

Decision No. ✓

ORIGINAL

Decision No. 1425

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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GEM CITY PACKING COMPANY,
a corporation,

Complainant,

-vs.-

SAN JOSE WATER COMPANY,
a corporation,

Defendant.

Case No. 489.

Louis Oneal and M. J. Rankin for complainant.
Leib and Leib for defendant.

ESHLEMAN, Commissioner.

O P I N I O N .

The complaint in this case alleges that the complainant has been receiving water from the San Jose Water Company, a public utility, at its packing house in the County of Santa Clara through the two-inch pipe owned by Santa Clara County; that originally this pipe was used to supply the County of Santa Clara alone but subsequently other users were permitted to take therefrom; that for ten years last past complainant has been securing water through said pipe, but that in 1913, the Board of Supervisors permitted others to receive water through this pipe and refused longer to permit the complainant to receive such water. It is in evidence that the complainant has invested in the neighborhood of \$25,000.00 in its packing house and that water through this pipe is absolutely essential to the continuance of its business.

The defendant admits most of the allegations of the complaint, but urges that the water was furnished through the County pipe with the knowledge of the complainant, and that this com-

plainant, as well as all other complainants, has known that it is the county pipe and that the use of it is controlled by the county.

San Jose Water Company evinces its willingness to continue the delivery of water and it is admitted that there is plenty of water to deliver to this complainant. San Jose Water Company likewise alleges that it has offered to expend \$700.00 to take the pipe from the end of its present facilities to the boundary line of Los Gatos provided the applicant would connect up at that place. About \$20.00 or \$25.00 a month during the packing season is paid by the complainant for its service.

Two very difficult legal questions are presented in this case, and exhaustive briefs have been filed but have not satisfied me as to the correct determination of these two questions. First, what is the relationship of the County of Santa Clara to these water users taking from this pipe which it (the County of Santa Clara) owns but which is used by a public utility water company in delivering water not only to it (the County of Santa Clara) but to others who by the permission of said county of Santa Clara have been attached to this pipe? Second, if the County of Santa Clara has the right to refuse the use of this pipe longer to these consumers, other than itself, what is the liability of the San Jose Water Company to the consumers who have heretofore taken water through this pipe?

I do not feel that it is necessary under the peculiar facts of this particular case, to decide these two interesting and important questions. It seems to me that the complainant is entitled to a continuance of its water supply, either through this pipe or by substituted facilities. Because of the over-taxing of this pipe and of the further fact that the complainant herein is a comparatively larger user of water, it is probably better in the interest of efficiency of service that other facilities be accorded to the complainant; and that without deciding the right to the continuance of the supply through the county pipe, and without deciding either that

the county having once accorded the right to use this pipe can withdraw this right or cannot withdraw this right, I believe the present complaint can be settled between the parties themselves. It is certainly very much to the interest of the Gem City Packing Company to have an adequate and constant supply of water for its uses. The San Jose Water Company has plenty of water to furnish to the complainant. It is in evidence that regardless of the condition with reference to other users from this pipe belonging to Santa Clara County, that this complainant knew the pipe belonged to Santa Clara County at the time it began securing water and at the time it erected its packing house. If all are treated alike on this pipe, and the county uses the water as its necessities require for sprinkling roads and similar purposes, the complainant will not, even though it should be decided that it has the right to participate in this use, always be able to secure water when it desires.

I believe under all the circumstances of the case that a new pipe should be constructed suitable to furnish the complainant at the joint expense of the San Jose Water Company and the complainant. I will not at the present time enter an order in this case, but the parties are directed to present to this Commission plans for a pipe line from the San Jose Water Company's facilities to the packing house of the defendant suitable to serve the needs of the complainant, and to submit estimates as to the cost of the same, after which the Commission will direct how such costs shall be divided. As I have already said, I believe that in some manner this complainant should be given water and that the San Jose Water Company should be required to deliver it water, but I do not intend to be understood as deciding that the San Jose Water Company should be required to extend pipes to all of the numerous scattered con-

sumers throughout Santa Clara County who are now taking from the county pipe. Nor do I intend to decide that this company may not be required to do so; neither do I decide what the liability on the County of Santa Clara is imposed by its voluntary submission of these pipes to the use of consumers taking water from the San Jose Water Company. These matters are left open for subsequent determination provided necessity requires.

The parties are therefore directed to submit to this Commission within twenty (20) days, plans for the construction of a pipe line from the nearest pipe of the ~~XXXX~~ San Jose Water Company to the packing house of the complainant, together with an estimate of the cost thereof, whereupon this Commission will decide what payment shall be made by each of the parties hereto.

The foregoing opinion is hereby approved and ordered filed as the opinion of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of April, 1914.

John M. Eckman
H. J. Ireland
Alfred Gordon

Commissioners.