

ORIGINAL

Decision No. 7350

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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IGNATZ SCHULHOF,
Complainant,
-vs-
LAMOSA WATER COMPANY,
Defendant.

Case No. 1361.

Ignatz Schulhof in propria persona.
Leonard Suhr & Hillyer for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that he owns land within the district served by defendant with irrigation water; that defendant is a public utility, that he has applied to it for irrigation service but that defendant refuses to serve him. The answer denies that defendant is a public utility and alleges that it serves only its stockholders as a mutual water company; that no part of its water has been dedicated to public use; that complainant owns no stock of defendant company and that the Commission is without jurisdiction in the premises.

A public hearing in the matter was held by Examiner Westover in Los Angeles.

The water served by defendant originates

in Cucamonga Canyon, San Bernardino County, and is distributed in the vicinity of Alta Loma in that county.

Most of the land served is in what was originally known as the Iowa Colony Lands, consisting of 500 acres, divided into 25 lots of 20 acres each, practically all of which are now covered with bearing citrus groves. With the tract of 500 acres, was originally deeded $86/300$ ths of the water flowing in Cucamonga Creek. The tract, with proportionate amounts of water, was deeded to various individuals who subsequently organized defendant Iamosa Water Company, as a mutual water company, and deeded to it the water rights acquired by them with said lands. The company subsequently received conveyances of $59/300$ ths of the water in the creek, and now claims $145/300$ ths thereof.

About 1888 a flume in the canyon used for conveying creek water was washed out by flood and defendant's predecessors in interest, with other claimants of water in the canyon, constructed the present pipe line in the canyon with suitable flume and a tunnel for the purpose of developing additional water and conveying all of the water to the mouth of the canyon. For the purpose of making these improvements, the claimants of the water, who had advanced the money for the improvements, organized a corporation known as Cucamonga Development Company/^{as a mutual water company} with a capital stock of 1200 shares which was distributed to the parties in interest in the ratio of 4 shares for each $1/300$ th part of the water. Defendant's predecessors in interest thus received 344 shares, which subsequently came to defendant with the water rights referred to. Defendant subsequently acquired $59/300$ ths interest in the water but did not acquire additional development stock in connection with it. The works of the Cucamonga Development Company bring water to the mouth of the canyon to a point known as Sontag's sand box. From this point

to the 500 acre tract referred to, a distance of about $2\frac{1}{2}$ miles, the water of land owners in the tract was originally conveyed by flume.

A short distance west of the colony lands is the Cornelian Street Tract belonging to a small group of individuals who also acquired with their lands water rights in the canyon in the same proportions as land owners in the Iowa Colony Tract. They also originally maintained a flume to convey their water from the Sontag sand box to their lands. Subsequently these two flumes were replaced by a joint pipe line which now belongs to defendant company and the individual land owners in the Cornelian Street Tract. The officers of defendant company and of Cucamonga Development Company are the same. For convenience in operation the joint pipe line is operated by defendant, and the expense apportioned between its stockholders and the individual owners.

Defendant and the Cornelian Street group provided for the use of ~~the~~ canyon water to such an extent that they control $\frac{8}{9}$ ths of the total water flowing and developed in the canyon. The flow falls to about 56 miner's inches minimum in dry years. To supplement the supply defendant operates wells and pumping plant on the colony tract but at such elevation that it can distribute well water only on the southern 200 acres of the tract and not at the elevation of complainant's land.

Complainant's land lies to the west of the two tracts referred to and about midway between the Sontag sand box and the Iowa Colony Lands. It could be served from the joint pipe line on which it abuts. Complainant acquired with his land by deed $\frac{1}{300}$ th of the water in Cucamonga Creek. He has no stock in Cucamonga Development Company which transmits water out of the canyon and he does not own an interest in the

joint pipe line passing his land and has no present means of bringing his water to his land.

Complainant sought to show that certain individuals who were not stockholders in defendant company had purchased water from it. In the instances relied upon, however, it appears that some were served through the Cornelian Street line and not by defendant, others received domestic water under deeded rights, while one not a stockholder made an unauthorized connection with the pipe of a stockholder, and used water without charge or payment, but for several years has been charged for water and it has been paid for in adjustment of accounts. It also appears that defendant for many years served domestic as well as irrigation water to its stockholders; and finding an excessive use, a few years ago it installed meters and began charging for water served in excess of a fixed allowance. This was done to prevent waste. The proceeds, however, are used in defraying the cost of operation, together with funds derived from assessments of stock.

The circumstances described clearly bring defendant within the meaning of Section 2, Chapter 80, Laws of 1913, defining mutual water companies. The Commission is therefore without jurisdiction to grant relief.

It may be that complainant can arrange for stock in Cucamonga Development Company to bring his water out of the Canyon, and can arrange with the owners of the joint pipe line to bring his water from the canyon mouth to his land; or he may wish to construct his own facilities, but he has not established a valid claim against defendant for relief. The complaint should, therefore, be dismissed.