

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

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 CITY OF SANTA PAULA, a municipal corporation,  
 Complainant,  
 vs.  
 SANTA CLARA WATER & IRRIGATING COMPANY, a corporation,  
 Defendant.  
 .....

Case No. 349

Arthur E. Blanchard and Don G. Bowker, representing the City of Santa Paula.  
 E. M. Selby, of Hiatt & Selby, representing Santa Clara Water & Irrigating Company.

GORDON, Commissioner:

OPINION.

The City of Santa Paula brought this complaint for the purpose of compelling the Santa Clara Water & Irrigating Company to discontinue and abandon the use of an open water ditch running through the City from the eastern boundary to the western boundary thereof, and to substitute a buried pipe line in the place of this open ditch.

The complaint alleges in effect that the defendant permits Johnson Grass to grow on the banks of this ditch, and that the seed from this grass is carried to neighboring farms to the injury of the latter; that the ditch is a menace to public health and safety because it runs close to numerous barnyards and out-houses from which offensive matter drains into the ditch, and that during certain portions of the summer season the ditch is allowed to stand stagnant and to breed mosquitos.

From the evidence introduced at the hearing, it appeared that the company was at present taking active steps to eliminate the Johnson Grass from this ditch and that practically all of this grass had been removed. I do not consider it necessary, therefore, to give any further attention to the allegation concerning the Johnson Grass.

The defendant has objected to the consideration by the Commission of the allegation in the complaint to the effect that the open ditch, as now maintained, is offensive to the public health and safety of the City. The defendant contends that the City itself has the power to regulate these matters and to abate nuisances of this character when they are found to exist. The defendant has moved that the complaint be dismissed, because of lack of jurisdiction to consider the subject matter thereof. I shall now direct my attention to the consideration of this motion.

The Public Utilities Act of this state, which defines the jurisdiction of this Commission, was passed by the legislature under the authority conferred upon the legislature by Section 23 of Article XII of the Constitution of this state, as amended on October 10, 1911. After defining certain classes of public utilities and giving to the legislature the power to confer upon the Railroad Commission authority with reference to such utilities, this section of the constitution provides that from and after the passage by the legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers over such public utilities theretofore vested in certain other public bodies shall cease and the same be exercised by the Railroad Commission. The section then states a very important proviso, to the effect that the powers of control over public utilities vested in incorporated cities and towns shall not be transferred to the Railroad Commission until

such cities or towns, at an election to be held for that purpose, shall have decided that the powers possessed by the municipality shall be transferred to the Railroad Commission.

This Commission has taken the position that, under this constitutional provision, the cities and towns of the state retain all powers respecting public utilities which they had on March 23, 1912, being the effective date of the Public Utilities Act. On that day Section 11 of Article XI of the Constitution of this State was in full force and effect, and provided:

"Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

The City of Santa Paula has never transferred to this Commission the powers which it holds by virtue of this section of the constitution. The regulation of the defendant company's ditch within the City of Santa Paula, with a view to protecting the health and safety of the inhabitants of the city, is clearly a police, or sanitary regulation. It is my opinion, therefore, that the power of regulation in the instance set forth in this complaint is vested exclusively in the municipal authorities of the City of Santa Paula, and not in this Commission. I believe that the objections of the defendant to the jurisdiction of this Commission are well taken, and I submit herewith the following order:

O R D E R .

The complaint in this proceeding having been filed and a copy thereof having been sent to the defendant company, and the latter company having moved that the complaint be dis-

missed on the ground that this Commission does not have the jurisdiction to consider the subject matter of the same, and the question of jurisdiction having been argued before the Commission,

IT IS HEREBY ORDERED That the complaint in the above entitled proceeding 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 23<sup>rd</sup> day of July, 1913.

John W. Mesbleman

Alfred Gordon

Max Thelen

Commissioners.