

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

Decision No. 535

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TYNDALE PALMER, OTAY WATER
LEAGUE, et al.,

Complainants,

- vs. -

Case No. 261.

SOUTHERN CALIFORNIA MOUNTAIN
WATER COMPANY,

Defendant,

CITY OF SAN DIEGO,

Intervenor.
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Tyndale Palmer for complainants.
E. E. Doolittle, H. L. Titus and R. G. Dilworth
for Defendant.
W. R. Andrews, City Attorney, for Intervenor.

ESHELEMAN, Commissioner.

O P I N I O N

The above entitled case was decided on the 21st day of January, 1913. Thereafter, within the time allowed by law, the complainants asked for a rehearing, and the argument on such application was held at San Diego on the 3d day of March, 1913.

In the application for rehearing the complainants set out various specifications of error on the part of the Commission. The main specifications of error are based upon an assumed state of facts which does not exist. In the original complaint there were six grounds of relief set out, but with reference to this situation the Commission, in its opinion heretofore rendered, said:

"The main question to be decided being the right of the complainants to receive water from the system of the defendant, it is evident that it is advisable to determine this question before proceeding to fix the rates of defendant, because if it should be determined that the complainants are not entitled to water the fixing of rates becomes unnecessary in this proceeding, while if they are so entitled, rates may thereafter be fixed with no added labor, the two inquiries being independent and unrelated. Hence at the hearing heretofore held the questions of rates and conditions of service were not considered, but their determination postponed until the main question shall have been decided."

I cannot understand why under this state of the record the complainants in asking for a rehearing should urge error on the part of the Commission in rendering a decision with respect to matters which were specifically excluded from the decision and which the complainants were advised at the time of the hearing would not be decided and in which course of procedure the complainants acquiesced and proceeded to the determination of the one issue, as defined in the language just quoted. None of the other matters raised in the complaint have been decided. They are still pending, and their decision is unnecessary and certainly of no interest to these complainants unless they are entitled to water. The only thing that was decided, and in denying the application for rehearing the Commission adheres to such decision, was that the complainants under the present condition of the system are not entitled to take water therefrom. Such being the case, a decision on the other questions could do them no good and would be a mere idle act and would require the consumption of time by this Commission in a vain quest. It is, therefore, distinctly understood in this denial of the application for rehearing, as it was in the original opinion and order, that only the single issue is passed upon leaving all other issues pending; namely: the question as to whether or not the complainants are entitled to water from this system.

As to the objections raised to the decision by the complainants which are aimed at the matters which the Commission did decide, I believe there is no merit. There are some mis-statements of what the Commission did decide, but Mr. Palmer, attorney for the complainants, makes the reasonable explanation that the record being large and the time for getting up his application being brief, any such mistakes in the statement of what the record discloses are not intentional. Inasmuch as, if resort is had to the Supreme Court, the record and not what the complainants in their application for rehearing say is the record, and the opinion and order and not

the complainants' interpretation of such opinion and order will be considered as properly determining what the Commission did decide, I do not think it necessary to review the specifications of error set up by complainants to show wherein they are incorrect.

Having nothing presented to me that at all changes my opinion as to the proper disposition of this case, I believe that the application should be denied, and I submit the following order:

O R D E R .

Complainants herein having filed their complaint against defendant herein and the City of San Diego having intervened, and a hearing having been held and a decision rendered on the 21st day of January, 1913, and thereafter, within the time allowed by law, an application having been filed for rehearing, and a hearing having been held on such application, and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED that the application for rehearing be and the same is hereby denied.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of March, 1913.

John M. Fishburn
H. B. ...
E. B. ...
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Commissioners.