were making public statements to the effect they cannot contact employees during the day and telephone messages are not returned. Bill Rugg, president of the SPOA called the water company on at least three occasions in August 1995 and did not receive a return call. Rugg pointed out that the Commission staff had trouble contacting anyone in the business office during their 1994 investigation of the most current advice letter. This assertion was not refuted and appears to be credible.

Brick explained that he is part-time and not in the office many times when customers call. However, his home telephone number is listed and posted for customers' information at the grocery store, post office, and other businesses in Strawberry. He testified that the first answering machine installed in the office erased messages whenever the power failed and there were power outages in bad weather. He explained that the office clerk is also part-time so he collects the messages on weekends and when she responds to repair problems. witness said that he is aqua qd-had a

Based upon credible customers' testimony in this and previous proceeding that their telephone calls are not returned we must conclude that defendant continues to defy our Ordering Paragraph 2c in D.83-05-052. witness in addition exhibited a affidavit.

E. Replacement of Worn Pipe witness borebro sw, roswell (E.g., In this proceeding, it is clear from Ralph Brick's witness testimony that pipes are repaired sporadically when needed, that job

there is no plan to replace 8,000 linear feet of worn pipe as was ordered in Ordering Paragraph 3 of D.83-05-0527. It is now H-awofed

Mr. E. Brick testified that currently replacement of worn pipe is occurring only when a pipe breaks; there are simultaneous road repairs or a customer complains. He could not estimate the amount of pipe replaced since 1983, but admitted that it would not amount to the 8,000 linear feet ordered to be replaced after his testimony.

This is exactly the type of piecemeal pipe replacement I had that we sought to avoid by ordering an ongoing pipe replacement program. We conclude that defendant has not complied with Ordering Paragraph 2e in D.83-05-0527. ~~and being unable to find confirmation of the company's failure to implement a Main Flushing Program~~

In 1989, during the investigation of defendant's advice on letter filing, we found that defendant had not instituted a main line flushing program. We invoked no sanctions for this noncompliance because DHS advised us that siltation and turbidity were reduced by the new filtration plant, leaving only the need for close monitoring and regular flushing of the mains. However, we did not retract the order and there is no current evidence that the system is regularly flushed, as desired. Frequent system monitoring is highly disputed by both customers and the record of DHS citations for untimely water quality reports, discussed below.

Thus, compliance with Ordering Paragraph 2d of A.D.83-05-0527 has not been achieved.

G. Prompt and Accurate DHS Reports

DHS testified in 1982 that defendant was not providing prompt and accurate water quality reports. This was before the construction of the treatment plant and most crucial to the health of the customers since the system was in dire need of improvement of water quality. Thus, we ordered prompt and accurate DHS water quality reports.

In this proceeding, DHS presented repeated citations for untimely and incomplete water quality reports including filtration

plant reports, annual reports, etc. We discuss these citations below. However, it is clear from the issuance of these citations to that defendant has not complied with our order to provide to DHS timely and accurate water quality reports. Thus, defendant has violated Ordering Paragraph 4 of D.83-05-052 entitled Reporting Requirements to II. Surcharge Accounting w. 33 additional § 8801 contra bonorum.

We ordered in 1983 that defendant maintains a separate balancing account for billed surcharge revenue and interest, as well as deposit the revenue within 30 days of receipt and maintains a separate bank account for deposits and disbursements of the SDWBA loan construction funds. Rugg pointed out at the hearing that staff's latest investigation of the company recommends an audit of defendant's books and records. Rugg requests that this audit include the trust account for surcharge revenues and the 1983 loan construction account. He questions the accuracy of expenses during the construction of the treatment plant, as it appears DHS earned

We agree that now is the time for staff to perform its audit and that it should include all accounts under the control of defendant. This conclusive direction on all credit has nothing to do with our position made at the hearing as defendant will suffer an enforcement action if it violates the Commission Orders In 1994 and defendant will be held responsible for any surcharge revenue collected for which no service was provided.

After the investigation of defendant's 1992 rate increase request by advice letter, we issued Resolution No. D.W-3827 on 20-88-0 February 16, 1994, ordering that:

All transactions between CSWC and Cohib DHS Logging Company shall be clearly identified and appropriately supported by written documentation. One copy of this resolution to the presiding officer to be made available to the public before the audit. The audit report shall be made available to the presiding officer for presentation to the public. In this proceeding, DHS presented evidence of violations of the Commission Orders in 1994.

item 000#4, "CSWC shall investigate alternatives back-up power req power supplies and report to the Branch such cost and timetable for installation such cost and timetable for installation of such equipment and shall be authorized to file an advice letter to offset reasonable costs when one or more new power sources has been installed and is in full operation. Conlin will file a letter to the Commission not later than 30 days after the effective date of this order. Within 30 days of the effective date of this order, Conlin Strawberry Water Company shall also file the recent revisions to its Title Page, Rules 2, 5, 7, 8, 11, 15 and 16; Schedule UF and other Connection Fee Data Form." The staff's position is that Conlin has failed to provide the requested revised tariff sheets. However, the witnessess did not address the matter of separate accounting for the water company and the logging company.

The record in this proceeding does not address whether defendant has investigated alternate back-up power or filed the requested revised tariff sheets. However, the witnessess did not address the matter of separate accounting for the water company and the logging company.

Complainant points out that the staff attempted to follow up on defendant's vague answers to data requests in the 1994 advice letter proceeding, to no avail. Complainant believes the costs presented by the company in 1994 could not be verified because of improper accounting between the two companies owned by Conlin. Thus, staff disallowed some expenses (and recommended separate accounting for these companies) and an audit during the next rate proceeding. Complainant in this proceeding recommends a complete audit of the water company as soon as possible.

Addressing the issue of separate accounting, Conlin testified that the logging company charged the water company per month \$275 for office equipment, \$250 for a backhoe, \$350 for a pick-up truck, and charges nothing for other logging equipment the water company uses. Likewise, the water company does not charge the logging company for its equipment used. Conlin is paid \$1,500

per month by the water company; his wife is paid roughly \$600 per month for bookkeeping.

Under cross-examination, Conlin testified that the water company employees are covered under the logging company's Worker's Compensation insurance policy. The logging company bills the water company for this expense. Complainants' allegation this arrangement is unlawful. However, an audit is needed before we can resolve this issue.

Rugg also is concerned that staff found no contracts for those employees hired by contract from the logging company and that Conlin's assertion of spending 90% of his time at the water company could not be verified by Commission staff. These are also matters in need of auditing by the staff.

In Rugg's opinion, staff also complained of problems similar to those of DHS, namely, that Conlin does not use the records required Commission workpaper forms to report costs, just as he does not use the correct DHS forms to report bacteriological analysis results, discussed below.

In Rugg's opinion, staff also complained of problems similar to those of DHS, namely, that Conlin does not use the records required Commission workpaper forms to report costs, just as he does not use the correct DHS forms to report bacteriological analysis results, discussed below.

On April 1, 1990, DHS issued a Citation to defendant's water plant, effective February 29, 1990.

As a condition of its approval of the new treatment plant, DHS placed the following requirements in defendant's water permit effective February 29, 1990:

1. Install fail-safe alarms by March 13, 1990, including a chart recorder for the continuous turbidity analyzer, a high effluent turbidity alarm and high/low chlorine vacuum alarm with plant shutdown capability;

2. Report the complete circumstances to DHS if ever the main plant storage tank is bypassed;

3. Submit to DHS by the tenth of each month the monthly filtration plant reports.

Defendant did not respond in writing to the 1990 DHS citation. Defendant failed to comply with provisions of Standard 103 pertaining to installing fail-safe alarms and submitting monthly filtration plant reports by April 1990. Therefore, on December 5, 1990, DHS cited the defendant for these violations. (Citation No. 03-095.) As of July 1995, the date of the hearing, no fail-safe alarms have been installed. DHS continued to cite defendant for untimely water quality reports after the hearing in this proceeding. In March 1996, the complainant submitted a copy of a DHS citation issued in October 1995 for failing to timely submit routine water reports. Thus, DHS reported in this proceeding that defendant violated all three of the above 1990 DHS orders and defendant continues to do so.

As previously set out in the new paragraph concerning the following:

VIII. DHS Citation In 1993

On July 30, 1993, after further inspection of the company, DHS set additional requirements:

1. "1993 Submit a bacteriological sample siting plan to ensure that all pressure zones are sampled periodically and that the chlorine contact (residual level) is measured; and a report

2. Repair the holes in the storage tank on 8th George's Drive, off 30th Street.

3. Immediately submit a completed 1992 Annual Report and a copy of the Annual Report to Consumers;

4. Adjust the treatment process to achieve finished water turbidity less than 0.5 NTU 95% of the time.

At the hearing, Conlin indicated the bacteriological

sample siting plan had been recently submitted. However, DHS could not confirm that the plan was submitted or approved as satisfactory.

During the hearing, it was determined that DHS

and customers at the hearing who live on George's Drive indicated that as of the date of the hearing, July 14 and 15, 1995, the storage tank still leaks causing water to stand in their front driveways and to run down the street. Thus, it appears that the defendant has not complied with the above DHS order.

The witness for DHS testified that defendant did not ever submit its annual report as ordered. Therefore, DHS issued a joint citation for failure to submit the 1992 Annual Report as ordered by DHS on July 30, 1993 and another citation for failure to pay annual operating fees (Citation Nos. 03-03-94C-011 and 103-11-94C-0587). The record does not disclose whether these fees have now been paid.

In addition, the record does not address whether the solids treatment process was adjusted to remove turbidity as ordered by DHS. These are matters requiring further investigation.

iii. do not from IX. **DHS Citations 1994** .08 xmt no

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On June 30, 1994, as follow up to the July 1993 letter, because defendant was still not timely submitting filtration plant reports, DHS issued a fourth citation (No. 03-11-94C-135) requiring the following:

1. publish notice of the 1993 DHS citation and submit proof of publication;
2. operate the treatment plant in accordance with operations plan to achieve optimal water quality from the filtration treatment process; and
3. complete and submit by the tenth day of the month a monthly bacteriological summary;
4. submit by the tenth of each month the filtration plant reports;

At the hearing, Carl L. Carlucci, DHS field inspector, presented DHS written correspondence and discussed prior DHS

citations. In addition to the above orders, he indicated that more serious problems began with the August 1994 water outage.

In August 1994, defendant's booster pump failed and customers in its upper pressure zone were without water for 2 consecutive days. DHS concluded the August outage had two causes: a failed pump below George's Drive and insufficient water flowing in Herring Creek. According to Carlucci, when pressure is very low or there are outages, a system is subject to contamination. This is why DHS immediately distributed to Upper Zone customers a DHS notice to boil all drinking water. The inspector concluded that the system operator was not on duty when the water outage occurred.

Several days later, on August 15, defendant still did not have an adequate water supply. Defendant pumped raw water into the system from the South Fork of the Stanislaus River for eight hours. Ralph Brick, defendant's employee, admitted to DHS that he also pumped 200,000 gallons of river water into the system three days later. The river water could not be pumped to the treatment plant, therefore, the treatment plant was not fully operational during this pumping, a violation of defendant's water permit. Defendant applied chlorine to the river water at the riverbank pump site. However, DHS determined that the chlorine contact time was inadequate. Therefore, DHS concluded that the river water was not adequately treated. It appears defendant did not report bypassing the main treatment plant until DHS investigated.

During the investigation of the outage, DHS also discovered that defendant had not submitted a current water quality emergency notification plan and had failed to submit bacteriological results on June 30, 1994. Under these circumstances, DHS posted notices in one area and required defendant to immediately notify customers to boil drinking water.

After its investigation, on August 22, 1994, DHS issued Citation No. 93-11-940-010, finding the following health and safety violations:

Failure to provide reliable, adequate and continuous supply of pure, healthful and potable water;

late for you to take a look at it before we leave," said Harry.

2. Failure to submit an updated Water Quality Emergency Notification Plan.

Failure to provide sufficient water to adequately supply the total requirement of all users under maximum demand conditions;

Failure to adequately operate the coagulation and flocculation unit processes at all times when the water treatment plant is in operation. After inspection it was ordered defendant to stop the flow of water from the coagulation and flocculation unit processes until such time as they were repaired.

DHS ordered defendant to:

**Article 1. Cease and desist from acts endangering the
health quality of the water; revis to employ 200,000 less**

2. Restrict any new connections indefinitely;

3. Implement water conservation immediately;

Letter 4: Immediately hire a full-time system operator to operate the plant daily and a minimum Grade II certified water treatment plant operator to operate the water treatment plant. Inspect and approve.

5. Immediately implement the following important risk reduction practices:

Water Order for all customers: The City of Waterford has issued a temporary ban on water usage.

specifications. The better source is one who has had experience.

4. The coagulation/flocculation process causes small, lightweight particles, such as fine silts, algae, and microorganisms, to stick together so they can be removed through the sedimentation and filtration processes. If left in the water, these particles can cause health problems, turbidity, and taste-and-odor problems.

(c) Unbiasedly measure and record chlorine residual and bromine levels in each pressure zone daily and (d) If at the time a bacteriological sample is being collected, take no less than two samples for monitoring and collect two bacteriological samples from each pressure zone weekly; and (e) Submit monitoring data by the tenth day of each month, copies of the following month, to DHS.

6. Operate its coagulation and flocculation unit processes when the treatment plant was operated;
7. Accurately and completely fill out the Monthly Summary of Monitoring and submit by the tenth day of the following month;
8. Submit an updated Water Quality Emergency Notification Plan;
9. Submit a plan and time schedule for providing sufficient reliable water at the maximum demand and an interim operating plan for minimizing water shortages and low pressure problems; and
10. Submit and have the above plan approved no later than March 31, 1995.

On Sept. 29, 1994, defendant wrote to DHS indicating that it was in compliance with the items ordered above.

On October 4, 1994, DHS responded indicating it disagreed that defendant had complied with items 4, 9, and 10. DHS refused to extend the March 31 deadline for permanent and interim operating plans. DHS requested a written reply from defendant. Defendant did not respond.

Defendant failed to submit its September monitoring data by the tenth of October, as required. DHS received the September report on October 28, 1994. Therefore, on November 10, 1994, DHS issued a citation for this violation. (Citation No. 03-11-94C-205.) DHS ordered defendant to submit the November

report and future reports of time? DHS again ordered defendant to respond to the October letter within 7 days. Defendant still did not respond to the October orders.

Therefore, on December 12, 1994, DHS issued a citation with a \$1,000 penalty for defendant's failure to comply with the October 4 and November 10 orders. (Citation No. 03-11-94C-222.) DHS witness, Carl Carlucci, testified that this type of penalty is rare.

On January 20, 1995, DHS inspected the water system and summarized all outstanding DHS requirements. Defendant had not complied with three orders on October 4. Defendant had not hired a Class II operator as ordered, even though DHS had provided a list of qualified operators in the area willing to work part-time as defendant desired. The operation plan was incomplete. DHS specified seven deficiencies in the operating plan submitted by defendant. DHS agreed that the construction of a pipeline to the treatment facility from the river and installation of a pump could not be completed by March 31. DHS extended the deadline to June 30, 1994, but required that defendant provide proof of purchase of the necessary equipment by March 31.

From prior citations, DHS noted that defendant still had not completed and submitted a bacteriological sample siting plan, nor provided proof of a published notice to customers of its failure to meet the May 1994 turbidity standards. Defendant was still not submitting timely the monthly bacteriological summary reports or monthly filtration plant and disinfection process reports.

DHS issued further orders regarding system operations:

1. Collect annual mineral, physical and chemical analyses from the surface water source by March 31, 1995; report no later than April 15, 1995.
2. Collect a second round of radiological samples; one each from the treated borehole and (203-11-94C-203).

item 13. Submit a watershed sanitary survey by January 1, 1996;

item 14. To continue as a public water system until corrective action is taken, observe the following:

item 14. Observed nonoperation of the flocculator is considered a violation;

item 15. Clean the backwash filter once every week and provide all information of filtration report;

item 16. Purchase a chart recorder; item 17. Calibrate the continuous and bench model turbidimeters with a primary standard every three months to provide accurate results;

item 18. Calibrate the continuous and bench modeling turbidimeters primary standard with a secondary standard every three months;

item 19. Obtain equipment to collect raw and treated water pH and temperature levels;

item 20. Repair a leak in the Lower Dymond tank;

item 21. Automate the Dymond pressure zone pump or add to its system, or if operate manually, daily monitoring and revise operations plan;

item 22. Add stand-by pumps at both pump stations because existing pumps are unreliable; and

item 23. Implement an active cross-connection control program and adopt an applicable ordinance.

On March 20, 1995, DHS ordered a written response to the above additional requirements by March 24, 1995. On March 20, 1995, Collin responded. He promised to comply with DHS requested items 1, 4, 5, 6, 7, 9, and 10 above ordered in January 1995. He indicated he was working on a revised operation plan as requested on February 27. He indicated that he was a Grade III operator and that he and Ralph Brick, his employee, would continue to be available for customer inquiries and would operate the treatment plant daily. He indicated Brick would take the next available test to qualify for a Grade II operator license.

In April 1995, Conlin forwarded to DHS a receipt for the purchase of an emergency standby pump as evidence of equipment purchased for the treatment plant as DHS ordered in January 1995 to be submitted by March 31.

DHS replied on May 19, 1995, indicating defendant had complied with seven of nine orders issued in its December 1994 citation. However, DHS did not consider compliance completed for the remaining items until it received evidence of Brick's Grade II certification, a revised operation plan, including a satisfactory DHS field review of the system operations, and installation of the emergency pump and pipeline from the river to the treatment plant with a satisfactory operational inspection. DHS again listed the 13 items of additional requirements ordered in its February 27 letter. DHS again demanded a written response to these items extending the initial March 31 date to June 30, 1995.

On June 30, Conlin responded in writing indicating that all of the 13 outstanding and incomplete items, except one, were still in progress. One item, the purchase and use of a chart recorder, was complete.

The night before the first day of the hearing, Rugg saw Ralph Brick attempting to install a pump at the river which will pump water to the treatment plant during emergencies. By 9:00 a.m., Brick had completed installing a sleeve and coupling, but not the pump. The pump is a small gas driven Homelite model with a two-gallon gas tank. Rugg does not believe it is intended for extended use, such as pumping water continuously for several days when there is an outage. During the hearing, DHS was unable to verify that the pump operated satisfactorily.

At the time of the hearing, Carlucci verified that defendant had still failed to comply with the following DHS orders:

1. Hire a Class II operator to perform daily tasks outlined in the operations plan;
2. Collect required water samples and submit timely reports;

13. Install a pump at the river; no settled area
is to be used.
4. Submit a bacteriological sample siting plan before building begins.
5. Fully complete and timely submit monthly reports of filtration plant and disinfection processes.
6. Submit a revised operations plan if no settled area is used.
7. Collect annual mineral, physical and chemical analyses from the surface water source by March 31 of 1995.
8. Collect a second round of radiological samples.
9. Operate the flocculator in the treatment plant.
10. Backwash filter once every week and provide all information on filtration report.
11. Repair leaks in the lower Dymond tank if not repaired.
12. Automate the Dymond pressure zone pump system, or if operated manually, conduct daily monitoring and revise the operations plan accordingly.
13. Add stand-by pumps at both pump stations because existing pumps are unreliable.
14. Implement an active cross-connection control program and adopt an applicable ordinance.

DHS' witness, Carlucci, indicated that DHS is still concerned about defendant's operation because although there have been improvements of the system over the years, the need for further improvement appears to be greater than the company's desire to provide these improvements. Even though there has been some compliance, DHS is concerned about continued improvement and the daily operation and maintenance of the system.

Plaintiff : to those firms which are effective partners for the City.

Conlin believes because all of the uncompleted items listed above are in progress, no further DHS violations exist.

Ralph Brick testified that he is monitoring the system as DHS requested and will take the Grade II Operator test in December 1995. He believes larger storage will solve the low pressure problems in the upper region of the service territory. Brick believes if customers conserve water as requested, pumping water from the river will not be necessary. He alleges that he demonstrated that the pump worked fine and provides the amount of water needed. He indicated they do not need a pump to supply the maximum demand since the pump is only used in emergencies and before he uses the pump the conservation plan must be implemented. He indicated that for four years of the drought the pump was never used. It has been used twice in 15 years. He and Conlin believe the pump satisfies DHS requirements and there is no need for a larger, more elaborate one.

Tom Brick, the fire chief of the volunteer firemen, testified that the Insurance Regulatory Group inspected the fire department and water company last year. As a result of their high rating, the resident's insurance premiums on property were cut 50%. He also informed us that Conlin is being considered for a nomination for the Edmund G. Pat Brown Water Resource leadership award for his progress on the water system.

X. Conclusion

Based upon the absence of a showing that Conlin has complied with our orders, we conclude that the company has violated the Commission's orders in D.83-05-052, Ordering Paragraphs 2a-e, 3, and 4.

Likewise, based upon the testimony of DHS, defendant obviously has not complied with the terms of its water permit added by DHS effective February 9, 1990. Those terms were to: install

fail-safe alarms by March 13, 1990, report complete circumstances to DHS if the main plant storage tank is bypassed; and, submit to DHS timely monthly filtration plant reports. General Order (GO) 103, Section II, requires defendant to comply with DHS orders. By failing to do so, defendant violates GO 103 and our express order in D.83-05-052, Ordering Paragraph 4.

We also conclude that defendant continues to potentially jeopardize water quality by not complying with DHS' orders in Citation No. 03-11-940-010 issued August 22, 1994. In this citation, DHS ordered and defendant has failed to hire a Grade II Operator, install an emergency pump and pipeline from the river to the treatment plant, and arrange for DHS to inspect the emergency pump and pipeline when it is complete.

In addition, defendant has not satisfactorily completed the above thirteen items specifically ordered in the DHS enforcement letter dated February 27, 1995. This letter summarized all outstanding orders from prior DHS citations in 1993 and 1994.

Since Conlin manages this system and oversees compliance with Commission and DHS orders, we hold him responsible for the above noncompliance. Stating that compliance work is "in progress" is, under all of the circumstances and operational history, not a legitimate excuse for timely compliance. Therefore, we will order his replacement immediately by a qualified operator until staff can complete an investigation and audit of all books and records. The new operator will be charged to carry out the duties specified in the Commission in prior decisions and by DHS in its letter of February 27, 1995. Pinecrest Permittees Association and Tuolumne Utilities District are willing to operate defendant and should be the first potential operators to be interviewed.

We will hold this proceeding open for a staff audit and further investigation of compliance with other Commission orders. After further investigation, staff will recommend whether Conlin should be held in contempt of the Commission for noncompliance with

other Commission orders and whether sanctions under PU Code §§ 2111 and 2113 should be imposed.

Findings of Fact

1. **Danny Conlin is the sole shareholder and system manager of Conlin-Strawberry Water Company, Inc. As such, he is responsible for defendant's compliance with Commission and DHS regulation and orders.**

2. In 1989-90 defendant completed construction of a treatment plant and accompanying storage tank which improved the quality of the water.

3. Complainant alleges defendant has continuously violated prior Commission and DHS orders to improve the system. Complainant requests that a receiver be appointed to operate defendant and that Commission staff conduct a complete audit of the company.

4. Pinecrest Permittees Association and Tuolumne Utilities District are willing to operate defendant. However, defendant desires to continue to operate the water system.

5. Complainant's president, Bill Rugg, investigated defendant's compliance with past Commission orders. Complainant presented past Commission and DHS staff reports, discussion in Commission decisions and citations by DHS which indicate that many Commission and DHS orders have not been completed by defendant.

6. Defendant alleges all outstanding Commission and DHS orders have been completed or are in progress.

7. Commission and DHS staff reports in Resolution Nos. W-3445 and W-3827 show that Conlin-Strawberry has not completed the following orders in Commission Ordering Paragraphs in D.83-05-052:

"2. Company shall undertake the following measures to improve service, under the following schedule:

 a. Improvement of pump efficiency to 50% or better for both pumps; one year from the date of this order.

 b. Further improvement of pump efficiency to 55% or better for both pumps; one year from the date of this order.

After further improvement of pump efficiency to 55% or better for both pumps; one year from the date of this order, the Commission will

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b. Purchase of turbidity monitor; three
 no less than 150 months from the date of this order

- c. Use of telephone answering device or**
 b. Répondant service; 30 days from the
 date of this order; no less than 150
 months from the date of this order; and
 b. Main flushing program; 30 days from
 the date of this order; and
 b. In response to inquiries and requests
d. Replacement of worn pipes as necessary
 and to prevent service breakdowns, pending
 engineering study; and to receive
 information on prohibited substances
"3. The Company shall, within 30 days of the date
 of this order, contract with a licensed
 civil engineer to formulate a plan for
 plant improvement and proper progressive
 maintenance, as set forth in Finding 7.
 A copy of the engineering report shall be
 furnished to this Commission, Attention
 Hydraulics Branch, and to the Department of
 Health Services (DHS);
"4. The Company shall make prompt and accurate
 reports as required by DHS.

8. The Commission staff report in Resolution No. W-3827 and
 customer testimony in this proceeding show that Conlin-Strawberry
 has not completed the following Commission Order Paragraph 3 in
 Resolution No. W-3445: to install and operate a

"3. Conlin-Strawberry Water Company shall place
 in service the answering machine required
 by Order Paragraph 2c of Décision
 83-05-052." See also footnote 4.
 The record in this proceeding does not indicate whether
 Conlin-Strawberry has complied with the Commission Order in D.66037
 to use a 2.20% composite depreciation rate.

5 See Footnote 4.

10. The record in this proceeding does not indicate whether Conlin-Strawberry has complied with the following Commission

Ordering Paragraphs of D.83-05-052:

- "7. Company shall establish and maintain a separate balancing account in which shall be recorded all billed surcharge revenue and interest earned on deposits made to the fiscal agent. The balancing account shall be reduced by the payment of principal and interest to the California Department of Water Resources and by any charges for the services of the fiscal agent. A separate statement pertaining to the surcharge shall appear on each customer's water bill issued by the company."
- "10. To assure repayment of the loan, company shall deposit all rate surcharge and/or upfront cash payment revenue collected with the fiscal agent approved by Department of Water Resources. Such deposits shall be made within 30 days after the surcharge and upfront cash payment moneys are collected from customers.

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 "11. Company shall establish and maintain a separate bank account to ensure adequate accountability for deposits and disbursements of SDWBA loan construction funds advanced by Department of Water Resources to the utility."

11. The record in this proceeding does not indicate whether Conlin-Strawberry has complied with the following Commission Ordering Paragraphs of Resolution No. W-3827 issued February 16, 1994.

- "2. All transactions between CSMC and Conlin OS, S a saw of Logging Company shall be clearly identified and appropriately supported by written documentation."

"4. CSWG shall investigate alternative back-up power supplies and report to the Branch such cost and timetable for installation and shall be authorized to file an advice letter to offset reasonable costs when one has been installed and is in full operation.

"5. Within 30 days of the effective date of this order, Conlin Strawberry Water Company shall also file the recent revisions to its Title Page, Rules 2, 5, 7, 8, 11, 15 and 16, Schedule UP and the Connection Fee Data Form."holbox to error baobas a doffor

12. Commission staff audit and further staff investigation will disclose whether Commission orders in Findings 8, 9, & and 10 have been completed and/or followed.

13. Citations and letters from DHS show that Conlin Strawberry has not completed the following DHS orders mandated in its water permit effective February 9, 1990:

1. install fail-safe alarms by March 13, 1990, including a high effluent turbidity alarm and high/low chlorine vacuum alarm with plant shutdown capability;

2. report the complete circumstances to DHS if the main plant storage tank is bypassed; and

3. submit to DHS by the tenth of each month the monthly filtration plant reports.

14. DHS Citations, letters, and testimony conclude that Conlin-Strawberry has failed to comply with the following DHS orders issued in citations from 1993 to 1995 and summarized in a DHS enforcement letter on February 27, 1995:

1. hire a Class II operator to perform daily tasks outlined in the operations plan;

2. collect required water samples and submit timely reports;

3. Install a pump at the river;

4. Submit a bacteriological sample testing plan; and if there has not been a report of infection not exceeding two days from date of sample collection.
5. Fully complete and timely submit monthly and filtration plant and disinfection process reports; and if at the beginning and end of operation.
6. Submit a revised operations plan; to DHEC by April 30 to avoid fines.
7. Collect annual mineral, physical and initial chemical analyses from the surface water source by March 31, 1995; and if it is not possible to do so, then collect samples from the well or ground water source.
8. Collect a second round of radiological samples;
9. Operate the flocculator in the treatment plant;
10. Backwash filter once every week and provide all information on filtration report;
11. Repair leaks in the lower Dymond tank;
12. Automate the Dymond pressure zone pump system; or if operate manually, conduct daily monitoring and revise operations plan accordingly;
13. Add stand-by pumps at both pump stations because existing pumps are unreliable; and
14. Implement an active cross-connection control program and adopt an applicable ordinance.

Conclusions of Law

1. Conlin-Strawberry has violated Ordering Paragraphs 2 and 3, and 4 of Commission D.83-05-052, and Ordering Paragraphs 6 of the Commission Resolution No. W-3445.

2. DHS concludes that Conlin-Strawberry has violated its orders listed in a February 19, 1995 DHS enforcement letter.

3. Conlin-Strawberry's noncompliance with DHS orders constitutes a violation of GO 103.

Within 30 days after the effective date of this order, Conlin-Strawberry should replace its current system manager with one who is qualified and willing to comply with past Commission and DHS orders. Commission Staff should approve the selected system manager and/or operator. This proceeding should be held open to and assure defendant's compliance with this and further Commission orders, as well as of insuring benefit from enforcement notifications.

Within 30 days after the effective date of this order, both Danny Colin should be ordered to show cause why he should not be held in contempt for violation of past Commission decisions and both he and the utility fined under PU Code §§ 2111 and 2113.

6. Commission Staff should audit the books and records of Conlin-Strawberry for further noncompliance and issue a written report. This proceeding should be held open for staff's report and recommendations and further proceedings.

7. Due to the importance of remedying problems related to safe drinking water, this order should be effective today;

INTERIM ORDER

Commission No. 010-010-11-30, dated May 20, 1988.

IT IS ORDERED that:

1. This complaint is granted in part; however, the request to appoint a receiver is denied without prejudice.

2. Within sixty (60) days after the effective date of this order, defendant, Conlin-Strawberry Water Company, shall hire a qualified system operator or manager who is qualified and willing to abide by prior Commission and DHS orders discussed in this decision. The Commission Staff must approve the new system operator or manager selected. Within 15 days after the effective date of this order, defendant is ordered to consult with Commission Staff for guidelines to solicit a temporary manager/system operator. Defendant is ordered to cooperate with Commission Staff during this process and to submit to Commission Staff notice of the

new hire within 15 days after the selection by Commission Staff may request further hearing immediately if this notice is not filed in a timely manner. Failure to do so will be held up at only one

time. Within 30 days after the effective date of this order, Danny Conlin shall file a written response indicating why he should not be held personally in contempt for noncompliance with past three Commission decisions and fined pursuant to Public Utilities (PU) Code, § 2113; and why the company should not be fined \$500 pursuant to PU Code § 2111 for each violation as follows:

a. **Failure to comply with orders in Decision No. 83-05-052.** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

b. **Failure to comply with Resolution W-3445.** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

c. **Failure to comply with DHS orders in Citation No. 03-095.** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

d. **Failure to comply with DHS orders in Citation No. 03-11-94C-135.** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

e. **Failure to comply with DHS orders in Citation No. 03-11-940-010.** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

f. **Failure to comply with DHS orders in Citation No. 03-11-94C-205.** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

4. Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with Commission orders including but not limited to the following issues:

a. **Use of a 2.20% composite depreciation rate;** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

b. **Establishment and maintaining a separate balancing account in which shall be recorded all billed surcharge revenue and interest earned on deposits made to the fiscal agent;** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

c. **Depositing within 30 days after collected all rate surcharge and up-front cash payment collected with the fiscal agent approved by the Department of Water Resources;** Commission Staff is instructed to conduct an audit of defendant's books and records for further noncompliance with

e. Establishment and maintaining a separate bank account for deposits and disbursements of Safe Drinking Water Bond Act loan received by construction funds advanced by the California Department of Water Resources to the utility;

f. Clear identification and support by written documentation for all transactions between Conlin-Strawberry Water Company and Conlin Logging Company;

g. The propriety of covering water company employees on the Workers' Compensation insurance policy of Conlin Logging Company;

h. Existence of contracts for employees hired from Conlin Logging Company; and
i. Verification of hours worked by all employees.

5. Within 12 months after the effective date of this order or sooner, Commission Staff shall file an audit report and make recommendations for further action in this proceeding.

6. This proceeding shall remain open for compliance with its orders, Conlin's response to the order to show cause, filing of Commission Staff's audit report and recommendations and further proceedings.

This order is effective today.

Dated September 4, 1996, at San Francisco, California.

Commissioner Daniel Wm. Fessler
Commissioner Jessie Knight Jr.
Commissioner Henry M. Duque
Commissioner Josiah Neeper

DANIEL Wm. FESSLER

JESSIE KNIGHT JR.

HENRY M. DUQUE

JOSIAH NEEPER

Commissioners

Excerpts of comments for proposed order

President P. Gregory Conlon,
being necessarily absent, did
not participate.