

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA

Decision No. 5534

ORIGINAL

Glenview Improvement Club	:	
Complainant	:	
-vs-	:	Case No. 900
Peoples Water Company	:	
Defendant	:	
City of Berkeley	:	
Complainant	:	
-vs-	:	Case No. 943
Peoples Water Company	:	
Defendant	:	
City of Richmond	:	
Complainant	:	
-vs-	:	Case No. 987
Peoples Water Company	:	
Defendant	:	
In the matter of the Commission's investigation into rates, rules and regulations of Peoples Water Company.	:	Case No. 1008

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B. D. Marx Greene for City of Berkeley.  
Paul C. Mori and John S. Partridge for City of  
Oakland.  
D. J. HALL for City of Richmond.  
Oliver Ellsworth for City of Piedmont.  
A. F. St. Sure for City of Alameda.  
Thomas McCartney for City of Albany.

T. C. Judkins for Town of Emeryville.  
H. L. Hagan for Glenview Improvement Club.  
W. E. Creed, Arthur G. Tasheira and Samuel  
Spring for Peoples Water Company.

EDGERTON, Commissioner:

O P I N I O N

This case involves all of the rates, rules and regulations of East Bay Water Company in its supply of water to communities on the east side of San Francisco Bay.

Prior to the institution of this case on the Commission's own initiative, there had been filed a number of complaints against this company or its predecessor involving rates, rules and regulations in particular localities and inasmuch as this proceeding (Case No. 1008) is comprehensive, an order made herein will settle all of the issues raised in these separate proceedings and they may then be dismissed.

This company serves water to and within the cities of Oakland, Berkeley, Alameda, Piedmont, Emeryville, Albany, Richmond and San Leandro and also widely separated portions of the counties of Alameda and Contra Costa outside of these communities.

The rates in these various communities are not the same. They differ in amount of minimum charge, measures for determining minimum charge and unit rate for water sold by measurement, fire hydrant rental and

water sold for public use. The following tabulation, adapted from an exhibit of the company, gives a general idea of the differences that exist:

	Monthly Payments				Public Use	
	Minimum	To	Above	Street	Hydrant Rent	Larger
Connections	: 2000	: 3,000	: 000	: Sprinkling	: 2"	: Larger
Oakland	\$ .85 to 1.50 <sup>a</sup>	\$.240	\$.150	\$.21 to .17 <sup>c</sup>	\$2.47 <sup>e</sup>	
Berkeley	1.50	.262	.262	.112	.50	1.50
Alameda	1.00	.224	.224	.224 <sup>d</sup>		1.00
Richmond	1.50	.262	.262	.224		3.00
Piedmont	1.50	.262	.262	.150	.50	2.75
Emeryville	1.50	.240	.240	.240		2.00
San Leandro	1.00 to 1.50 <sup>a</sup>	.240	.190	.127 <sup>d</sup>		1.25
Albany	1.50	.262	.262		.50	1.50
Unincorporated	1.50	b	b	.150		

"a" Determined by flat rate measure. Can be higher if more than one occupancy on one service.

"b" Takes rate of nearby municipality.

"c" Meter minimum of \$1.30

"d" Meter minimum of \$1.00

"e" Oakland owns its hydrants. The other cities do not.

Minimum on connections larger than 1½"; 73 cents per month per ¼" of diameter. Fixed by Oakland ordinance.

One of the questions which must be answered here is "shall this water system and its service be treated as a whole and consumers in a given class be charged the same rate regardless of location in communities". In other words, shall all political boundary lines be disregarded and rates fixed by treating consumers the same as though they were all residents of one large community.

This question in my judgment must be answered in the affirmative. I can see no reason why for a like service a consumer of this company should pay a higher or a lower rate merely because he may reside in an area surrounded by particular municipal boundaries.

Therefore the burden of cost of the service of water as a whole to all water consumers has been distributed as equitably as may be upon each class of service, regardless of the locality in which such service is given.

One issue of outstanding importance in this proceeding concerns the retention of all of the large acreage of real property owned by the company in the water shed of its water supply, as used and useful in the conduct of its public utility business.

Representatives of the cities and consumers contend that the land owned by this company, and draining toward points of diversion of water, is not all necessary in the proper service to consumers; that all that is necessary is the retention of a reasonable margin of land around the water sources.

The company on the other hand contends that practically all such land now owned by it is used and useful in the service to consumers, in that it constitutes a large proportion of the water shed land upon which the water originates and the ownership thereof results in safeguarding the water supply by preventing the entry of human beings and animals thereon with consequent pollution.

A large amount of expert testimony was introduced on this subject. Mr. C. P. Gillespie, a sanitary engineer and the Director of the State Board of Health, testified very

positively that these water supplies would be fully as safe and palatable for drinking purposes if all of the water was filtered by modern methods and all water shed lands disposed of except a comparatively narrow margin around reservoirs and along streams. He explained in considerable detail the working of the modern filter and expressed the opinion that filtration was a very much greater safeguard against water contamination than the ownership of water shed lands. Furthermore, that the ownership of water shed lands did not insure pure water and that in any event the water produced in this system should be filtered by modern methods. He called attention to the fact that the large majority of water systems in the United States were not protected by the ownership of water shed lands and that in many instances water, admittedly badly polluted, was made entirely safe for human consumption by filtration and chemical treatment.

Mr. J. H. Dockweiler, an engineer employed by the City of Oakland, gave testimony in agreement with the foregoing and produced a tabulation with maps of water systems in various parts of the United States where there was no ownership of water shed lands.

On the other hand, the president of the State Board of Health, Dr. George E. Ebricht, testified that in his opinion all of the water shed lands of this company should be retained for the purpose of safeguarding the water supply. He stated that he was not expert in the matter of water supplies and that he knew practically nothing of modern filtration methods or their accomplishments.

The company produced Mr. Geo. C. Whipple, an engineer of national reputation, who has given particular

attention to the sanitation of water supply. An analysis of his testimony clearly establishes the proposition that it is not necessary, as a sanitary measure, that a water company own water shed lands. It is true he states that in his opinion this company should retain the water shed lands which it now owns for added safety and because of public opinion but he emphatically declares that a modern filter is thoroughly efficient and does safeguard water against both pollution and disease germs.

He declared that complete ownership of land was not necessary but that such control of the land be had by the company as to permit only such use as would not cause pollution of the water. In answer to a question he said:

"I mean ownership in order that the use might be properly controlled. I don't mean the absolute exclusion of all human beings and putting a board fence around the watershed to keep everybody off. I don't think that is necessary always."

At another place in his testimony he says:

"Filtration accomplishes more than disinfection. It yields a clean water, as well as a safe water."

He also said in answer to the question as to whether multiple filtration would make water safe:

"If you are talking about safety as meaning simply safety from disease production, I don't think there is any question but what double filtration would make the water, I may say, thoroughly safe, and that also the ownership of the lands or half of the lands, and a modern filtration would also make the water safe. That is, you are asking me to compare two things, both of which are excellent and so nearly alike that I don't believe it is possible for anyone to make any real comparison between them."

Considering Mr. Whipple's testimony as a whole it is quite convincing to the effect that modern filtration would be effective applied to this company's water supply and that reasonable control of the water shed lands to pre-

vent direct pollution of the water is all that is necessary to make the water entirely sanitary and palatable.

W. E. Creed, president of the company and its legal representative in these proceedings, took the position that the major part of the water shed lands of this company should be retained even though it were determined that the water could be safeguarded by filtration. He insisted that experience demonstrated that people would not be content with filtration alone but would be continually disturbed and anxious over the safety of the water supply if the water shed became populated. He desired, however, to be distinctly understood as not deprecating the value of modern filtration; in fact, he said he was an advocate of it.

When it is considered that this company now owns only forty six per cent of the water shed lands now producing water for use, it is obvious that the supply is not protected by complete ownership of the shed, and from the evidence I am convinced that the ownership of approximately one-half of water shed lands adds no more protection than a reasonable and continuous margin around streams and lakes.

If the position be taken that the ownership of water shed lands is necessary, then logically this Commission should insist upon the acquisition of the remainder of the water shed lands and when it is considered that the total lands now owned by this company are valued by their own witnesses at approximately \$7,000,000 and the lands which might be eliminated are given a value of approximately \$4,000,000, and that to acquire the remaining water shed lands would require the investment of perhaps several million dollars more, the importance of this question is realized.

Of course if the ownership of water shed lands could be had with small burden to the consumers or loss to the company, we could have unanimous agreement that such ownership be maintained, but when the claimed value of the water shed lands represents several million dollars and modern filtration plants would cost approximately one-tenth of the claimed value of these lands, we are forced to a choice. Furthermore, the evidence clearly shows that modern filtration plants should be installed to safeguard this water, whether water shed lands are retained or not.

I do not believe that we are warranted in perpetually burdening consumers with the carrying cost of millions of dollars of water shed lands merely because of a fear of popular agitation if water shed lands are not owned. We note that in most of the communities in the United States water shed lands are not owned by the companies or municipalities and there is no evidence of any popular agitation on the subject. Surely we can rely upon the intelligence of the people of the East Bay region to base their attitude toward a water supply upon the question of whether pure and sanitary water is provided rather than upon the methods of the company in collecting and treating this water.

The evidence to me is clear and convincing that the water of this company should be filtered by modern methods and that thereupon there will be no further need of continuing the ownership of all of the water shed lands of this company.

However, I believe that a reasonable time should be allowed within which a readjustment of the affairs of



the East Bay Water Company may be brought about so that no violent and disastrous financial result will ensue. If the many thousands of acres of water shed land are suddenly removed from the rate base, the results on the financial condition of this company would be disastrous, and bankruptcy might ensue.

Considering that the public has up to this time not only sanctioned the ownership of these lands as a part of the water system but at times has compelled the acquisition of such lands, it is not unfair to the communities that they bear the burden during the readjustment period.

I shall recommend therefore that there be permanently retained, as used and useful lands, a margin of approximately 1500 feet around the reservoirs and along principal stream courses in this system, and that the remainder of the water shed lands be disposed of; that the company within a reasonable time construct and put into operation modern filtration plants for all of their water supplies.

The evidence is not sufficient upon which to base a finding of a definite time within which this superfluous land should be disposed of, and these filtration plants built, and therefore the company should be required within a period of ninety days from the date of this order to prepare and file with the Commission a plan or program for the disposal of these superfluous lands and the time within which such disposal will be made; and that the company file with the Commission within said ninety days a plan for the construction and putting into operation of modern filtration plants and statement of the time within *which* such plants shall be completed.

That meantime the lands now owned by the company be considered as a part of a rate base and that upon the disposal of these lands under the plan to be submitted and approved, the water rates shall be readjusted accordingly.

Rates should be fixed for this company upon the broad considerations of the service being rendered to the communities on the east side of San Francisco Bay and to the necessary income to keep the company in a sound financial condition.

We are dealing here with a water company performing an essential service for a great number of people and which has emerged from a bankrupt condition into one of sound and conservative capitalization which was created under authority of this Commission. This company like other utilities in California has felt the marked effect of increased costs of operation due to war conditions and, while it did not originate this proceeding with a request for an increase of rates, the situation is such that, since the Commission on its own initiative instituted an investigation into its rates, rules and regulations, conditions have so changed that it will be necessary to treat the whole matter in the light of the present status.

In this proceeding exhaustive evidence was introduced in an effort to establish the usual factors of value of property but I see no useful purpose to be served in an analysis of this evidence in view of the use of the base above suggested in fixing rates.

Mr. John S. Drum, a witness on behalf of the company, testified as to its financial requirements. He stated that in order that this company be kept financially sound its income should be sufficient to pay operating

expenses, taxes, depreciation, bond interest and dividends on the Class A preferred stock and create a surplus. Since he gave his testimony the company has submitted a statement of additional operating expenses and bond interest and modifying his figures by these sums results in the following:

<u>Factors</u>	<u>Gross Income</u>	<u>1918</u>
1. Operating expenses and taxes		\$ 997,205.
2. Depreciation		200,000.
3. Bond Interest		629,875.
4. Dividends		298,667.
5. Surplus		<u>99,556.</u>
Total necessary gross earnings		\$2,225,303.

These items have been carefully checked by Mr. R. W. Hawley, Hydraulic Engineer of the Railroad Commission, and by Mr. W. C. Fankhauser, Stock and Bond Expert of the Commission, and I am satisfied that the operating expenses submitted by the company are reasonable except that there should be eliminated therefrom \$120,000 of the \$200,000 annual depreciation claimed because a reasonable depreciation annuity upon a sinking fund basis would be \$100,000 and from this should be deducted \$20,000 because the Maintenance and Repair Accounts already allowed for the replacement of water meters and service connections. Also there has been eliminated from the claimed operating expenses of the company \$52,000 Railroad Commission expense as it is obvious that the company will have no such proceedings before this Commission as to justify any such expenditure. The sum of \$7,000 annually has been allowed for this item. In the amount allowed for maintenance and operation is an emergency pumping estimate of \$106,000.

Mr. Creed in calculating the 1918 bond interest and dividend requirements assumed that the bonds and stock necessary to finance the 1918 construction expenditures would be issued on January 1, 1918. Mr. Fankhauser on the other hand assumes that all of the 1918 construction expenditures will be financed through the issue of bonds at not less than 92 and preferred stock at not less than 80 and further assumes that the securities instead of being issued on the first of the year will be issued in equal installments from month to month as the construction work progresses. Mr. Fankhauser has proposed what appears to be a reasonable surplus of \$60,000 per year as compared to Mr. Creed's \$99,556.

These changes result in the following:

<u>Gross Income</u>	
Operating expenses and taxes	\$ <u>945,205</u>
Depreciation	80,000
Bond interest	609,545
Dividends	288,972
Surplus	60,000
	<u>\$1,983,722</u>

It will be seen that the figures last given result in a net income to the company over operating expenses, taxes and depreciation of \$976,361 and this net income is less than eight per cent upon the value heretofore fixed by this Commission upon the property of applicant when authorization was given to issue stocks and bonds. That value was \$14,100,000 and there have been additions and betterments since of over \$500,000 and eight per cent on this sum <sup>is</sup> of \$1,168,000. This does not take into account the recent expenditure on the San Pablo dam project.

The reorganization whereby all of the properties of the old Peoples Water Company were transferred to the present East Bay Water Company resulted in a new management being put in office at the head of which is W. E. Creed. The evidence is that under his direction the company has changed its attitude toward the public and every reasonable effort is being made to conduct its affairs

with due regard to service to consumers.

Interest on its bonds is promptly paid and dividends on the Class A preferred stock have been regularly declared. Further than this the company apparently has no immediate intention of extending its dividend policy to the other class of stock. So we are not here being asked to produce a revenue which will either increase dividends now being paid nor to make it possible to extend the dividends to other classes of stock.

I believe that the Commission should give due consideration to the financial needs of this company, having in mind that the rates to be fixed shall not be unreasonably or prohibitively high and that the revenue from the consumers be such as not only to enable this utility to continue service to the communities it serves but to constantly better this service.

A very important result of an adequate revenue will be the establishment of the company's credit so that it may obtain money at reasonable rates, thus preventing a heavier burden being put upon the consumers.

Having these circumstances in mind I recommend that a gross revenue of \$2,000,000 per annum be produced by consumers and that this gross amount be spread over the various classes of service rendered as hereafter indicated.

It becomes necessary not only to fix the rates for general consumers of water but also to fix the rates to be charged municipalities for service. These latter rates are based in part upon the advantage gained by the communities measured by the value of property in each municipality receiving a direct benefit. To this is added the investment in fire hydrants owned by the company, the cost of maintaining the same and a charge for pipe lines

of certain sizes on the assumption that they are larger than necessary for normal domestic and industrial draft and of particular value in delivering large quantities of water in a short time.

The excess capacity of the water system that may be deemed justified by the necessity of providing for emergency demands such as that in fighting fire cannot fairly be charged against regular customers and paid under cover of a unit rate for water.

I have separated out only part of the charge that could reasonably be collected from owners of property as distinguished from water users. The total amount of this charge is slightly more than one-tenth of the estimated income to be realized by the utility company. It is certain that the proportion of the public utility water system expense not essential in the delivery of water to individual consumers is much greater than this.

The Wisconsin Railroad Commission has made a prolonged study of the proportion of cost properly chargeable to the general public which it calls the fire service charge and in several typical cases reports it to be between 25% and 75% of the total charges. In systems of the magnitude of the East Bay Water Company it is found to be between 25% and 50%.

Mr. Creed on behalf of the company offered to treat the sum allowed by the Commission as operating ex-

penses, as a trust fund, to be expended by the company under the general supervision of the Railroad Commission, and that in the event that the amount allowed was found to be greater than was actually needed, that any overplus would be used for the benefit of consumers in any manner directed by the Commission.

This offer if accepted means that instead of the stockholders profiting by an overestimate of operating expenses used by this Commission in arriving at the sum necessary to be paid by consumers in rates, that the consumers themselves would be benefited. Of course this offer should not be taken to mean that the stockholders should be wholly deprived of any benefit arising by reason of economies or efficiencies introduced by the management in the conduct of the business of the company. Nor should it be understood that of necessity there must be a refund of money to consumers. There are several dispositions that could be made of this money for the benefit of consumers other than refunding; such for instance as investment in plant uncanceled, etc. I believe this offer should be accepted and that the company should be asked to file a written stipulation as provided in the order herein, designed to carry this plan into effect.

Herewith a form of order:

#### ORDER

This Commission having upon its own initiative called into question all of the rates, rules, regulations and practices of East Bay Water Company and a public hearing having been had;

IT IS HEREBY FOUND AS A FACT by the Railroad Commission of the State of California that the existing

rates of East Bay Water Company are unjust and unreasonable and that the rates hereinafter set out are just and reasonable rates to be charged for the service of water by said company to its consumers.

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that East Bay Water Company is hereby authorized to file with this Commission a schedule of rates to become effective on July 1, 1918, as follows:

INITIAL PUBLIC USE CHARGES:

Basic charge annually as of the year 1917 -

Alameda - - - - -	\$ 22 000
Albany- - - - -	1 000
Berkeley- - - - -	43 000
Emeryville - - - - -	2 000
Oakland - - - - -	105 500
Piedmont- - - - -	5 000
Richmond- - - - -	11 000
San Leandro - - - - -	2 500

Adjustment to be made in fixing the charge for the fiscal year 1918-1919 and following years by measure of net changes in the inventory of company pipe lines and hydrants from that of January 1, 1917 as follows:

4" fire hydrants	\$ 8 per annum
6" " " "	10 " "
Per 1000 feet of street piped with	
12" diameter or larger	\$50 per annum
6" and larger to 12"	30 " "
4" " " " 6"	10 " "

GENERAL USE CHARGES MONTHLY:

Minimum for each meter in use-

5/8" meter at rate of	\$ 1.00 per month
1" " " " "	1.50 " "
1 1/2" " " " "	2.25 " "
2" " " " "	3.25 " "
3" " " " "	5.75 " "
4" " " " "	10.00 " "
6" " " " "	25.00 " "

Unit Price-

For water used to amount of the minimum charge, 25¢ per 100 cubic feet.  
For all other use, 20¢ per 100 cubic feet.



Public Use-

At general rates where water is measured by meter permanently set. Otherwise, at 20¢ per 100 cubic feet with no minimum. Water used in fighting fire, no charge.

Private Fire Service-

When no meter is on service, one-half the minimum charge for corresponding size of service pipe.

IT IS HEREBY FURTHER ORDERED that before thirty days from the date hereof said company shall submit to this Commission for its acceptance rules and regulations for the service of water to its consumers.

IT IS HEREBY FURTHER ORDERED that within ninety days from the date of this order the company shall file for the approval of the Commission a plan for the disposal of superfluous lands and a statement of the time within which such disposal will be made and shall also within said ninety days file for the approval of the Commission a plan for the construction and putting into operation of modern filtration plants together with a statement of the time within which such plan shall be completed.

IT IS FURTHER ORDERED that within ten days from the date of this order the company shall submit for the approval of the Commission a stipulation in writing designed to make effective the plan of treating operating expenses as mentioned in the foregoing opinion.

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

1st day of July, 1918.

Edwin O. Edgerton  
J. J. Devol  
Alex. Gordon  
Frank R. Weston  
Commissioners.