

ORIGINALDecision No. 19036

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CASTRO VALLEY IMPROVEMENT CLUB,
an unincorporated association,

Complainant,

vs.

EAST BAY WATER COMPANY,
a public service corporation,

Defendant.

Case No. 2197.

Frank H. Arb, for Complainant.
McKee, Tasheira and Wahrhaftig, by A.G. Tasheira,
for Defendant.
J.W. Lupton, for East Bay Municipal Utility District,
Protestant.
Clark, Nichols and Elts, by George Clark,
for Alameda County Water District.
J.F. Maynard, for Oro Loma Sanitary District.

WHITSELL, COMMISSIONER:

O P I N I O N

This is a complaint filed by the Castro Valley Improvement Club against the East Bay Water Company, a corporation, requesting the Commission to direct the said water company to extend its distribution system to supply the residents of Castro Valley, Alameda County, with water for domestic and other purposes. The complaint in this proceeding alleges that defendant now serves water to lands and residences adjacent to Castro Valley, that it has an ample water supply for the service desired herein, and that there is no water system, other than that owned and operated by defendant, available to furnish water to the territory and residents represented by complainant.

The answer of East Bay Water Company denies generally the allegations set out in the complaint, and, in addition thereto, alleges that Castro Valley is in no wise a part of the territory in which defendant has undertaken to supply water, that defendant has not the water supply available for additional or new territory and cannot assume the responsibilities to serve this new area without impairing its ability and obligations to serve properly its existing consumers. Defendant therefore asks that the complaint be dismissed.

A public hearing in this matter was held at Hayward after all interested parties had been duly notified and given an opportunity to appear and be heard.

Castro Valley is located about two miles northeast of the town of Hayward on the Dublin Pass state highway, and comprises a district of approximately five square miles in area with a population at present estimated to be somewhat in excess of 1200. Although this district enjoys public utility electric, telephone and to some extent gas service, yet there is no comprehensive water system supplying the community. Water is obtained from individual wells which, by reason of the increased demand of the growing district and also because of the several years of inadequate rainfall, have already decreased in production to such an extent as to be inadequate for present requirements. In addition to the depleted water yield, the lack of proper sewage disposal and the many chicken ranches in the community have resulted in the contamination and pollution of many of the wells which must be depended upon for domestic water, so that the present conditions urgently demand an additional water supply from outside and uncontaminated sources.

The defendant East Bay Water Company serves water as a public utility to consumers from the City of Richmond in Contra

Costa County on the north, to a point not far from the city limits of the town of Hayward on the south, in Alameda County. Defendant now maintains a small storage tank, designated as Meek tank, which is located on a low ridge at the entrance to Castro Valley. Water is pumped from the defendant's Alvarado and Roberts Landing wells to the Meek tank, from which a small group of consumers living near the junction of Foothill Boulevard and Castro Valley Road, some distance north of Hayward, are supplied with water.

As the area in which complainant desires service has no facilities for the general distribution of water, it will be necessary to install a complete storage and distribution system before water can be delivered to the residents of the valley. Two plans for water supply were proposed by Jesse B. Holly, consulting engineer for complainant. One of these plans contemplated the use of pumped water from defendant's present wells to storage at a point above and not far from the present Meek tank, which would be re-located and enlarged. The other plan proposed by Holly provides for obtaining water from the defendant's Upper San Leandro Reservoir, from which it would be released to flow down the natural channel of San Leandro Creek to be recovered at a point near the head of Lake Chabot and thereafter pumped against a head of 350 feet to a reservoir of 100,000 gallons capacity located at an elevation of 500 feet. This proposed installation, including the necessary distribution system consisting of 68,580 feet of four and six-inch cast iron pipe, was estimated by Holly to cost approximately \$88,310. This amount, however, does not include the cost of meters and service connections and filtration equipment which are items of considerable importance. Mr. Holly further sets out in his report that the annual revenues which could be obtained from the consumers to be served by this extension would be \$20,880.

George H. Wilhelm for the East Bay Water Company estimated that the cost of the necessary installation to properly serve the Castro Valley would be \$164,153. and that the revenues to be received would be far less than the amount claimed by complainant, for the reason that the majority of the residents would continue to use their private wells and pumping plants for sprinkling and irrigation purposes which would, according to Wilhelm, greatly reduce the actual use of water which complainant assumed would be used.

Written protest was filed by J.W. Lupton, appearing for the East Bay Municipal Utility District, a municipal corporation, alleging in effect that said District includes a territory coincident with the boundaries of the following incorporated cities and towns in Alameda and Contra Costa Counties, namely, Oakland, Berkeley, Alameda, Piedmont, San Leandro, Richmond, Emeryville, Albany and El Cerrito; that it is the intention of said District to take such steps as are required by law for the acquisition of the properties and distributing system of the East Bay Water Company; that the permits for water which the District seeks to acquire from outside sources do not embrace the use of such waters for irrigation purposes; that the said District will be handicapped in its administration of those properties if the services of the East Bay Water Company are extended to points outside of the boundaries of the District, especially so if such services include irrigation use; and that there is at present a serious shortage in the East Bay Water Company's supply available to serve the existing communities which have a prior right to service. It is further alleged that the District contemplates the bringing into its area of an additional supply of water from the Mokelumne River and that when this development is completed and it is possible to ascertain what surplus waters are available for distribution without its boundaries, then in that event complainants may be given service from such surplus waters. The Commission therefore is asked

not to direct defendant East Bay Water Company to extend its service area to embrace territory without the boundaries of the District to the residents of Castro Valley, and to dismiss the complaint.

Protest against the granting of the request of complainant herein for extension of water service to Castro Valley was also made by the Alameda County Water District, by its attorney George Clark, upon the grounds that the East Bay Water Company has not a sufficient water supply for its present requirements; that to obtain water for the extension of service to complainants, resort must be had to increased pumping operations, which will draw upon the underground waters within the area of the Alameda County Water District, thereby inflicting serious injury and damage to and upon the private land owners within said water district.

In view of the protest of the East Bay Municipal Utility District against the extension of service by defendant to territory outside of the district boundaries, it should be pointed out at this time that this company already serves a considerable number of consumers in areas outside of said boundaries and in fact is so serving from the Meek tank in the general vicinity of Castro Valley. The fact that the present water supply of the company is not handicapped with reservations against the use of its waters for irrigation purposes should be sufficient to enable the Utility District to avoid any difficulties which might possibly arise in the future over the use of its waters from distant sources being put to agricultural uses against express prohibitions in the permits authorizing the appropriations of such waters.

The entire area served by East Bay Water Company is now and for several years last past has been experiencing a very rapid increase in growth, which will unquestionably soon tax the water resources of the company severely. Several large acreages of

property lying north of the present southern limits of this system are now being subdivided and placed upon the market as residential property. Provisions, of course, must be made in some manner to take care of the growing demands of this company's service area. Therefore, in reply to the protest of the Alameda County Water District, it should be noted in fairness to the complainant that the total number of consumers involved in the service to the entire Castro Valley is less than half the average number of new consumers added each month throughout the defendant's whole system.

The evidence presented in this proceeding shows that Castro Valley is wholly beyond the present area in which defendant has dedicated its water supply to the public use and that the defendant has not at any time ever held itself out to serve water to any portion of this territory to which complainant now desires water service extended. It furthermore appears from the evidence that, because of the large area covered and the widely scattered location of the houses therein, the cost of installing a proper water system to supply this territory would not be compensatory at this time. The Commission therefore would not be justified under these circumstances in directing defendant, East Bay Water Company, to make the extension of its water mains to serve Castro Valley residents.

The Commission, however, is very strongly impressed with the urgent need of this community for an adequate and uncontaminated water supply and recognizes the seriousness of the increasing menace to health resulting from the present methods of obtaining water. As there is no other source of supply available in sufficient quantity other than from the East Bay Water Company's system, the Commission has suggested to this company that it furnish the necessary water for Castro Valley from some point upon its present system, provided

the people, themselves, install the necessary distribution facilities and connecting pipe lines, and provided further that by so doing there will be no interference with the prior rights of the consumers within the dedicated area of this utility to water in times of water shortage. The evidence shows that the water supply of East Bay Water Company is at times barely sufficient to meet the needs of its consumers during periods of peak seasonal demand in the territory in which it holds itself out to serve. This order therefore will provide for the delivery to Castro Valley users only of such surplus waters as East Bay Water Company may have available over and above the requirements of its present and future consumers within its dedicated service area, and, in the event of a scarcity of water for its regular consumers, this company may discontinue the service herein permitted. The East Bay Water Company, by letter dated May 13, 1927, has consented to this arrangement. Should this plan be acceptable to the residents of Castro Valley, it is suggested that some type of responsible organization, such as a water district, mutual water company, or otherwise, be formed for the purpose of installing and operating a water system whereupon arrangements can be made to obtain water from the East Bay Water Company at a point of delivery to be mutually agreed upon.

This complaint therefore will be dismissed with the understanding that East Bay Water Company will furnish a water supply from its surplus waters, if any, in reasonable amounts for the use of the people of Castro Valley at a point to be mutually agreeable to consumers and company, if and when the said people of Castro Valley form a responsible organization for receiving and distributing such water and have installed the necessary facilities therefor.

O R D E R

Castro Valley Improvement Club having made complaint as

entitled above, requesting this Commission to direct the East Bay Water Company, a corporation, to extend its distribution system throughout the Castro Valley, in Alameda County, for the purpose of supplying the inhabitants of said valley with water for domestic and other purposes, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully informed thereon,

IT IS HEREBY ORDERED that the East Bay Water Company supply the Castro Valley area with water from such surplus waters as may be available over and above the requirements of its present and future consumers within its dedicated area, and subject to the further conditions and limitations set out in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED that in all other respects, for the reasons stated in the foregoing opinion, the above entitled proceeding be and it is hereby dismissed.

The effective date of this order shall be twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of November, 1927.

Edward J. Casey
Leon Whaley
Thos. J. Rourke
M. J. Carr
 Commissioners.