

Decision No. 20667

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

L.T. Boiseau, W.T. Clements,
Thomas Greaves, C.A. Adou,
Alfred Morgenstern and W.H.
Quinn, Jr.

Complainants,

vs.

Loyola Water Company and Los
Altos Country Club Properties,
Inc.

Defendants.

ORIGINAL

Case No. 2385.

Charles A. Gray, for Complainants.

Hankins & Hankins, by H.J. Hankins,
for Defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding, a number of lot-owners and consumers of water in the real estate subdivision known as Los Altos Country Club Properties, Inc., in Santa Clara County, have made complaint against Loyola Water Company, a corporation, which supplies water for domestic purposes on that tract.

The complaint alleges in effect that the existing well source of supply and the system of Loyola Water Company are inadequate to supply the domestic water service required by the consumers. The Commission therefore is requested to issue its order directing said company to install improvements necessary to provide proper and adequate service.

Defendants, in their answer, deny generally the allegations set forth in the complaint and aver that Loyola Water Company was organized as a private water company supplying consumers only under private contracts, is not operating as a public utility and therefore is not subject to the jurisdiction of the Railroad Commission. Defendants ask that this proceeding be dismissed for lack of jurisdiction.

Public hearings were held in this matter before Examiner Satterwhite after due notice had been given.

The present operative system of Loyola Water Company consists of a drilled well equipped with an electrically-driven pump, a 100,000-gallon wooden storage tank and the distribution pipe mains and services to the consumers. The area served contains about 600 acres subdivided into 900 lots and acre parcels. At the present time, there are only about thirty active consumers on the system.

The evidence shows that Los Altos Country Club Properties, Inc., a corporation, acquired said 600 acre tract in October, 1923, and thereafter proceeded with the development of the realty project by subdividing into lots, constructing roads, etc., installing the necessary water system and inaugurating a selling campaign. Said Los Altos Country Club Properties, Inc., organized and incorporated the Loyola Water Company on September 11, 1924, and on January 19, 1925, conveyed to said water company all the water supply properties and system, thereby separating the water business from the real estate operations. On the date of said conveyance of the water properties, an agreement was entered into by and between Los Altos Country Club Properties, Inc., and Loyola Water Company which provided that said water company would

sell water for domestic purposes to any and all purchasers of lots or parcels of land in said subdivision under the terms and conditions of an individual contract of the form attached thereto. Said contract, among other things, contained the following provision:

****nothing in this contract, however, shall be construed as constituting said first party (Loyola Water Company) a public utility or as prohibiting said first party from selling surplus water to other persons."

The articles of incorporation of the defendant water company provide that it shall sell and deliver water only

"under private contracts and agreements to such person, persons or companies as to this company may seem advisable, and without selling or delivering water to the public at large or as a public utility."

However, the evidence in this proceeding shows that, out of a total of thirty consumers at present served, not more than eight have ever signed the individual water contracts.

The record herein furthermore discloses the fact that during the early development of the project, from March, 1924, to on or about June, 1925, the latter being about five months after the date on which the parent company conveyed its water supply properties to Loyola Water Company, water was sold by representatives and/or agents of said parent company to eight lot-owners for construction and domestic purposes without requiring the signing of any private water service contracts whatsoever. Thereafter, and in spite of the fact that the said private water service contracts set forth therein a definite schedule of rates, the company on its own initiative, on or about the month of January, 1927, increased said contract schedule of rates to the amounts now charged present consumers.

A careful consideration of the record in this proceed-

ing shows that the water service of this utility was dedicated to public use prior to the time the defendants herein attempted to confine their operations to strictly private agreements to supply water. Furthermore, although the now claimed intent of defendants was to supply water only in their private capacities, nevertheless, their actual acts and practices have been inconsistent with any such alleged intent. There can be no other conclusion therefore than that the service of Loyola Water Company is public utility in character and, as such, said company is under the jurisdiction of the Railroad Commission.

The testimony shows clearly that Loyola Water Company's water-producing and distributing facilities are inadequate to properly serve their existing consumers and should be improved and remedied without further delay. The rates heretofore charged and in effect on this system prior to the arbitrary and unauthorized increase therein, made on or about the month of January, 1927, shall be considered the effective rates on this system and will be ordered filed with this Commission as such.

O R D E R

L.T. Boiseau, W.T. Clements, et al. having filed formal complaint with the Railroad Commission as entitled above, public hearings having been held thereon, the matter having been submitted and the Commission being now fully informed in the premises, and also being of the opinion that Loyola Water Company, a corporation, is serving water to its consumers as a public utility and, as such, that said service is under the jurisdiction and control of the Railroad Commission,

IT IS HEREBY ORDERED that, within twenty (20) days from the date of this order, Loyola Water Company, a corporation, shall file with this Commission as follows:

1. Rules and regulations governing the relations of the company with its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.
2. The former schedule of rates heretofore charged and in effect for service rendered consumers prior to the unauthorized increase therein made by said Loyola Water Company on or about the month of January, 1927, said former schedule of rates to be charged for all service rendered subsequent to the first day of July, 1928.
3. Plans acceptable to this Commission for the proper improvement of existing inadequate and unsatisfactory water service conditions.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 11th day of January, 1929.

Thos D. Laidley
Esq.
Attorney
Leon Whittell
M. J. Curran
 Commissioners.