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Decision No. ✓

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

Decision No. 2529

In the Matter of the Application of
JAMES A. MURRAY and ED FLETCHER for
an order authorizing and permitting
an increase in the rentals, tolls
and charges for water furnished by
them and service rendered by them in
furnishing water in the County of
San Diego, State of California.

Application No. 118.

Sweet, Stearns and Forward for Applicants.
L. L. Boone for La Mesa Development Company.

THELEN, Commissioner.

SUPPLEMENTAL OPINION.

This is a petition by La Mesa Development Company for
an order modifying this Commission's order of March 28, 1913, in
the above entitled proceeding by adding thereto the following
language:

"Provided, however, that it is not intended
by this order to prevent the said James A. Murray and
Ed Fletcher from performing any valid contract for
the supply of water which exists at the time of making
this order, to-wit, on this 28th day of March, 1913,
made by the San Diego Flume Company, the predecessor
in interest of the said James A. Murray and Ed Fletcher."

The petition alleges in part that on February 7, 1908,
San Diego Flume Company and La Mesa Development Company entered
into a contract for a consideration of \$120,000 paid to the San
Diego Flume Company by the La Mesa Development Company, wherein
and whereby the Flume Company agreed to supply the Development
Company with 150 miner's inches of water, upon demand therefor,
at any time within 20 years for use upon any lands belonging
to the Development Company; that said contract was a valid con-
tract when entered into and that it has not been rescinded or
set aside; that on June 1, 1910, the Flume Company sold its water

system to James A. Murray and that James A. Murray agreed, for himself and his successors in interest, to carry out all the contracts for the supply of water theretofore made by the Flume Company; that Murray subsequently transferred a one-sixth interest in the property to Ed Fletcher; that subsequent thereto the Development Company demanded performance of said contract of Murray and Fletcher but that performance was refused; that thereafter, on February 16, 1912, the Development Company brought suit against Murray and Fletcher in the Superior Court of San Diego County for the specific performance of the contract of February 7, 1908; that thereafter, on December 5, 1913, Murray and Fletcher set up as a defense to the suit the order of this Commission rendered on March 28, 1913, in the above entitled proceeding and claimed that they could not perform the contract of February 7, 1908 on the ground that it conflicts with this Commission's said order; and that the Superior Court had previously adjudicated on demurrer to the complaint in said action, that the complaint stated facts sufficient to constitute a cause of action. The particular portion of this Commission's order of March 28, 1913, to which the Development Company objects is the direction that no additional consumers be added to the system except domestic consumers under the terms specified in the opinion. The Development Company has used only one miner's inch out of the 150 miner's inches referred to in the contract of February 7, 1908, and Murray and Fletcher, who are doing business under the firm name and style of Cuyamaca Water Company, take the position that under this Commission's order of March 28, 1913, it is forbidden to deliver water for irrigation to any land which was not being irrigated on March 28, 1913.

The Cuyamaca Company further takes the position in this proceeding that the contract of February 7, 1908, is void in toto both as establishing a preference in favor of La Mesa Development Company as against other persons living within the area to the

use of which the Cuyamaca Company's water has been appropriated and dedicated and as attempting to carve out a private use in favor of the San Diego Flume Company's officers and directors through the instrumentality of another corporation, La Mesa Development Company, which had the same or almost the same officers and directors as San Diego Flume Company.

The question of the validity of the so-called water right contracts of the San Diego Flume Company is being adverted to in the decision this day being rendered by this Commission in Application No. 1432, being the joint application of James A. Murray and Ed Fletcher on the one hand and La Mesa, Lemon Grove and Spring Valley Irrigation District on the other, for an order authorizing the price at which the property of the Cuyamaca Company is to be sold to the Irrigation District, to which decision reference is hereby made.

If the contract of February 7, 1908, is void, as claimed by the Cuyamaca Company, no harm will be done by amending this Commission's order of March 28, 1913, as requested by the Development Company. On the other hand, it was not this Commission's intention in its decision of March 28, 1913, to place stumbling blocks in the way of the performance by the Cuyamaca Company of any valid outstanding contracts for the delivery of water. If the contract of February 7, 1908, is a valid and enforceable obligation against the Cuyamaca Company, this Commission does not desire by any language in its order of March 28, 1913, to make performance of that contract difficult or impossible. Whether the contract of February 7, 1908, is valid or not is a matter for the determination of the courts. All parties should obviously work together to expedite the determination of this question so that the extent of the legal obligations of the Cuyamaca Company's system for the delivery of water may be determined at as early a date as possible.

The granting of the petition of the Development Company herein will not in any way change the obligations, if any, of the parties under the contract of February 7, 1908. Such action will merely place the Development Company in the position of being able to have adjudicated in the proper forum, without embarrassment from this Commission, the question whether or not its contract is valid.

I recommend that the petition of La Mesa Development Company be granted and submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

A public hearing having been held in the above entitled proceeding, and the Railroad Commission finding that the petition of La Mesa Development Company herein should be granted,

IT IS HEREBY ORDERED that the order rendered on March 28, 1913, in the above entitled proceeding be and the same is hereby modified by adding thereto the following proviso:

"Provided, however, that it is not intended by this order to prevent the said James A. Murray and Ed Fletcher from performing any valid contract for the supply of water which exists at the time of making this order, to-wit, on this 28th day of March, 1913, made by the San Diego Flume Company, the predecessor in interest of the said James A. Murray and Ed Fletcher."

In all other respects said order of March 28, 1915, as modified by subsequent orders, shall remain in full force and effect.

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

Dated at San Francisco, California, this 26th day of June, 1915.

Max Thelen
H. S. Ross
Alex Gordon
Edwin C. Edgerton
Frank R. Doherty

Commissioners.