

Decision No. 5868.

ORIGINAL

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

W. B. KURTZ and A. G. KUICK, )  
 Complainants, )  
 -vs- )  
 VISTA WATER COMPANY, a )  
 corporation, )  
 Defendant. )

Case No. 1190.

-----

Wright & McKee, for complainants  
 Halsey W. Allen, for defendant

LOVELAND, Commissioner:

OPINION

The complaint in this case alleges that defendant, Vista Water Company, is a public utility owning and operating a water system to supply water for irrigation and domestic use to certain designated tracts of land in Rancho Buena Vista in San Diego County, in which area complainants' lands are situated, and the complainants seek an order from the Railroad Commission requiring the water company to make provision for a more adequate supply of water.

The defendant company claims that it is not a public utility and not subject to the jurisdiction of the Railroad Commission.

It appears that the water company was incorporated in June, 1912, "to buy, develop, acquire, bore for, collect, store, distribute, supply to its members, sell to its members, deliver to its members and for domestic use, the said water to be so sold, distributed, supplied, delivered and apportioned only to the owners of its capital stock, said stock to be made appurtenant to certain lands to be described in the certificate issued therefor and to be particularly described and designated in its by-laws". The intent of the incorporators of this company was thus undoubtedly to form a mutual water company for the supply of water to certain area to which the stock of the water company was to be made appurtenant. This was, in fact, done, the by-laws specifically defining the area to which the stock was to be appurtenant and the stock certificates themselves being endorsed with the same description. Witnesses for the company testified that no dividends had ever been declared and that the revenue derived had not more than paid for the cost of operation, each stockholder being assessed the pro rata amount represented by the shares of stock held by him.

Complainants are holders of stock which has been made appurtenant to the land owned by them, and supplied with water by the defendant company. The only basis of the complainants' contention that the defendant company is a public utility is their claim that in addition to supplying its stockholders the company was also engaged in supplying water directly to a number of persons in the incorporated "Vista townsite" who were not holders of stock and who were charged rates by the company for water supplied. Complainants at the hearing, however, were unable to substantiate this claim. The evidence clearly showed

that the defendant was supplying water to no one except <sup>the</sup> its stockholders, and that the water supplied within the Vista townsite was supplied by Vista Land Company, which is a holder of stock in the water company, the Vista Land Company receiving the water by virtue of its stock ownership in the water company and then itself distributing this water to the inhabitants of the townsite and itself rendering bills and collecting rates therefor.

Under all the evidence presented, I am satisfied that the Vista Water Company is a mutual company and not a public utility, and that the complaint should accordingly be dismissed. The Vista Land Company, however, which is engaged in supplying water within the Vista townsite is a public utility, and as such is subject to the jurisdiction of the Railroad Commission.

#### ORDER

It appearing that the Railroad Commission has no jurisdiction to grant the relief prayed for in the complaint herein because the defendant company is not a public utility,--

IT IS HEREBY ORDERED that the complaint herein be and the same hereby is dismissed.

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 28th  
day of October, 1918.

Edwin C. Edgerton

H. D. Howard

Stam R. Newlin

Commissioners.