

Decision No. 29954

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SAN GABRIEL VALLEY WATER SERVICE)
to purchase and E. H. McHann and)
J. E. Laycook, a co-partnership)
doing business under the name of)
McHANN & LAYCOOK DOMESTIC WATER)
SYSTEM to sell a certain public)
utility water system situated in)
the County of Los Angeles, State)
of California)
and of)
SAN GABRIEL VALLEY WATER SERVICE,)
a corporation, to purchase and)
INDIO WATER COMPANY, LTD., a)
corporation, to sell all of its)
public utility water system)
situated in the County of River-)
side, State of California)
and of)
SAN GABRIEL VALLEY WATER SERVICE)
to issue, sell and deliver \$120,000)
principal amount of its First)
Mortgage Bonds, and to issue and)
deliver 1200 shares of its capital)
stock in payment for said properties.)

ORIGINAL

Application No.
21250

M. I. Church, for Cross Water Company.
O'Melveny and Myers by L. M. Wright,
for San Gabriel Valley Water Service.
H. R. Leonard, for Purity Mutual Water
Company.
E. M. Lineman, for Mission Gardens
Mutual Water Company.

WAKEFIELD, COMMISSIONER:

OPINION ON REOPENED PROCEEDING

In the above entitled application the Commission issued
its Decision No. 29954, dated July 16, 1937, granting San
Gabriel Valley Water Service⁽¹⁾, a corporation, among other things,

(1) Hereinafter referred to as Water Service.

a certificate of public convenience and necessity to operate a water system in a large area located in the general vicinity of El Monte, in the County of Los Angeles. This proceeding is reopened for further hearing upon the petition of Cross Water Company, a mutual water corporation, primarily upon the grounds that petitioner had received no notice of hearing of the application and had been granted no opportunity to appear and enter a protest and submit evidence to show that a portion of the area for which a certificate was requested was and now is being served by said Company. The Commission is asked to exclude from the certificated area granted Water Service, all lands supplied by Cross Water Company.

In order to determine any similar issues involving other water works operators, the Commission at the time of acting upon petition of the Cross Water Company also ordered the proceeding reopened for the purpose of determining whether its Decision No. 29954 should be modified in so far as it relates to the granting of a certificate in territory served by any mutual water company, public utility, governmental agency, district, association, corporation, or person. All such persons and agencies known to the Commission were served with notice of the reopened proceeding.

Public hearings were held in this reopened proceeding at Los Angeles.

The evidence shows that Cross Water Company was incorporated in 1911 by Cross Land Company, then owner of Tract No. 1343, Los Angeles County, for the purpose of furnishing domestic and irrigation water on said tract. The Land Company was engaged in subdividing and selling parcels of land that varied from one to ten acres. This tract is located three and a half miles southeasterly of the city of El Monte, is a portion of the Rancho La

Puente and embraces 2066 acres of land of which 300 acres are not irrigable. When the tract was subdivided, each acre of irrigable land was allocated a share of stock in the Cross Water Company. At present there are but 970 shares of stock outstanding, leaving 796 acres of land without water stock. The Cross Water Company reported its fixed capital to be \$163,751 as of December 31, 1939, which includes a value of \$80,752 for water rights, based upon decree issued by a federal court⁽²⁾ confirming to said Company a prior right to a continuous flow of the first 450 miner's inches of water underlying Tract No. 1343. As a result of this award Cross Water Company has prevented all landowners in the tract from producing water from wells on their premises.

Cross Water Company's water supply is produced from seven wells that have an installed pump capacity of 325 miner's inches. Water is stored in a one and a half million gallon concrete lined reservoir and distributed to the stockholders through 80,000 feet of concrete and steel mains that vary from eighteen inches to two inches in diameter. Water is furnished to 185 consumers for domestic use and to 55 for agricultural irrigation. All service connections are metered and all water is sold on a measured basis.

The record shows that the certificated area granted to Water Service overlaps 869 acres of Cross Water Company's territory. Within this overlap area there are 164.46 acres of land which at present are not covered by water stock because of forfeiture for nonpayment of assessments. Cross Water Company serves 153 consumers in the overlap area. However, water stock may be acquired from the Company at the reported market price of \$100

(2) Cross Land Company vs. Cross Water Company, U. S. District Court, Southern District of California. Equity No. K-16-J

per share per acre by new landowners in the tract and forfeited stock may be restored by payment of accrued assessments together with certain penalties.

Subdividers in the mutual area are required to have stock appurtenant to the lands and to advance to Cross Water Company upon a non-refundable basis the cost of the water main layout for each tract; this installation charge includes also all service connections and meters. Unquestionably Cross Water Company has facilities to and does provide adequate water service to its stockholders and it is ready and willing to furnish water to any and all lands within its service area under the terms and conditions of its by-laws.

Messrs. J. C. Ellis and A. C. Harvey recently acquired a parcel of land containing 22.3 acres in Block 29, originally the property of Mr. L. Giordiano, who since 1931 had failed to pay assessments on his water stock in the Mutual Company. This property was subdivided into 56 lots and called Allenwood Park. Application for water service to the Cross Water Company was rejected unless and until delinquent assessments, plus accrued interest and penalties, amounting to some \$25.00 per acre were paid. In addition to this, demand was made for payment of at least a major proportion of the cost of installing all necessary mains and service connections in the subdivision. Thereafter Water Service agreed to supply water in this tract and a contract satisfactory to both the subdivider and the utilities was entered into, with the result that the utility piped the tract and is now supplying at the present time 20 consumers in Allenwood Park, with the additional prospect that practically all of the 56 lots will be sold in the very near future.

Water is supplied to Allenwood Park through a 4" main connected with the adjacent system operated by Water Service. Very serious objections have been made by Cross Water Company to this

specific invasion of its service territory. The Company itself has a 12" main in the roadway fronting Allenwood Park and claims that an operating pressure between 25 pounds and 40 pounds is maintained throughout this portion of the distribution system.

The service area of the Cross Water Company, known as Tract No. 1343, comprises mainly agricultural lands, principally being devoted to walnut and citrus culture. The Mutual Company is in a position to supply water upon demand throughout practically all of this area. There was no evidence at the original hearing in this matter indicating that Cross Water Company was serving in any portion of the territory for which a certificate subsequently was granted to Water Service.

Mr. L. Giordiano, in addition to the land sold to Messrs. Ellis and Harvey, is the owner of certain lands in Block 10 and Block 11 of Tract 1343, amounting to 30.5 acres, upon which properties the water stock of Cross Water Company has been forfeited through failure to pay assessments. An action is pending wherein Cross Water Company is seeking to enjoin Mr. Giordiano from developing and producing water on any portion of this property as it holds through adjudication the sole and exclusive rights to develop, recapture and use practically all waters underlying the entire Tract No. 1343. Mr. Giordiano now desires to subdivide these properties and demands the right to obtain water from the San Gabriel Valley Water Service, primarily because he claims that the cost of reinstating his stock through the payment of delinquent assessments and accrued penalties will make the cost of water from Cross Water Company prohibitive. The transmission main connecting the present service area of San Gabriel Valley Water Service with the Allenwood Tract passes through or adjacent to the property which Mr. Giordiano intends

to subdivide and place upon the market. Moreover Water Service extended its mains to the Allenwood Tract and adjacent to the Giordiano Tract at a time when it had a valid, unrevoked certificate to serve said areas. In view of the foregoing facts, it appears at this time to be reasonable and proper that the said lands of Mr. Giordiano as well as the Allenwood Tract should remain within the domestic water distribution area of applicant. In so doing it is, of course, evident that none of the present or prospective owners of any of the lots in these parcels will be divested of any of the rights which they may now have or to which in the future they may be entitled, to obtain water from Cross Water Company upon complying with this Company's regulations and requirements. As to the remaining portion of the overlap area, it is sufficient to state that there has been no evidence presented tending to show either a present or an immediate future demand therein for water service other than that which may reasonably be furnished by Cross Water Company. Under existing conditions and circumstances this remaining portion of the overlap area is now and can be adequately supplied by the mutual company and there appears no necessity for any duplication in water production or distribution facilities in this district. The order therefore will provide for the elimination of the remaining overlap lands from the certificated area heretofore granted to San Gabriel Valley Water Service.

Representatives of the Purity Mutual Water Company, a corporation, and Mission Gardens Mutual Water Company, a corporation, demanded that the lands supplied by their respective water companies be excluded from the certificated area granted to San Gabriel Valley Water Service. These demands, however, were qualified to the extent that said representatives were willing to permit the utility to install in their districts mains which could be made available

for standby or emergency purposes only, provided Water Service would agree not to extend its distribution facilities into their service areas for direct consumer deliveries, except upon formal written request of said mutual companies after approval thereof by the duly qualified board of directors in each instance. This proposal was accepted through stipulation by R. H. Nicholson for and in behalf of San Gabriel Valley Water Service.

The following form of Order is recommended:

O R D E R

The Commission having issued its Order reopening the above entitled proceeding for the purpose of taking evidence concerning the boundaries of the area included in the certificate of public convenience and necessity therein granted applicant, public hearings having been held thereon, the matter having been submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that Decision No. 29954 dated July 16, 1937, Decision No. 32390, dated September 26, 1939, and Decision No. 32424, dated October 3, 1939, insofar as they affect the declaration and the granting of a certificate of public convenience and necessity to San Gabriel Valley Water Service, a corporation, be and they are hereby further modified to exclude therefrom all parts and parcels of Tract No. 1343, Los Angeles County, excepting Lots 1, 2, 3, 4, Block 29, all of Block 10, and Lots 3 and 4 of Block 11.

IT IS HEREBY FURTHER ORDERED that San Gabriel Valley Water Service, a corporation, shall not sell and deliver water directly to any consumer within the service area of Purity Mutual

Water Company, a corporation, or Mission Gardens Mutual Water Company, a corporation, unless requested so to do through resolution duly passed and approved by the board of directors of the said Mutual Company involved.

In all other respects Decisions No. 29954, No. 32390 and No. 32424, except as modified by this Order shall remain in full force and effect.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

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 23rd day of

July, 1940.

Frank Rowley
Robert A. Higgins
J. H. Smith
Justice J. C. Cramer
Commissioners.