

Decision 99-11-044 November 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Strawberry Property Owners Association,

Complainant,

vs.

Conlin-Strawberry Water Company, Inc.,

Defendant.

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

Bill Rugg, for Strawberry Property Owner's
Association, complainant,
Goodin, MacBride, Squeri, Schlotz & Ritchie,
by Thomas J. MacBride, Jr. and Jeffrey P. Gray,
Attorneys at Law, for Conlin-Strawberry Water
Company, Inc., defendant.

O P I N I O N

Summary

We order Conlin-Strawberry Water Company, Inc. (company, defendant) to make all system improvements ordered by the Commission and the Department of Health and Services (DHS) by April 30, 2000, and to pay a fine of \$10,000 for violations that remained uncorrected on January 20, 1994. Within two months of the effective date of this order, the Director of the Water Division shall file a compliance verification resolution for our review indicating all improvements which have been verified, and a recommended timetable for completion by April 30, 2000 of previously ordered system improvements which

remain uncorrected. Said resolution shall also address whether, as required by D. 96-09-043 (68 CPUC2d 52 at 67), the company has hired a qualified system operator or manager who is willing to abide by prior Commission and DHS orders. Within one month following the April 30, 2000 deadline for completion of system improvements, the Director of the Commission Water Division shall file for our review, with a copy to the Commission General Counsel, a final compliance verification report regarding the status of required system improvements. Should Conlin-Strawberry fail to comply with this Order by April 30, 2000, the Commission General Counsel shall promptly prepare for the Commission's review, a petition, pursuant to Section 855 of the Public Utilities Code, to be filed in the Superior Court of Tuolumne County seeking the appointment of a receiver to assume possession of Conlin-Strawberry Water Company, Inc. and to operate the utility system.¹

Interim Decision (D.) 96-09-043 (68 CPUC2d 52) in this proceeding concluded that during the period 1983 to 1995 the company had problems with every major aspect of the company because of its owner's inadequate management. The Commission found that the company had not complied with General Order (GO) 103², eight specific Commission orders, and 17 specific orders of the DHS. The water system suffered from pump failures, water supply

¹ Interim Decision (D.) 96-09-043 (68 CPUC2d 52) in this proceeding denied, without prejudice, the Strawberry Property Owners Association's complaint request to appoint a receiver. Should Conlin-Strawberry continue its intractable resistance to Commission and/or DHS orders, we are prepared to reconsider the receivership solution.

² Section II of GO 103 requires that public water utilities comply with water quality, testing and supply standards of the state Department of Health Services (DHS) and local health agencies. In addition, Commission public utility certification is conditioned upon compliance with all DHS orders.

deficiency, lack of system alarms, inaccurate monthly water quality reporting, questionable daily monitoring, and nonuse of an automated control system.

The interim decision found that compliance failures provided sufficient grounds to immediately replace Danny Conlin, owner of the company, as system manager and ordered him to show cause why he should not be held personally in contempt for noncompliance with past Commission orders and why he and the company should not be fined pursuant to Pub. Util. Code §§ 2111 and 2113. In addition, the interim decision ordered an audit of the company.

After the interim decision was rendered, complainant, the Strawberry Property Owners Association, petitioned for modification of the interim order requesting more specificity in its implementation. In addition, defendant applied for rehearing alleging numerous instances of legal error.

D.97-10-032 addressed both the petition for modification and the application for rehearing. The Commission concluded that modification of the interim order to be more specific about implementation of the order was unnecessary and denied the petition. The Commission also denied rehearing and modified the interim decision. In modifying the interim decision, D.97-10-032 deleted charges of personal contempt under Pub. Util. Code § 2113³ against Danny Conlin as an individual, corrected penalty citation errors making it clear that the applicable penalty statutes in the Order to Show Cause issued to the company were Pub. Util. Code §§ 2107-2110, and clarified that the Commission would determine what, if any, fines would be imposed on the company in a future order in this proceeding. In the instant decision we provide that order by

³ Subsequently, Conlin-Strawberry Water Company filed a Supplemental Response to Interim Decision 96-09-043, as corrected on rehearing by D.97-10-032.

assessing the company \$10,000 in penalties payable over a period of 12 months with the first payment starting on May 1, 2000.

We do not resolve issues in the Water Division's staff audit report submitted on September 4, 1995 in compliance with Ordering Paragraph 4 of the Interim D.96-09-043. The Water Division is pursuing the issue of missing trust funds associated with repayment of the company's Safe Drinking Water Bond Act loan and other relevant issues in the company's pending general rate case proceeding. Pursuant to Resolution W-4144 issued April 22, 1999, the Commission authorized an interim rate increase for the company subject to refund pending the completion of the Water Division staff investigation and audit.

Violations of Prior Orders

The Interim Decision finds as a matter of fact and law that defendant had violated the following Commission orders in D.83-05-052:⁴

- a. Improve pump efficiency to 50% or better for both pumps within one year from the date of this order.
- b. Purchase a turbidity monitor within three months from the date of this order.
- c. Use a telephone answering device or answering service within 30 days from the date of this order.
- d. Replace worn pipe as necessary to prevent service breakdowns, pending an engineering study.
- e. 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 being

⁴ These facts and conclusions of law were not altered on rehearing by D.97-10-032.

furnished to the Commission Hydraulic Branch and the DHS within 30 days.

- f. Make prompt and accurate reports as required by DHS.

In addition, the Interim Order finds that defendant had violated its water certificate mandate to comply with all DHS orders, such as those summarized by DHS in a letter dated 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-siting plan.
5. Fully complete and timely submit monthly filtration plant and disinfectant process reports.
6. Submit a revised operations plan.
7. Collect annual mineral, physical and chemical analyses from the surface water source by March 31, 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.
12. Automate the Dymond pressure zone pump system, or if operated manually, conduct daily monitoring and revise the system 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.

This final decision addresses the issue of whether fines and penalties should be assessed for the above-stated violations.

Statute of Limitations

In its application for rehearing of Interim D.96-09-043, defendant argued that the Commission is prohibited from assessing fines for the numerous violations in this proceeding by: (1) Pub. Util. Code § 735 which sets a two-year limitation on the collection of damages for violations of the Public Utilities Act and, (2) Code of Civil Procedure section 340 which imposes a one year limitation on actions based upon a statute for a penalty or forfeiture. D.97-10-032 concluded that these arguments had no merit. The instant complaint does not seek damages, a prerequisite of Pub. Util. Code § 735 and Code Civ. Proc. § 340 does not bar the imposition of fines and penalties for continuing violations that remain uncured. As D.97-10-032 states: "Conlin-Strawberry's CCP section 340 argument has no merit. Each of the violations noted in Ordering Paragraph 3 as possible grounds for imposing a fine or penalty remained uncured as of the date the complaint was filed in this proceeding." (D.97-10-032, mimeo, page 6.)

Since issuing D.97-10-032, we have discovered that defendant had cured some violations a year or more before the instant complaint was filed on January 20, 1995. Consistent with the implicit conclusion of D.97-10-032, Code Civ. Proc. § 340 does bar the imposition of fines for failures to timely comply with orders of the Commission or of DHS if those violations were cured by January 20, 1994. Accordingly, in this decision, pursuant to Pub. Util. Code § 2107, the Commission assesses a fine of \$500 for each of 20 violations, which continued and were uncured one-year before the complaint in this proceeding was filed.

Cured Violations Fines and Penalties Inapplicable

In defendant's Response and Supplemental Response to the interim order to show cause why fines should not be imposed for found violations, defendant argues that no fines are justified because it has complied with all Commission and DHS orders, or it is in the process of doing so. We disagree that defendant has complied with all prior Commission or DHS orders. However, as noted above, we do agree that Code Civ. Proc. § 340 bars fines for the lateness in complying with the order to install a turbidity monitor within three months after the May 1983 Commission order. (D. 83-05-052, Ordering Paragraph 2b.) According to the staff report in Resolution W-3445, defendant installed a turbidity monitor in 1988, five years after the Commission order. However, because the violation was cured more than a year prior to the filing of the instant complaint, fines for this violation are barred by CCP § 340.

For the same reason we will not impose fines for defendant's failure to expressly comply with the Commission's order to install a measurement of water production at the water source. (Resolution W-3445, issued May 1989.) It now appears that the turbidity log of the turbidity monitor installed in 1988 shows water production, and that a meter at the treatment plant measures water production. Therefore, this violation was cured before January 1, 1994.

Uncured Violations Subject to Fines

Defendant emphasizes that it strives to provide its customers with safe, potable water even though the Commission and DHS have questioned the company's compliance with various orders and requirements in the past.

Defendant argues that it has fully complied with the Commission orders in question or is in the process of doing so. We find this alleged compliance inadequate. Given the long history of Commission review of this company and its facilities, the issuance of Commission orders to repair the system and the

issuance of DHS citations for failures to follow its orders, we must look to defendant's actions, not its words, to determine whether and what sanctions for noncompliance are appropriate. We have already concluded that defendant has committed numerous unlawful acts. We cannot accept words to minimize the fact that the repairs ordered as long ago as 1982 continued to be uncompleted in 1994.

Overall guidelines for setting fines were discussed by the Commission in the Merger Rulemaking Proceeding, I. 98-04-009, D. 98-12-075. As noted in that decision, the purpose of a fine is to effectively deter further violations by this perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims. Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. To capture these ideas, the two general factors used by the Commission in setting fines are: (1) severity of the offense and (2) conduct of the utility. These help guide the Commission in setting fines which are proportionate to the violation.

Severity of the Offense

The severity of the offense includes several considerations. Economic harm reflects the amount of expense, which was imposed upon the victims or customers, as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine. In comparison, violations, which caused actual physical harm to people or property are generally considered the most severe, with violations that threatened such harm closely following.

In this proceeding, defendant has committed numerous violations, the existence of more than one itself increasing the degree of severity, which threaten

the physical health and adequacy of water supply to its customers. Because it is located in the Sierra foothills near Sonora in Tuolumne county, the territory the company serves is populated in winter by skiers and in summer by campers. Thus, inadequate water utility service creates a potential health hazard for the public at large and potential economic impact on local business dependent on tourist income.

The violations relate to routine maintenance and testing procedures, which are the most important and major responsibilities of any public water utility. This company has service problems with every major aspect of the system, in large part, due to neglect—pump failures, water supply deficiency, lack of system alarms, inaccurate monthly water quality reporting, questionable daily monitoring, non-use of the automated control system and general inattentiveness to routine monitoring of the system. Such violations individually or collectively threaten the integrity and reliability of a system and ultimately the quantity and quality of water delivered by the system.

The system in this proceeding was significantly improved ten years ago and it has been poorly maintained since then, threatening to make a mockery of the effort to obtain funds for improvements of small water systems and ongoing increased cost to customers to repay such a loan. Continually failing to comply with DHS orders regarding correction and improvement of specific aspects of the system creates potential health risks to the customers, increased expenses to the company and customers, and potential water outages and generally poor service for customers. DHS and the Commission have devoted considerable time and effort evaluating system operations and ordering improvements for the past 10 to 20 years. These improvements have been ignored for an unreasonable period of time while customers continue to pay established rates without receiving adequate service.

Conduct of the Utility

Every utility is required by Pub. Util. Code § 702 to obey and comply with every order, decision, direction, or rule of the Commission. Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be dealt with severely. As described in the Interim Order in this proceeding, D.96-09-043, the company continued to violate Commission and DHS orders for periods up to 20 years.

In summary, as of the date of the hearing, July 13, 1995, defendant had not complied with the Commission orders to improve pump efficiency by 50%, replace worn pipe on a regular basis, install a reliable telephone answering device to improve customer communication, institute a regular main-flushing program, develop an overall plan for plant improvements, make prompt and accurate reports to DHS, and comply with fourteen (14) DHS orders and a reporting requirement. The specific violations and required improvements are described below.

Financial Resources of the Utility

Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine, which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States, and others are extremely modest, one-person operations. The Commission adjusts the fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources. In this proceeding, completing the ordered improvements is as crucial as deterring any such failures to comply with future orders.

Setting fines often requires that the Commission specifically tailor a package of sanctions, including fines, to the unique facts of the case. In this case we conclude that the continued long-term failure to comply with Commission and DHS orders warrants the maximum fine. However, in this proceeding, calculating fines on a daily basis per violation could easily result in a total fine of millions of dollars against a relatively small company. Conlin-Strawberry is a small water company with 366 customers (122 metered and 244 flat rate) and \$103,000 in annual gross revenues in 1998. We believe assessing the applicable fine under Pub. Util. § 2107, \$500-\$20,000 for a continuing violation for each of the days that these violations continued will be counter-productive by preventing the company from making the ordered repairs and improvements.

We recognize that under the current financial conditions of Conlin-Strawberry, our primary objective is to ensure the adequacy of the utility's water system, and that customers of the water utility receive adequate water service that meet the Commission's and DHS' minimum requirements. Towards that end, first, we will require that the company perform all installations, cure all existing violations which are the subject of this proceeding and to cooperate fully with the Commission's Water Division staff in verification of the company's compliance with previous Commission and DHS orders by April 30, 2000.

Second, we impose a fine of \$500 per incident for the 20 violations that had not been cured by 1994, or a total of \$10,000, pursuant to Pub. Util. Code § 2107. The total fine is payable within 12 months, with equal payments to be remitted on a quarterly basis with the first payment being due on May 1, 2000.

We are aware that the company reported a net loss of \$21,143 in its annual report to the Commission for 1998. However, revenues received at that time were based on rates established February 16, 1994 in Resolution W-3827. Pursuant to Resolution W-4144, issued April 22, 1999, the Commission

authorized a rate increase for the company that should provide adequate revenue, including a reasonable rate of return. For policy reasons, the company may not pay fines or penalties out of funds provided by the ratepayers for the expenses and operations of the company. Instead, the company must look to the shareholders for the payment of fines and penalties. In as much as the new rate increase will have been in effect for nearly a year before the initial payment of the \$10,000 fine is due, it is reasonable to expect that the company will be able to pay said fine in addition to making the necessary expenditures to cure the violations ordered herein.

If the required improvements have not been completed by April 30, 2000. This will be revealed in the Water Division's report verifying the final status of defendant's compliance. As ordered, that report will be filed for Commission review, with a copy to the Commission's General Counsel who, in the event that compliance is incomplete, shall promptly prepare for Commission consideration, a Pub. Util. Code § 855 petition for filing with the Superior Court of Tuolumne County seeking the appointment of a receiver to assume possession of Conlin-Strawberry property and to operate the utility system.

Pump Efficiency

In 1989, six years after being ordered to improve pump efficiency by 50% in each of two pumps within one year, the company rebuilt one pump. Danny Conlin, the utility owner (Conlin), argues that because staff took no further action, this repair was sufficient to comply with the 1989 order. Conlin argues that the pressure problems in 1995 on upper George's Drive were not caused by pump failure and implies that DHS has removed this requirement by indicating at the July 1995 hearing that the modifications made to the pump have made the system more reliable.

We cannot accept this contention as true, since DHS continues to make recommendations for improving the overall pump reliability within the system. For example, DHS recommends that all pumps have back-ups because they are not reliable and that a back-up pump be installed at the river to pump water in case of emergency lack of water supply, which has occurred at least for two summers in the past five or six years. DHS witness, Carl Carlucci, testified at the hearing on June 14, 1995 that defendant had still failed to comply with these DHS orders.

At the hearing, Conlin did provide proof of purchase of a stand-by pump for the river. The morning of the first day of the hearing his employees attempted to install this pump. However, at the hearing, customers complained that this pump was inadequate to serve in case of such an emergency. Carlucci testified that he had not inspected the installation and could not verify that it operated satisfactorily. Therefore, we can not agree that this requirement is completed.

We do not agree that the testimony in this proceeding disproves that pressure and supply problems on George's Drive are not related to our prior order to improve the efficiency of pumps. The company has only two pumps and the one replaced in 1989 was not the one on George's Drive. Even if this pump has been restored, it is obvious that pressure and supply problems are likely related to inadequate pumps and that the problems were continuing in 1995 at the time of the hearing.

We find no evidence that the Commission rescinded its order to improve pump efficiency by 50% or accepted the replacement of one pump as satisfactory completion of this order. Conlin's interpretation that "50% improvement of pump efficiency" means replacing one of two pumps is sorely overreaching. The Commission required that pump testing for efficiency be improved by 50%.

However, no pump efficiency tests have been submitted. Therefore, we have no evidence that the new pump improves overall system pump efficiency.

For this violation of the 1989 Commission order to improve pump efficiency by 50%, we assess a penalty of \$500, to be paid over 12 months at \$125 per quarter beginning on May 1, 2000.

Telephone Answering Device

We ordered the company to install a telephone-answering device within 30 days after our order in 1983. Customers testifying at the hearing on July 13 and 14, 1995 were furious because they could not report water outages and other problems in 1994 since defendant failed to return their telephone calls when they left a message. While arguing that it has used an answering machine for the past several years, Conlin, testifying on behalf of the company, admits that this machine malfunctioned and erased messages when power failed. Conlin blames power failures for this lack of communication with customers implying that it never received the messages.

In its 1997 Supplemental Response, the company indicates a new, recently installed machine is more reliable, has a remote retrieval and provides emergency instructions. However, noncompliance with this 1989 order obviously continued into 1994. For this noncompliance we assess a fine of \$500, to be paid over 12 months at \$125 per quarter starting on May 1, 2000.

Replace Worn Pipe

In its 1997 Supplemental Response, the company admits its continuing noncompliance with the requirement to replace worn pipe on a scheduled basis. The company indicates its consultants hired in 1995 will survey the condition of the pipe infrastructure to develop a pipe replacement plan. This promise of compliance comes 12 years after defendant was ordered by the Commission to

complete and institute this plan. For this noncompliance we assess a fine of \$500, to be paid over 12 months at \$125 per quarter starting on May 1, 2000.

Plan for Plant Improvement

Conlin recognizes that he has no system maintenance or improvement plans. Conlin testified that he confused the order for plant improvement plans with the construction plans for improvements funded under the Safe Drinking Water Bond Act (SDWBA) funds which were delivered to the Commission staff prior to that construction in 1988. However, as of January 1, 1994, defendant still had no such written plans, which are a standard part of operating a water system. This excuse is simply unacceptable.

For this noncompliance we assess a fine of \$500, to be paid over 12 months at \$125 per quarter starting on May 1, 2000.

Prompt, Accurate DHS Reports

DHS witness, Carl Carlucci, testified at the June 14, 1995 hearing that defendant was still filing untimely monthly lab reports and radiological samples. Conlin argues that some of the delays are beyond his control. However, we notice that once its equipment was properly calibrated, after being ordered to do so in our Interim decision, these reports are timely and accurate. This tends to show that the problem was with operation of the system, not failure of DHS to monitor submission and accuracy of submitted reports, as alleged by witness Conlin at the hearing.

For this noncompliance we assess a fine of \$500, to be paid over 12 months at \$125 per quarter starting on May 1, 2000.

Main-flushing Program

The Commission ordered the institution of a main flushing program in 1983. In 1989, we instituted no penalties for this violation because DHS assured us the filtration plant was sufficiently reducing siltation and turbidity. In its 1997

Supplemental Response, the company admits it had no regularly administered main flushing program until approximately October 1996. It represents that a new program derived by Walter & Associates has been instituted since the Interim Order was issued and includes a copy of this program and a notice to customers of the start of the program.

However, this alleged compliance occurred long after the hearing and DHS has not verified that this plan is satisfactory. Therefore, for 12 years defendant violated this order and only complied under the threat of fines and penalties in this proceeding.

For this noncompliance we assess a fine of \$500, to be paid over 12 months at \$125 per quarter starting on May 1, 2000.

DHS Orders

In its Response and Supplemental Response, defendant addresses items of noncompliance mentioned by DHS in a letter written after the hearing. However, the Interim order bases its findings of noncompliance with DHS orders on a DHS letter dated February 27, 1997. It is this letter upon which we will base fines and penalties, consistent with the Interim Order that finds the following items continuing to be violated.

In this letter, DHS identifies 14 items as in continuing noncompliance. Defendant argues that numerous items have been repaired since the hearing. However, for purposes of avoiding fines, the items should have been completed at least one year before the complaint in this proceeding was filed. DHS witness Carl Carlucci testified at the hearing that as of that date, July 13, 1995, none of the 14 items had been completed. Owner Conlin's attempts to complete some of these items during and after the hearing does not protect the company from fines for continuing to violate these orders in years before the hearing.

DHS issued 14 separate orders for repairs and improvements from 1990 that were still not completed in 1995. We shall impose a fine of \$7,000 (or \$500 for each of the 14 orders) for the orders DHS issued and Conlin-Strawberry failed to implement as of July 13, 1995, to be paid over 12 months at \$1,750 per quarter starting on May 1, 2000.

Payment of Fines

At the beginning of each quarter defendant shall pay to the Commission for forwarding to the General Fund of the California State Treasury the quarterly amount due. The payment drafts (or checks) shall be made out to the California Public Utilities Commission and delivered to the CPUC Fiscal Office at 505 VanNess Avenue, San Francisco, California 94102. We do not wish our imposition of fines to be taken lightly. Therefore, if the company fails to pay a single quarterly payment, ten days after the quarterly due date, the balance of the total fine as of that date shall start accruing interest at the commercial paper rate for each month following that date until the fines are paid in full.

Audit Issues

The Interim Order instructed Commission staff to conduct an audit of defendant's books and records. This report was submitted on September 4, 1997. It appears that upon audit of the SDWBA trust account, roughly \$93,000 is missing. However, the audit makes no recommendations for recovery of these funds or the liability of ratepayers for repayment of this loan. As noted in Resolution W-4144 issued April 22, 1999, the Water Division is addressing the missing trust funds in the context of the company's general rate case which is in process. To the extent that there are any other unresolved audit or compliance issues that are not disposed of in the Commission's final General Rate Case decision, the Water Division is directed to raise such issues in a separate future proceeding(s).

Comments on Draft Decision of ALJ Bennett

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on August 23, 1999 by Danny Conlin representing Conlin-Strawberry Water Company, Inc. Conlin-Strawberry contends that it has now complied with many of the Commission and DHS orders, the company would have made a better showing if represented by counsel at the hearing and the company desires to reopen the proceeding to present additional evidence of compliance.

We have taken the company's arguments into consideration in issuing this alternate order of Commissioner Neepor to lower the fines and allow the company to focus on complying with Commission and DHS required improvements that are unacceptably belated. The company claims that many of the violations have been cured. It will have the opportunity to make that clear to Commission staff, as verification of compliance is required. Said verification will be the subject of the Water Division's compliance verification reports due to this Commission two months from the effective date of this decision and one month after the compliance deadline of April 30, 2000, respectively.

We disregard Conlin-Strawberry's argument for re-opening the record of this case at this time. The arguments do not address legal, technical, or factual error as required under our comment procedures by Rule 77.1.

The alternate order is substantially different from the proposed decision in the severity of the fine. But we have gone further in this proposed alternate decision by renewing the possibility, first requested by complainants, of the appointment of a receiver for Conlin-Strawberry Water Company, Inc. if the company fails to comply and complete all mandated system improvements by April 30, 2000. A fine, albeit a much lesser one, is still imposed on the company

in an effort to send a clear message to its shareholder that this company has blatantly disregarded and violated the Commission's and DHS' orders and that such actions carry penalties of the highest proportion. However, we impose the minimum fines in consideration of the size of this water company, its financial standing and the importance of insuring that available funds primarily will be used for system improvements as they should have been long ago. Conlin-Strawberry's argument that the Commission exceeds its jurisdiction by imposing a fine for non-compliance with DHS orders is without merit. The fine in this proceeding is based upon a violation of General Order 103 that requires water utilities to comply with all DHS orders and regulations. Other minor revisions are made to the order herein to clarify the language.

Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Josiah L. Neeper in this matter was mailed to the parties in accordance with Rule 77.6(e) of the Rules of Practice and Procedure on November 4, 1999. No comments were filed.

Findings of Fact

1. Interim D.96-10-038 found defendant, Conlin-Strawberry Water Company, Inc. to be in violation of numerous Commission and DHS orders.
2. Conlin-Strawberry Water Company Inc. has continuously, and over long periods of time, failed to comply with orders of the Commission and the DHS as a result, it has failed to provide an adequate, reliable and safe supply of water to its customers as required by the Public Utilities Act.
3. Although the company's belated compliance with Commission or DHS orders requiring the purchase of a turbidity monitor and the provision of a method to measure water production was unconscionably slow and imposed an unjustified burden on its customers, correction of these violations were

completed more than a year before the filing of the instant complaint and therefore cannot be the subject of a fine or penalty.

4. These six items remained uncured and continued to be in noncompliance with prior Commission orders on January 1, 1994: improve pump efficiency by 50%, replace worn pipe on a regular basis, install a reliable telephone answering device to improve customer communication, institute a regular main-flushing program, develop an overall plan for plant improvements, and provide prompt, accurate water quality reports to DHS.

5. DHS' letter of February 27, 1994 summarizes 14 violations which, as of that date, continued to be in noncompliance with express DHS citations and orders. Imposing fines under Pub. Util. Code § 2107 for each day of continuing violations in this proceeding could assess amounts that might hinder the most important objective of making the repairs and improvements ordered by the Commission and DHS between 1983 and 1995.

6. A fine of \$500 for each item of noncompliance is reasonable based upon the violations committed, and the company's ability to pay said fine from shareholder assets even after making the necessary investments to pay for required system improvements.

7. The requirement that equal, quarterly payments be made within a 12-month period is a reasonable plan for payment of the total fine.

8. Interest for late payment or nonpayment will provide incentive to make timely quarterly payments of fines.

9. Requiring defendant to obtain approval from Commission staff in a timely manner of completed repairs and improvements is a reasonable requirement given the company's long delays and inadequate manner of completing these projects in the past.

10. Water Division staff is intimately familiar with past Commission and DHS' orders to improve this system. This makes them uniquely qualified to assess whether improvements have been satisfactorily completed.

Conclusions of Law

1. CCP § 340 bars fines for violations, which are cured within one year before a complaint is filed, or in this proceeding, before January 1, 1994.

2. Fines imposed pursuant to Pub. Util. Code § 2107 and 2108 are equally applicable to the violations in this proceeding.

3. Commission policy prohibits the payment of fines and penalties such as those ordered herein from revenues authorized for company expenses and operations. Such fines must be paid from shareholder assets.

4. This proceeding should be closed. Any unresolved compliance issues, such as the staff audit report or DHS citations since January 1995 should be disposed of in the company's pending general rate case or pursued in a future proceeding.

O R D E R

IT IS ORDERED that:

1. Conlin-Strawberry Water Company, Inc. is assessed a fine of \$500 per incident uncured for 20 incidences of violating past Commission and Department of Health Services (DHS) orders.

2. The total amount of the fine, \$10,000 shall be paid in full no later than February 1, 2001. At a minimum, equal quarterly payments in the amount of \$2,500 each, commencing May 1, 2000 shall be made out to the California Public Utilities Commission and shall be transmitted to the Commission Fiscal Office at the following address: 505 Van Ness Avenue, San Francisco, CA 94102.

3. Each quarterly installment becomes delinquent upon the tenth day after each quarter begins. The rules, fees and collection practices of the State of California Treasury Department will govern the collection of fines assessed in this order.

4. If a quarterly payment is not timely, ten days after each quarterly due date interest, at commercial paper rate, shall start accruing on the total balance due at that time for each month that the payment is late until the balance is paid in full.

5. The Commission Water Division is directed to pursue resolution of the remaining compliance items and of the audit discrepancies raised in the *Audit Report in Compliance With Interim D.96-09-043 for Conlin-Strawberry Water Company, Inc.* submitted on September 4, 1997 in the context of the company's pending general rate case or in another formal proceeding to be instituted no later than one year from April 30, 2000 or one year after the effective date of the final general rate case decision, whichever date is later.

6. Conlin-Strawberry Water Company, Inc. is hereby ordered to make all improvements ordered in prior Commission decisions and DHS orders reviewed in this proceeding by April 30, 2000.

7. Within two months of the effective date of this order, the Director of the Water Division shall file a compliance verification resolution for our review indicating all improvements which have been verified, and a recommended timetable for completion by April 30, 2000 of any system improvements which remain uncorrected. Said resolution shall also address whether, as required by D. 96-09-043 (68 CPUC2d 52 at 67), the company has hired a qualified system operator or manager who is willing to abide by prior Commission and DHS orders.

8. Within one month following the April 30, 2000 deadline for completion of system improvements, the Director of the Commission Water Division shall file

for our review, with a copy to the Commission General Counsel, a final compliance verification report regarding the status of required system improvements.

9. If Conlin-Strawberry fails to make the required improvements as ordered by this decision by April 30, 2000, the Commission General Counsel shall promptly prepare for the Commission's review, a petition, pursuant to Section 855 of the Public Utilities Code, to be filed in the Superior Court of Tuolumne County seeking the appointment of a receiver to assume possession of Conlin-Strawberry Water Company, Inc. and to operate the utility system.

10. Case 95-01-038 is closed.

This order is effective immediately.

Dated November 18, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners