

Decision No. 26285

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J.H. McCULLOCH and  
JOSIE M. McCULLOCE,

Complainants,

vs.

THE SWEETWATER WATER CORPORATION,

Defendant.

Case No. 3625.

BY THE COMMISSION:

O P I N I O N

In this complaint J.H. and Josie M. McCulloch who own two lots in the City of Chula Vista, San Diego County, California, having an area of approximately ten acres, ask the Commission to require The Sweetwater Water Corporation to furnish irrigation water to said parcels. Complainants allege that they acquired the above property on November 13, 1911, since which time they have been continuously the sole owners thereof, and that, before purchasing said property, assurance was obtained from Sweetwater Water Company, predecessor in interest of defendant herein, that the said lots were entitled to water for irrigation from the company's mains and that water would be delivered to them at any time upon demand. It is further alleged that the sum of five thousand dollars (\$5,000) was paid for the property at the time of its purchase and that the present investment therein is in excess of ten thousand dollars (\$10,000). Complainants allege that defendant

has refused to furnish these two lots with irrigation water under the provisions of its rules and regulations.

In its answer, defendant generally denies the allegations of the complaint and requests that the proceeding be dismissed.

The issue raised in this complaint involves the adequacy of defendant's water supply and the extension of irrigation service to lands that have not heretofore received service. This same question has been an issue in other proceedings before this Commission involving defendant, namely, Case No. 1627 entitled E. Melville, et al. vs. Sweetwater Water Corporation, of which complainants herein had full knowledge and in which proceeding the Commission rendered its Decision No. 9514, dated September 14, 1921 (20 C.R.C. 562), and Application No. 14195 entitled "IN THE MATTER OF THE APPLICATION OF THE SWEETWATER WATER CORPORATION FOR AN INCREASE IN RATES," in which proceeding the Commission rendered its Decision No. 20499, dated November 16, 1928 (32 C.R.C. 428). In Decision No. 9514, supra, the Commission held:

"Studies of the safe yield of the Sweetwater system were made by Mr. Bowen, for the company, and by C. H. Monett, one of the Commission's engineers. The results obtained were practically identical and indicate, when considered in connection with the area irrigated at present, that the limit of safe capacity of the system for irrigation use has been reached. Further extension of the irrigated area should be discontinued until additional facilities for increasing the water supply have been provided.

"The utility has acquiesced in this conclusion, and has filed an amendment to its rules and regulations which will effectually control the situation and which is satisfactory to the complainants. The complaint can therefore be dismissed." (20 C.R.C. 562, 567.)

The amendment to its rules and regulations filed by Sweetwater Water Corporation covering this restriction in further irrigation deliveries among other things provides as follows:

"No. 2. APPLICATION FOR SERVICE

No application for service will be granted except for strictly domestic use upon tracts of one-half acre or less, upon which a dwelling has been erected or will be erected in the immediate future. This Rule and Regulation does not apply when application is for service upon land heretofore using water as a part of a larger tract and which has a recognized right to water for irrigation, nor does it apply to applications for industrial use or temporary uses."

No restriction was placed upon the domestic supply to new tracts but further extension and expansion of irrigation service accordingly thereafter has been refused. The Commission in again discussing this same matter in 1928 stated in Decision No. 20499, supra:

"In Decision No. 9514, the Commission placed certain restrictions on this utility, limiting the further extension of service for agricultural irrigation purposes. Several petitions and requests were presented at the hearing, asking that these restrictions be removed and that the company be authorized to extend its service area to include certain adjoining tracts of land, some of which contain a very considerable acreage. The evidence presented in this proceeding does not indicate that the present water supply is sufficient at this time to justify the removal of the existing restrictions without endangering the supply of the regular irrigation and domestic consumers." (32 C.R.C. 428, 431.)

The records of this Commission indicate that there are, in addition to the lands of the plaintiffs, approximately three thousand acres of land within the service area of this utility which also desire irrigation service but which cannot be supplied because of lack of adequate water facilities. It is obvious that it would be an unfair discrimination against the owners of this large acreage of land to permit complainants to receive irrigation water without according to them the same privilege. The water supply of the defendant company has not improved to any sub-

stantial extent over that available at the time the decisions were issued by this Commission in September, 1921, and November, 1928. In view of these facts, it is apparent that this is not a matter in which a public hearing is necessary and that the complaint should be dismissed.

O R D E R

Good cause therefor appearing,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 2nd day of October, 1933.

O. L. Seaman  
Leon A. Whately  
M. A. C.  
M. B. Lewis  
Commissioners.