

Decision No. 1486.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

J. W. FRASER and C. L. GOETZ,
Complainants,

vs.

STANFORD WATER COMPANY, FRANK
S. OSTRANDER, O. C. STINE & CO.,
Defendants.

ORIGINAL

Case No. 1209.

James P. Sex and Monroe Thomas for
C. L. Goetz.

John Ralph Wilson for Stanford Water
Company.

BY THE COMMISSION.

OPINION ON SUPPLEMENTAL AND
AMENDED PETITION FOR REHEARING.

The original pleadings put in issue the question whether Stanford Water Company is a mutual corporation or a public utility. By Decision No. 5829 the Commission held that company to be a public utility and directed it to file its rates, rules and regulations as such and submit plans for certain improvements considered necessary to enable the plant to render high class service.

A public hearing upon the amended and supplemental application for rehearing was held by Examiner Westover at Palo Alto, September 4th. At the hearing dismissal of all pro-

ceedings by complainant Fraser was filed.

Defendant Stanford Water Company petitioned this Commission for rehearing and later filed an amended and supplemental application alleging error in the finding that defendant is a public utility subject to the jurisdiction of this Commission. The amended petition for rehearing alleges in effect that subsequent to this Commission's Decision No. 5829, the articles of incorporation of Stanford Water Company were changed and amended in order to more nearly comply with the provisions of Section 324 of the Civil Code, which section relates to making shares of a water company appurtenant to specified parcels of land and transferable with the land; that arrangements had been made with all consumers except complainant Goetz, to accept stock in said company and operate it as a mutual water company, and that complainant Goetz contracted to discontinue the use of water from defendant's water system not later than May 1, 1918.

In Decision No. 5829 herein, the Commission said of the original pleadings and testimony thereunder:

"The pleadings and testimony show that all parties in interest expected the water plant and system to be turned over to the land purchasers for operation as a mutual water company. This has not been done. The plant is operated by said defendant."

It appears from the testimony taken at the recent hearing upon the present application that since the original decision defendants Ostrander and Stanford Water Company have offered to issue certificates of its stock to all consumers in proportion to their acreage, except to complainant Goetz, stockholders to at once endorse certificates in blank as part of the same transaction and deposit them in escrow to be held until their lands are fully paid for, or to be delivered to defendants in the event default is made in the performance of their said land purchase

contracts, consumers to at once choose two of the three members of the Board of Directors of defendant water company, and to select the third member of the Board when their outstanding water bills are paid. The offer was accepted, and pursuant to it all the certificates of stock have been prepared ready for delivery, the company having delayed consummation of the agreement until after this decision is issued. The two directors chosen by consumers have been elected and are in control of the company.

Complainant Goetz, owing to a disagreement with Stanford Water Company and Ostrander, executed a contract dated September 21, 1917, whereby he agreed to discontinue the use of water from the system of Stanford Water Company subsequent to May 1, 1918. Mr. Goetz has not complied with the terms of this contract, stating that he believed defendant to be a public utility, and as such, obligated to render service to him.

Defendant herein has delivered water only to stockholders or to those who have contracted to become stockholders, with two minor exceptions in addition to the service rendered to Mr. Goetz, as provided in his contract. Of these two exceptions one has since been discontinued, and owing to the indefiniteness of the evidence submitted, it is undertain whether or not the delivery of water to the other was of public utility nature.

It is clear from the evidence submitted, that Stanford Water Company did not hold itself out to serve whomsoever applied for service, nor did it in fact deliver water to the public generally or any portion of the public other than to its stockholders or those who purchased land and contracted to become stockholders as soon as payment for the land had been completed and title to it had passed to them.

It is true that there are two minor exceptions, which have been mentioned above and are not controlling. The only present consumer who is without this general classification is Complainant Goetz, whose contractual relations with defendant are discussed herein.

Recent decisions of the courts of last resort, rendered since the original decision herein, are now controlling, and necessarily have changed our view of defendant's status.

In view of the decisions of the courts above referred to, we are constrained to set aside the original order herein and hold defendant water company to be a mutual water company not subject to the jurisdiction, regulation or control of the Railroad Commission.

O R D E R

A public hearing having been held upon the supplemental and amended application in the above case and the matter being now ready for decision,

It is hereby found as a fact that Stanford Water Company is now a mutual water company within the meaning of recent decisions of the courts of last resort, and basing its order herein upon this finding and upon each of the findings contained in the opinion preceding this order,

IT IS HEREBY ORDERED that the order contained in the Commission's Decision No. 5829 of October 1, 1918, be and it is hereby set aside, and that the complaint herein be and it is hereby dismissed.

Dated at San Francisco, California, this 24th day of September, 1919.

Edwin O. Edgerton
H. D. Leonard
Frank M. Wiley
Commissioners.