

Decision No. 25154

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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LANDOWNERS' LEAGUE OF ATASCADERO,
Complainant,

vs.

ATASCADERO MUTUAL WATER COMPANY,
Defendant.

ORIGINAL

) Case No. 3131
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Harry A. Encell, for Landowners' League
of Atascadero

Louis Cohen, for Atascadero Mutual Water
Company.

BY THE COMMISSION:

O P I N I O N

This is a proceeding brought by the Landowners' League of Atascadero, a voluntary association of persons residing in the vicinity of Atascadero, San Luis Obispo County, against Atascadero Mutual Water Company, a corporation, which is engaged in the distribution of water for domestic and irrigation purposes to its stockholders only.

The complaint alleges that the water controlled and distributed by defendant is, under the terms of its articles of incorporation, made appurtenant to the lands in a certain tract formerly known as the J. H. Henry ranch; that it has sold and delivered water to landowners beyond the limits of said tract,

and has made contracts for the sale of its stock to such land-owners upon varying terms and prices; that it charges each stockholder at a meter rate irrespective of the number of shares owned; that it collects a ready-to-serve charge from each irrespective of his use of water, and in other respects has failed to administer its affairs as a truly mutual corporation. No allegation is made in respect to the reasonableness of the rates charged or the adequacy of the service rendered. The prayer is simply that the Commission declare the defendant to be a public utility and require it to file with the Commission rates, rules and regulations covering its operations.

Defendant denies that it is a public utility or has ever dedicated its water supply or facilities to the public use, and asks that the complaint be dismissed for lack of jurisdiction.

Public hearings in this proceeding were had before Examiner Satterwhite at Atascadero. The record develops the following facts:

The Landowners' League of Atascadero is an organization composed of approximately 275 property owners in the Atascadero Colony, all stockholders in the Atascadero Mutual Water Company. The Atascadero project was a land colonization plan conceived and developed by one E. G. Lewis and by him placed on the market in 1913 through and by means of the Colony Holding Corporation formed for that purpose. The land included in the area was known as the J. H. Henry ranch and comprised 23,150 acres, all of which was riparian to the Salinas River. The Colony Holding Corporation subdivided the property into urban and suburban lots, organized several commercial and industrial projects, installed a well and pumping plant near the Salinas River and mains throughout a very considerable portion of the properties to supply the colonists

with water. Service was first delivered to residents on the tract in 1913. At the outset it became apparent that the production and distribution of water in itself would be a most complicated problem. It was thereupon decided to form a separate corporation to provide this service, resulting in the organization on August 8, 1913, of the defendant water company to take over the above water facilities and assume the responsibility of providing service throughout the area. This was accomplished as the result of a written offer termed the "Proposal" presented by the Holding Corporation to and accepted by the board of directors of defendant on October 20, 1914. In this proposal the Holding Corporation, among other things, offered to purchase all of the 200,000 shares of the capital stock of the water company, less twenty-five shares of the qualifying directors, in consideration of the granting of said water company "of all the right, title and interest of the Holding Corporation in all percolating and underground waters riparian to, in or pertaining to the J. H. Henry Ranch". Further improvements to the water plant and facilities thereafter were to be financed by the Colony Holding Corporation and deeded to the water company.

Purchasers of tracts from the Colony Holding Corporation were issued shares of stock in the defendant water company appurtenant to the lands purchased, each lot or acre tract being entitled to five shares, and each residence lot one share for each one-fifth acre, or one share in case the lot contained less than one-fifth acre. The deeds executed by the Colony Holding Corporation in practically all its land sales contained the following covenants:

"Seventeenth: The first party also excepts and reserves to itself, its successors and assigns, all waters, not riparian, in or upon the said premises, together with the right of entry to make water development thereon, and appropriate and carry the same away by pipe lines or other conduits, causing no unnecessary damage to the land and paying to the second party all damage to his improvements thereon caused by the first party, but the first party shall not make any such water development of such waters, unless, in the opinion of the first party, such development is necessary upon the lots and parcels sold in order to provide sufficient water for distribution by said Atascadero Mutual Water Company, for domestic, irrigation and other needful uses.

Eighteenth: The lands of the said J. E. Henry Ranch are riparian to the waters of the Salinas River and other streams and waters in, adjoining and bounding the same, and it is the purpose of the first party to partition said riparian rights of said ranch among the lot and parcel owners, including the first party hereto, in proportion, approximately, to the number of acres owned by each, and for this purpose the first party grants to the second party, as appurtenant to the lands hereby conveyed, that part or portion of said riparian waters represented by the number of shares of stock in the Atascadero Mutual Water Company hereby sold to the second party, but the first party reserves the sole and exclusive right to take and distribute said waters itself or through and by means of the said Water Company (which has been organized and incorporated by it for that purpose), to and for the use of the second party and other lot and parcel owners, under rules and regulations to be established by it, or by said Water Company, and at reasonable rates to be fixed and established by it or by said Water Company, or by authority of law."

As originally subdivided the J. E. Henry ranch required only 106,341 shares of stock, leaving an excess of 93,659 shares which the Colony Holding Corporation returned to the defendant water company, excepting approximately 10 per cent thereof to provide for possible future subdivisions or resubdivisions of the tract. It appears that the capital investment in water facilities was raised by adding the necessary charges therefor to the sale price of the land. The funds thereby acquired were either turned over to the defendant or used by the Colony Holding Corporation itself to install water facilities for the account of the defendant.

The articles of incorporation of the Atascadero Mutual Water Company were filed in 1913 and express the purpose of engaging in the business of delivering water only to the owners of its capital stock, which shares of stock shall be made appurtenant to the lands of the respective owners. The articles expressly provided further that "said land is a certain tract situated in the County of San Luis Obispo, State of California, containing 23,150 acres, more or less, known as the J. E. Henry Ranch, and also certain lands in the vicinity of said ranch".

Its original by-laws provided as follows:

"The waters of the corporation shall be sold, distributed, supplied or delivered to owners of its located capital stock only, and shares of stock sold may be made appurtenant to the parcel of land described in the certificate issued therefor, and when made appurtenant, as aforesaid, the said shares shall only be transferred with the said land, and shall pass as appurtenant thereto. The said land must be a lot or parcel of the Ranch known and called the J. E. Henry Ranch, situate in the County of San Luis Obispo, State of California, * * * * *. No stock shall be located upon any land not described in the Articles of Incorporation.

Land upon which shares shall be located shall be entitled to the use of water thereon only and for such purposes and uses as shall be provided by the By-Laws of said Water Company and the Board of Directors are hereby given power and authority to make rules and regulations for the use and distribution of said water to the lands upon which said shares shall be located but the distribution thereof shall be in proportion to the number of located shares of the respected located land owners. The right to the use of water for irrigation and domestic purposes shall be subject to the provisions of the contract for the original purchaser of said land from the Colony Holding Corporation and also to any deed of conveyance for said land executed by said corporation. Unlocated shares of stock shall not be entitled to the use of any waters."

The Colony Holding Corporation later was forced into bankruptcy. A plan for the settlement of its affairs was adopted and during the year 1927 the corporation was succeeded by Oscar L. Willett as trustee, appointed under a reorganization in the form of a liquidating trust locally known and referred to as

"The Real Estate Settlement Plan." The water company was not involved in such reorganization. No funds were provided by the trustee for further extensions of the water system, so it was necessary thereafter for the water company to require the landowners themselves to pay the cost of necessary additions.

In 1929, Oscar L. Willett, trustee, purchased 159 acres of land adjoining the J. H. Henry ranch, subdivided and placed it upon the market through the Atascadero Development Syndicate. This concern was not incorporated but was one of the two branches of The Real Estate Settlement Plan. The tract was called A.D.S. Addition No. 1. Approximately forty-four hundred dollars were invested in the piping and installation of water distributing facilities throughout the Addition and 899 of the excess shares of stock in the treasury of the defendant water company were transferred to the trustee and by him made appurtenant to the lands in said addition, the consideration for said transfer being, among other things, the granting to the water company of all the reserved rights to underground or percolating waters in the new tract and title to the water distribution facilities therein installed. The expansion of the activities of the water company to include the lands in this addition was in all respects in accordance with its by-laws and under the same plan theretofore adopted in connection with the J. H. Henry tract. No water sales were ever made to any one in this addition who was not occupying land to which water stock had been made appurtenant. At present approximately sixty stockholders are served in this new area.

It should be noted that by the provision of the original by-laws of defendant, above quoted, water service was restricted to the lands comprising the J. H. Henry ranch, although its articles of incorporation did not contain the same restrictions. Accordingly, after arrangement was made to serve water to the owners of land in the A.D.S. Addition No. 1, as above described, the by-laws were amended at a stockholders' meeting held in May 1931, to include lands in the vicinity of the J. H. Henry ranch, in order to make them consistent with the articles of incorporation. The stock outstanding on the above dates was 107,240 shares, and there were represented 56,623 shares at the meeting, of which 51,328 shares were voted for the amendment. The by-laws of defendant were recorded in the office of the County Recorder in San Luis Obispo County in February 1915, and the amendments subsequent thereto also were therein duly recorded.

Complainant contends that all waters delivered to consumers must be restricted and confined to that particular area designated as the J. H. Henry ranch. It contends further that the modification of its by-laws designed to permit the inclusion of lands outside that tract was ultra vires and void because not accomplished in compliance with the procedure provided by Section 304 of the Civil Code.

The water system presently operated by defendant consists of a well and pump located in the bed of the Salinas River, from which water is brought to the surface and elevated by a booster unit into a concrete-lined reservoir located on one of the points of higher elevation in the tract. Several small booster plants lift the water to supply consumers situated above the elevation of the main reservoir. The distribution system consists of

sixty-six miles of mains, from which approximately 572 are presently receiving water. All service connections are metered. According to the evidence submitted, the assets of the company as of April 30, 1931, total \$724,407 and the liabilities \$123,815, showing the total net worth of the physical properties to be \$600,592. For the year 1930, the revenues receivable were given as \$39,876 and the operation expenses \$31,816, exclusive of depreciation. The revenues are those as billed. The amounts actually collected are considerably less as a large number of nonresident property owners who do not receive water are assessed a readiness-to-serve charge, a part of which has never been collected. Operating expenses include bond interest amounting to \$6,320.27. There are at present about 3,400 stockholders. About one-third only of the original tract is piped for water service.

From these facts it is apparent that the defendant, in the beginning operated as a truly mutual water company and that it continued to operate in that capacity so long at least as it distributed water only to the lands included in the J. H. Henry tract. There is no substantial evidence that water was ever delivered to any one who was not a bona fide stockholder. Every share of outstanding stock, except directors' qualifying shares, is appurtenant to land and entitles the owner to the delivery of exactly the quantity of water to which his land is entitled by virtue of its riparian rights. Although the underground waters were reserved to the Colony Holding Corporation and in turn conveyed to the defendant, the riparian rights remained in the ownership of the respective landowners and have been administered to their mutual benefit through the medium of the defendant corporation.

Such a corporation is a mutual organization and not a

public utility, Frazer v. Railroad Commission, 185 Cal. 690; Stratton v. Railroad Commission, 186 Cal. 119. We are unable to perceive, also, wherein the defendant's status as a mutual corporation was changed when it later issued more stock and extended its facilities to include other lands. The water rights of such new stockholders, the consideration for the issuance of stock to become appurtenant to their lands, and their respective rights to water service through the medium of the defendant corporation, are apparently identical with those of stockholders and landowners within the area originally served. The mutuality of defendant's undertaking was not in the least altered by such enlargement of its field of operation. We cannot conclude that merely because the issuance of those additional shares by defendant was possibly without proper corporate authorization, it thereby dedicated its entire property to the public use.

Other points urged by complainant in support of its contention that the defendant is a mutual corporation in name only concern matters of internal management which are not within the province of this Commission to control, and do not alter our conclusion in respect to the main issue presented. Its charges or assessments for water service rendered may or may not be entirely equitable, or in excess of the actual current cost of operation. It is obvious the recipients of water service, the stockholders themselves, are the beneficiaries of any profits which have accumulated and they in effect are having their waters distributed among them at actual cost. They have it within their power to administer the affairs of their corporation in any legal manner which will best promote their own interests. In only three instances was water ever delivered to non-stockholders, and in those it was an indirect sale through a stockholder as an accommodation

for a limited period during a very dry year. The record contains no substantial evidence indicating that the defendant by its acts or declarations has dedicated its property to the public use. The complaint will, therefore, be dismissed.

ORDER

Landowners' League of Atascadero, a voluntary association of landowners and stockholders of the Atascadero Mutual Water Company of Atascadero, San Luis Obispo County, having filed a formal complaint with the Commission requesting that the company be declared a public utility, subject to the control and jurisdiction of this Commission, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the complaint herein be and it is hereby dismissed.

Dated at San Francisco, California, this 10th day of September, 1932.

W. A. Cunn
W. B. Harwin
James G. Hester
Commissioners