

Decision No. ✓

ORIGINAL

Decision No. 8084

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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ALEX CUMMINGS, and MARY F. CUMMINGS,
Complainants,

-vs-

LA RICA WATER COMPANY, a
corporation,

Defendant.

CASE NO. 829.

Harry W. McNutt for complainants.
Goudge, Williams, Chandler and Hughes,
by Charles L. Chandler, for
defendant.

BY THE COMMISSION:

O P I N I O N.

The amended complaint alleges the rate charged plaintiffs to be excessive, discriminatory and unlawful, and asks that defendant be declared a public utility, subject to the jurisdiction, regulation and control of this Commission, and that it refund the sum of \$84. alleged excess in rates collected from complainants within the last two years for irrigation water furnished.

The answer denies that defendant is a public utility, denies that any part of the \$84. is due from it, and pleads in justification of the higher rate charged complainants a contract for such a rate between them and the prior owners of the water plant. It denies that it fur-

nishes water to persons other than its stockholders, except to complainant, Mary F. Cummings, and to one William Stevenson, both being supplied with water under a similar contract.

In 1910 H. K. Wheeler and Moses Stewart, ranchers in Los Angeles County, constructed a well and pumping plant for their joint use under oral agreement, each sharing equally in the cost.

On or about January 4, 1911, Lillian Dubois Wheeler, wife of said H. K. Wheeler, sold to complainant, Mary F. Cummings, ten acres of land described as Lot 4 of Tract 718, La Puente Rancho, "including a 'water right' for irrigation purposes", and under that date executed and delivered to her a "water right contract" in which it was provided:

"The said party of the first part agrees to furnish as much water as in the judgment of the party of the second part is necessary to irrigate said land, and the said second party shall take and receive the full capacity of said well and pumping plant for such period as may be necessary to irrigate the same.

"And it is further agreed that the party of the second part shall pay the sum of one cent per miner's inch per hour for any or all water furnished under this contract by the party of the first part." *****

"It is further agreed that the covenants and agreements herein contained shall run with and be binding on the land whereon the said pumping plant is situated, and the land of the party of the second part as above described, and on the successors and assigns of the parties hereto."

Mrs. Wheeler also sold 10 acres of her land to one William Stevenson, executing a similar water contract. Both purchasers
/have ever since paid \$1.50 per hour for the service of water to the capacity of the pump. The plant was operated by its

builders for about two years and on or about May 24, 1912, was conveyed to the newly organized defendant company, subject to above contracts. Wheelér and Stewart each received in exchange for the plant 430 shares of the capital stock of the new company. Most of their stock has been sold by them. No stock has been sold at more than \$3.00 per share, which is probably about the price assigned to it by the parties to the exchange. The total stock outstanding now is 907 shares.

Defendant is organized as a corporation for profit with a capital stock of \$7500. divided into 1,500 shares of the par value of \$5. each. Its articles state its purposes to be, among others, "to sell, furnish and deliver water to others for domestic and irrigation purposes". Its by-laws, however, seem designed for a mutual company. They contain among others, the following provisions:

*****Stock shall be issued at the rate of five (5) shares to one acre of land upon which water shall be used, and the ownership of the stock and the land upon which water is to be used thereunder, shall stand in the same person.

"Where water is permitted to be used on land not covered by stock in addition to land covered by stock, a rate of one dollar and fifty cents (\$1.50) per hour shall be charged for the proportion of time the water is used as the amount of land not covered by stock bears to the land covered by stock." (From Art. I, Sec. I).

"Section 6. Water shall only be sold, distributed, supplied or delivered to owners of the capital stock of this Corporation. Such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor." (From Art. I, Section 4.)

In practice the water has not been distributed in proportion to holdings of capital stock of the company. Each stockholder has been furnished water as desired in amounts desired, at the same uniform rate, which for some time has been eighty cents per hour for the capacity of the plant whether used on land owned or leased and regardless of the number of shares owned.

The receipts of the company, based on a rate of eighty cents per hour to stockholders and \$1.50 per hour to complainants and Mr. Stevenson, have been sufficient to cover the cost of operation and ordinary repairs, without providing any sinking fund for depreciation. The plant will soon need heavy repairs or replacements. No salaries have been paid but labor has been hired and paid for. Water is pumped direct into about 720 feet of pipe line, from the end of which water is conveyed in open ditches to most of the users. The capacity of the plant is about 200 inches at the pump and about 125 inches at complainant's land, there being considerable seepage, evaporation and loss in transmission through open ditches.

A comparative statement, furnished since the hearing, of the water in actual service in the fall months of 1912, 1914, and 1915, is as follows:

| | <u>1912</u> | <u>1914</u> | <u>1915</u> |
|-----------|-------------------|-------------------|-------------------|
| August | 309.10 hr. | 337.45 hr. | 363.35 hr. |
| September | 218.35 hr. | 310.55 hr. | 347.55 hr. |
| October | <u>200.00 hr.</u> | <u>286.05 hr.</u> | <u>234.55 hr.</u> |
| | 727.45 hr. | 934.45 hr. | 946. 25 hr. |

It is apparent that defendant is a public utility as defined by Section 2 (bb) of the Public Utilities Act and that the rate charged complainants is discriminatory. The return to stockholders should be earned through dividends rather than through the favor of a discriminating rate.

The fact that the contract holders are not subject to assessment with the stockholders to improve the plant is not of great importance because rates may be so fixed as to include an annuity charge sufficient in amount to rebuild the plant from time to time as needed.

Under the circumstances of this case we feel no need to order a refund of any part of the rates heretofore collected in order that justice may be done, and especially in view of the fact that it does not clearly appear from the evidence that the rate paid by complainants is unreasonable. That portion of the relief prayed for will, therefore, be denied.

O R D E R.

ALEX CUMMINGS et al. having complained of discrimination in rates charged by defendant La Rica Water Company for service of irrigation water, and praying a refund of \$84.00, representing the excess in rates paid by complainants over rates paid by defendant's stockholders, and that defendant be declared a public utility; and defendant having denied that it is a public utility in law or in fact, and a public hearing of said case having been held, and the matter having been submitted to the Commission for determination, it is hereby found and declared that defendant is a public utility.

IT IS HEREBY ORDERED that defendant La Rica Water Company eliminate the discrimination which now exists in its rates by reason of the fact that it charges a different rate to its patrons who are not stockholders from the rate charged to its stockholders.

IT IS FURTHER ORDERED that the refund prayed for be and it is hereby denied.

IT IS FURTHER ORDERED that this order shall take effect from the date hereof and that La Rica Water Company shall, within thirty days from date hereof, prepare and file schedule of rates to be charged by it for the service of water to its patrons.

Dated at San Francisco, California, this 7th

day of February, 1916.

H. D. Howland
W. J. Gordon
Edwin A. Edgerton
Franz R. Decker
Commissioners.