

Decision No. _____

ORIGINAL

Decision No. 3275

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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M. M. ESHEIMAN, et al.,

Complainants,

-vs-

TITLE GUARANTEE AND TRUST
COMPANY,

Defendant.

CASE NO. 864.

Nelson C. Burch for complainants.
E. W. Sargent and W. G. Cook, by W. G.
Cook, for defendant.
Henry P. Goodwin, City Attorney, for
City of Tropic.

BY THE COMMISSION:

O P I N I O N.

Defendant, as trustee for the bondholders of Glendale Consolidated Water Company, is engaged in serving domestic water to the inhabitants of Tropic, Los Angeles County, a city with a population of about 4,000, adjoining Los Angeles on the north.

The principal allegations of the complaint are:

1. That defendant's rates are unjust and unreasonable;
2. That it fails and refuses to provide adequate equipment and facilities for the service;

3. That the cost and expense of providing and maintaining said equipment and facilities have been and are now collected from consumers;
4. That inhabitants of Tropicco are entitled to the free use of a portion of the flow of the water rising in Verdugo Canyon, which portion is sufficient to supply their needs;
5. ^{That} /defendant's reservoirs, mains, meters, pipes and connections for serving said water to the inhabitants of Tropicco were acquired, constructed and installed at the cost and expense of the inhabitants, as follows:

Distribution pipes.....	\$28,000.00
Meters and meter connections..	12,500.00
Repairs and replacements for two years, one and one-half months ending December 31, 1914.....	10,600.00
Fire hydrants, connections and pipe service extensions provided by the city at an expense during the fiscal year ending June 30, 1915, of.....	4,768.00

6. That the inhabitants "are owners of a proprietary right to a perpetual easement in the said instrumentalities and equipment and facilities * * * subject only to the payment of a service rate."

It is further alleged that neither defendant nor its predecessor has made any additional outlay for the purchase, upkeep, betterment or maintenance of the system other than at the cost and expense of consumers. The prayer is for an order

fixing rates and for further relief generally.

The answer alleges that defendant as trustee for Glendale Consolidated Water Company is the owner of all of the property including water, water rights, pipe lines, reservoirs and rights of way formerly belonging to the latter company, through purchase at foreclosure sale on November 6, 1912, part of the property acquired being the water system serving Tropic and vicinity; that its rates established by the city of Tropic are not sufficient to provide for maintenance and operation, depreciation and interest on the value of the plant, but that the city adopted an ordinance to become effective July 1, 1915, which would reduce water rates about half, and that it procured a temporary injunction from the superior court restraining the enforcement of the ordinance.

It admits that consumers paid actual cost of connections in a few instances, but claims to own such connections; and admits that certain fire hydrants installed since July 1, 1914 by the city are the property of the city, evidently meaning the item of \$4,768.00.

All of the other allegations of the complaint are denied either directly or indirectly, and the answer joins in the prayer to fix rates.

It is not clear from the complaint that the water claimed by the inhabitants is the same as that claimed by defendant. Such a claim on behalf of the inhabitants was advanced by complainants at the hearing, however.

Tropico adjoins Los Angeles on the north, and has a population of about 4,000. The question of annexation to the city of Los Angeles and the use of its aqueduct water has been agitated at times. The city has also negotiated for the purchase of defendant's system. In 1914 a proposition to issue

bonds for that purpose was defeated by the voters. At the time set for hearing the case, the city of Tropicco, by its City Attorney, requested that the hearing be continued to some future date to permit the question of issuing bonds by the city for such purpose to be again submitted to the voters. It was stated that the property, including water rights and water stock had been offered to the city at a tentative price of \$50,000. The statement was made with the understanding that the offer should not be considered by the Commission as evidence of value. Objection being made by complainants to the proposed delay, however, the testimony then available was taken and further hearing continued indefinitely. The city and complainants having subsequently advised that no further delay was desired on account of the proposal to issue bonds, a further hearing was held, the remaining testimony submitted, and the matter is now ready for decision. The parties stipulated the following facts:

On November 29, 1871, decree of partition was entered in the case of A. B. Chapman et al. vs. Teodora Verdugo et al., by the district court of the state, partitioning the Rancho San Rafael, including Verdugo Canyon, and declaring the waters of Verdugo Canyon appurtenant to several parcels of land aggregating about 3535 acres. For the purposes of the decree, the water was divided into ten thousand parts or shares, of which 1046 were declared by the decree appurtenant to the Dreyfus tract, one of the parcels described in the decree. The tract was subsequently subdivided into 10, 20 and 40 acre parcels by a syndicate composed of Watts and others. They transferred the 1046 shares of water by deeds with the lands so subdivided, at the rate of $2\frac{1}{2}$ shares per acre. The subdivided lands were known as Watts Subdivision. Most of the

City of Tropic is built upon said Watts Subdivision and it is almost entirely used as residence property.

Subsequently the Glendale Pipe and Reservoir Company was organized for the purpose of providing pipes and equipment, and supplying water to the tract. The corporation did not acquire the title to the water, but distributed it locally for the owners. Subsequently the corporate name was changed to Tropic Water Company. As such, it purchased the 660 shares of water of one Sanchez, a distributee under the decree of partition and placed it on lands in its Rancho Santa Eulalia, below Watts Subdivision. Subsequently the system of Tropic Water Company was acquired by Glendale Consolidated Water Company, a corporation. There were then 1721 shares of water appurtenant to the lands of the district; being 1046 shares of original Dreyfus water; 660 shares acquired from Sanchez, and 15 shares not traced.

Verdugo Canyon Water Company was organized about the time of the partition of the land, as a mutual company, with a capital stock of 10,000 shares, for the sole purpose of delivering water for the owners of the water. It did not acquire title to any of the water and did not distribute it locally. Its by-laws provide that only the owners of water in the Canyon can become stockholders in the corporation, and at the rate of one share of stock for each share of water owned. The capital stock of the company was and is divided into as many shares as there are shares or parts of water described in the decree of partition. The stock is assessed regularly for expense of maintenance and operation of the system. About one-fourth of the land described in the decree of partition was distributed thereby to Messrs. Ross and Thom. They never became stockholders in Verdugo Canyon Water Company but they pay one-fourth the cost of maintenance and operation of the company's works, the other three-fourths being paid by the holders of the 7500 shares of issued stock. In practice the water of the canyon is actually divided into 10,046 shares or parts through some error; and it is agreed no one knows how the error originated or where it is. It was also stipulated that the record in Application No. 936 hereinafter cited--being application by

City of Glendale to have the Commission fix valuations on certain water systems in that city should be considered in evidence in this case.

Defendant has acquired title by deeds to 1114 $\frac{1}{2}$ shares of the water of Verdugo Canyon and holds 1114 $\frac{1}{2}$ shares of the capital stock of Verdugo Canyon Water Company, evidenced by three certificates in its name on the books of the company. Through foreclosure proceedings instituted under deed of trust executed by the Tropico Water Company and through a deed and agreement with the trustee under a deed of trust securing the payment of an issue of \$650,000 of bonds of Glendale Consolidated Water Company, the defendant has succeeded to the rights of said company in said water, water stock and system, which during its existence had both names. The purchase price at the foreclosure sale on November 6, 1912 was \$27,000. The property is now held in trust by defendants as trustee to manage and repay from the proceeds, first the \$27,000, and then distribute the remaining proceeds to the bondholders of Glendale Consolidated Water Company. The system was formerly operated by Glendale Consolidated Water Company as part of a system or systems operated by it in a group of municipalities in the immediate vicinity of Tropico. The other portions have been disposed of and that now under consideration is practically all that remains.

The rates established by ordinance of the City of Tropico effective July 1, 1915 provide for certain flat rates and for meter rates, as follows:

\$1.25 monthly minimum for 800 cubic feet or less.
0.07 per 100 cubic feet excess.

On May 25, 1915, the City of Tropico passed Ordinance No. 105, establishing rates effective July 1st, 1915. The meter rates established therein are as follows:

\$0.75 monthly minimum for 800 cubic feet or less.
0.05 per 100 cubic feet excess.

Defendant obtained a temporary injunction from the superior court, which injunction is still in force, making the new ordinance nonoperative.

The operating revenues collected under the rates in effect for the last two years with operating expenses shown by the books of defendant are:

	<u>1914</u>	<u>1915</u>
Operating Revenues,	\$14276.47	\$14673.25
Operating Expenses and Taxes,	6453.62	6263.72

Considerable additional expense has been occasioned by the adoption of an ordinance by the city, requiring defendant to maintain a local office in Tropicco for billing, metering, reading and collecting. The bookkeeping is done by defendant at its Los Angeles office, the charge for this service having been \$40 and \$50 per month during 1914 and 1915 respectively. The bookkeeping expense is probably less than if it were done in Tropicco. During the continuance of the trust, fees of the Trustee and its attorneys will probably be allowed by the courts or by agreement between the parties to the trust. No express charge has been made for legal or executive expense. If the property were administered directly, such charges would probably be found necessary.

The company has charged off \$3500. each year for depreciation but has made no statement as to how this sum was found. The Commission's engineers estimated that there should be laid aside each year for depreciation fund the sum of \$1267.50 if computed by the sinking fund method or \$2267.46 if computed by the straight line method.

An appraisal of the properties was submitted by defendant, as follows:

Estimated cost new less depreciation.....	\$54,401.40
16 miner's inches minimum flow of water at \$2000. per inch.....	56,000.00
*1114½ shares of Verdugo Canyon Water Company stock @ \$2.00.....	2,228.00
Total depreciated cost new.....	<u>\$92,629.40</u>

*Defendant paid \$10. per share for 81 shares of water pipe stock bought in 1914.

An appraisal of the physical properties was presented by the Commission's engineers, as follows:

Estimated cost new of real estate and equipment.....	\$ 67,543.00
Depreciated cost new.....	49,709.00

These figures do not include water pipe stock or water rights.

The Commission's engineers investigated the pipe system very carefully, and arranged several conferences, in which all the data possible concerning the age of various sections of pipe was secured. The total of the appraisal includes a certain non-operative piece of land held as a prospective reservoir site, and services and meters.

The following table shows a comparison of appraisals made by Arthur Campbell, defendant's superintendent, and by the Commission's engineers:

I t e m	ESTIMATED COST NEW		ESTIMATED COST NEW LESS DEPR (by straight-line method.	
	Company Supt	Com. Engrs.	Company Supt	Com. Engrs.
Real Estate	\$7700	\$7220	\$7700	\$7220
Buildings	670	1171	670	609
Well and Shaft	1048	980	634	622
Pumping equipment	4491	5125	2656	3312
Transmission pipes	7974	7195	6662	5756
Reservoir	6150	5083	6150	3447
Distribution system	25224	26331	19594	18638
Services	4580	4497	3677	3238

I t e m	ESTIMATED COST NEW		ESTIMATED COST NEW LESS	
	Company Supt.	Com. Engrs.	DEPR. (by straight line method) Company Supt.	Com. Engrs.
Brought forward	\$57837	\$58600	\$ 47743	\$ 42842
Meters	6423	8305	5388	6229
Tools, etc.	270	338	270	338
Stock on hand	-	300	-	300
Sub-total.....	\$68530	\$67543	\$54401	\$ 49709
Water stock	2228	-	2228	-
Water rights	36000	-	36000	-
GRAND TOTALS....	\$104758		\$92629	

From the cost of physical property upon which an interest return should be allowed we will eliminate the prospective reservoir site, appraised at \$1340, as not yet useful in the system. When put to use its value may be added. Approximately half the services and meters now in place were installed at the expense of the consumers, at \$15. each.

No testimony was offered showing that any portions of the distributing pipes, repairs and replacements were paid for out of rates, nor installed at the cost of the inhabitants, nor showing the amounts invested by defendant during the time it has operated the property. No testimony was offered tending to show poor service or a refusal to provide adequate equipment or facilities. The investigation by the Commission's engineers did not disclose

poor service or inadequacy. From the data showing the age of the various parts, it is apparent that little money has been invested since the foreclosure. Fire hydrants are not claimed by defendant as part of the system, and they are not included in either valuation.

The records of water deliveries made by defendant were examined by the Commission's engineers and the result presented at the hearing shows that the proportionate use of water is as follows:

42% use less than 600 cu. ft. per month.
15% use over 600 and less than 800 cu. ft. per month.
10% use over 800 and less than 1,000 cu. ft. per month.
7% use over 1,000 and less than 1200 cu. ft. per month.
26% use over 1200 cu. ft. per month
100%

The total quantity used in the Tropic district during 1915 was approximately 8,300,000 cu. ft.

In Application No. 936, by the City of Glendale to fix a value for the purchase of certain properties it was determined by the Commission that the safe yield or dependable flow of water in Verdugo Canyon was 155 miner's inches. (Vol. 4, Opinions and Orders of the Railroad Commission, p. 1011). The earlier determination of the quantity of water flowing was based on evidence of flow for the previous ten years, and the amount determined was the lowest monthly average flow for the year 1913, which was recognized as a very dry year. The undisputed evidence at the hearing herein shows that the low flow for 1914 and 1915 was about 200 miner's inches. Using 155 miner's

inches as a basis $1114\frac{1}{2}/10,000$ of the flow of the canyon (for which defendant or its predecessors in title received deeds from individual land owners) would be equivalent to 17.7 minor's inches.

Complainants advance the theory that a utility should make repairs at its own expense, such expense to become a part of its capital on which it is entitled to receive an adequate return in rates. Under their theory the invested capital would be continually increasing, and eventually would become several times the actual value of the plant. An adequate return upon the investment would then produce an unreasonable rate, out of all proportion to the value of the service. Repairs and other expenses for maintenance of the system are a part of operating expense. Extensions, additions and betterments alone constitute proper basis for increase in capital. Replacement is provided for through allowance for a depreciation fund. The appraisal of property and the consideration of maintenance and operation expense by the Commission's engineers herein, conforms to the accounting methods established by the Commission, founded upon the above principles.

Complainants urge that the water declared by the decree appurtenant to the Dreyfus Tract, because of that circumstance, could not be used on other land. Yet, they showed that the Watts syndicate, long after the decree, purchased the Sanchez water from the land to which it was so declared appurtenant and put it upon the purchasers lands in Rancho Santa Eulalia to which it was by them declared appurtenant. Evidently these water rights

could be separated from the lands when found expedient. However, it is apparent that quite generally the water originally used in Tropicco for irrigation is now used there for domestic purposes.

It was alleged by the complainants that the pumping equipment was more necessary for providing outside consumers with water than it was to increase supply, in periods of shortage, to the inhabitants of Tropicco. This pumping plant is operated some six weeks every year. We doubt the wisdom of eliminating the pumping plant, if that were possible, and would anticipate many complaints during periods of drought without such/auxiliary.

Complainants urge that the value of the system for fixing rates in any event does not exceed the \$27,000 paid for it at the foreclosure sale. It should be remembered in this connection that while that sum represented the debt, interest and costs accrued, it did not necessarily represent the amount which the plant might have sold for at forced sale under ordinary circumstances. But for the agreement by which they are to share in the proceeds of a subsequent private sale, the bondholders would probably have been bidders at the foreclosure sale. It was not necessary for them to bid to protect their interests, as they were already protected by the agreement. Defendant holds the naked legal title in trust for the bondholders who already have suffered a heavy loss. Basing rates on a supposed value evidenced only by the fixed price bid under these circumstances would improperly depreciate the value of the property in the consideration of a prospective purchaser, thus destroying a large part of its actual value in the hands of the beneficial owners.

It is unnecessary to discuss the ownership of the plant or water rights further than has been done incidentally herein; or to make findings on the subject.

In considering rates which will produce an adequate provision for maintenance and operation of the system and return upon the property we estimate that the net revenue for the current year, based upon water use for 1913 at the rates provided in the order, will be as follows:

Operating revenue.	\$12,750.00
Maintenance and operation. . . \$6360.	
Sinking fund for depreciation. 1270.	
	<u>7,630.00</u>
Net operating revenue. . . .	\$ 5,120.00

Increase in revenue in 1915 over 1914 was approximately 3% and this increase will probably continue. Some changes in water use may result from the new rates. It is believed, however, they will provide fully for all proper expenses of the system and for an adequate return upon the reasonable value of all of the property, including the right to divert and distribute water.

O R D E R.

M. M. ESHELMAN et al. having complained of the service and rates charged and collected by defendant, as trustee for Glendale Consolidated Water Company for water served to the inhabitants of the city of Tropic for domestic purposes, and defendant having filed its answer, and joined in the request to fix rates,

AND A PUBLIC HEARING of the case having been held, the Commission does hereby find as facts:

(a) That the said rates, in so far as they differ from the rates herein found to be reasonable, are unreasonable and unjust, and the rates hereinafter set out are hereby found to be just and reasonable rates to be charged for the distribution of water by Title Guarantee & Trust Company to its consumers;

(b) That it has not failed or refused to provide adequate equipment and facilities for the service of water;

(c) That the plant and system were not constructed by consumers or at their expense;

(d) That fire hydrants of the original cost of \$4768 were installed by the city of Tropic at its cost and expense.

Basing this order on the foregoing findings of fact, and the findings of fact in the above and foregoing opinion,

IT IS HEREBY ORDERED that defendant, Title Guarantee & Trust Company, be and it is hereby directed to establish and to file with this Commission within twenty days from the date of this order the following schedule of monthly rates to be charged for service of water to the inhabitants of Tropic and vicinity, to-wit:

Monthly Meter Rates.

Minimum, including first 400 cubic feet 75¢
Next 1800 cu. ft. per 100 cubic feet 10¢
Use in excess of 2000 cubic feet, per
100 cu. ft. 6¢.
Municipal use for sprinkling and flushing
sewers, per 100 cubic feet 6¢.

Fire service \$75. per month for the hydrants
in service April 1, 1916. Additional
hydrants 50¢ per month each.
Flat rates in effect April 1, 1916 unchanged.

Dated at San Francisco, California, this *21st* day
of April, 1916.

Max Thelen

H. B. Loveland

W. J. Gordon

Commissioners.