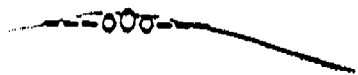


Decision No. 6262

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.



D. M. CLARK, MARGARET GILBERT
SMITH and T. RILEY,
Complainants,

vs.

TULARE LAKE WATER COMPANY, a
corporation,
Defendant.

Case No. 1220.

Geo. H. Woodruff and Clyde C.
Shoemaker for complainants.
Davis, Kemp and Post for defendant.

BY THE COMMISSION:

O P I N I O N

Complainants demand service of irrigation water on their lands consisting of 320 acres each, alleging that defendant was organized in 1912 for the purpose of constructing an irrigation system to irrigate 57 sections of land in Kings and Tulare Counties with water from Tulare Lake; that defendant conveys and distributes water upon the demand of land owners or their tenants; that complainants have demanded water from defendant and are willing to pay reasonable rates, but that defendant refuses to serve them. The answer alleges that defendant serves only its stockholders

and denies that water is served at fixed rates. It admits that there is an ample supply in Tulare Lake but denies that it has sufficient capacity to serve the lands of complainants in addition to those of its stockholders.

As a separate defense the answer alleges that defendant is a mutual water corporation organized not for profit but for the purpose of delivering water for irrigation to its stockholders at cost; that its by-laws, rules and regulations provide that its water shall be delivered only to the owners of its capital stock, said stock being made appurtenant to certain lands described upon its certificates of stock in the proportion of one share of stock per acre of land, and that water shall be distributed at cost; that defendant has always been conducted as a mutual water corporation distributing water at cost to its stockholders in accordance with its by-laws, rules and regulations, water being sold only to stockholders and on land having stock appurtenant thereto and that it has no authority under its charter, by-laws, rules or regulations or from any other source to sell or distribute water to any persons other than its stockholders or for any lands not having its stock appurtenant thereto; that complainants are not stockholders in defendant corporation and their said lands have none of defendant's stock appurtenant thereto; that defendant is not a public utility and is not subject to the jurisdiction, control or regulation of the Commission.

Public hearings in the case were held by Commissioner Gordon at Hanford, and by Examiner Westover at Los Angeles. The matter has just been submitted.

It appears from the testimony that defendant served water to several different persons when they were not stockholders of defendant and charged them the same rate per

acre that it charged its stockholders. Most of those so served are parties to a contract dated April 3, 1912, between Jesse M. Hansen et al. as first parties and F. P. Newport, defendant's predecessor in interest, as second party. First parties had previously levied their lands lying south of Tule River and east of Tulare Lake between the lake and the lands defendant irrigates. The borrow pit from which materials for the levee had been taken was used by them to lead water from Tulare Lake to their lands. Under the contract the land owners agreed to grant a right of way along the borrow pits for defendant's main canal and grant a water right on Tule River, appropriated December 5, 1911 by Hansen and others providing they might retain prior right to water in the canal developed from the lake or river with which to irrigate their lands, the cost of pumping water to be divided in proportion to lands irrigated.

A contract under date of August 31, 1916 was made by defendant with A. Heyer, under which the defendant received the use of Mr. Heyer's canal adjoining his land for a period of years, defendant to sell water to him or his tenant for his land at cost of production or the same price enjoyed by defendant's stockholders.

Under these contracts water was served upon the lands in question at cost pro rated with defendant's stockholders on the basis of acreage actually irrigated.

Long prior to the filing of the complaint, the contracts above described had been annulled and defendant's stock issued to land owners who were parties to the contracts, in consideration of their surrendering their rights under the contracts. At the time the complaint was filed defendant was serving only its stockholders at cost, and had been doing so for a long time prior thereto. Water served to others during the war emergency under the law did not change defendant's mutual status.

Defendant was incorporated in 1912 by the owners of large bodies of lands as a mutual water company, for the purpose of distributing water among its stockholders at cost. Its by-laws provide that water shall not be sold, distributed nor delivered to others than holders of its capital stock, the stock to be made appurtenant to the land in the proportion of one share per acre. One by-law was amended on two occasions with the apparent purpose of providing that such water should be served at cost and was amended at the meeting of February 18, 1918 to provide that during any period at which the nation is at war, when the laws of the state permit, water might be sold at cost to those who were not stockholders, for the purpose of irrigating lands not having stock of defendant appurtenant to it.

Instructions were given to employes not to deliver the water under any conditions other than those above described, and correspondence and minutes of directors' meetings indicate a fixed policy in that regard and a persistent effort to limit service to its stockholders at cost.

In addition to service of water to those who were defendant's stockholders at the time the complaint was filed, complainants offered testimony tending to show service to Larsen and Heck, tenants on the land of complainant Clark, who never was a stockholder, and to Frank Smith, tenant on the land of Heyer. It appears from the testimony, however, that water used on the land of complainant Clark was purchased from Bayou Vista Ditch Company, a public utility, and conveyed through its canal and that of Kings County Canal Company, also a public utility, and used on the Clark land.

Concerning the service to Mr. Smith, there is a conflict in the testimony as to whether water was used on the Heyer land before Mr. Heyer became a stockholder, or on an adjoining section also farmed by Mr. Smith, the owners of which were stockholders at the time.

It is apparent that defendant is not a public utility but a mutual water company within the meaning of Section 2 (bb) of the Public Utilities Act, and Chapter 80, Laws of 1913, and the Commission has no jurisdiction in the matter.

O R D E R

Public hearings having been held in the above entitled case, evidence presented and briefs filed, and it appearing to the Commission that defendant is a mutual water company not subject to the jurisdiction of the Railroad Commission,

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

Dated at San Francisco, California, this
15th day of April, 1919.

Edwin O. Edgerton
H. S. Lovelace
Frank R. Burton
H. B. B. B. B.
Erving Martin
Commissioners.