

ORIGINAL

Decision No. 44742

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PALM SPRINGS WATER COMPANY for an )  
order of the Public Utilities Com- )  
mission of the State of California ) Application No. 30493  
determining that a contract dated )  
May 25, 1934, signed by Thomas A. )  
O'Donnell and A. F. Hicks, is )  
invalid and unenforceable against )  
Palm Springs Water Company. )

Thompson & Colegate, by Roy W. Colegate, for  
applicant. Wellborn, Barrett & Rodi, by Karl B. Rodi and  
Robert B. Curtiss, for protestants.

O P I N I O N

Palm Springs Water Company, a California corporation,  
and applicant herein, is a water corporation and a public  
utility, as defined in Sections 2(x) and 2 (dd) of the Public  
Utilities Act of the State of California.

In its application it prays that this Commission  
"make an order determining that a contract dated March 25,  
1934, signed by Thos. A. O'Donnell and A. F. Hicks is invalid  
and unenforceable against Palm Springs Water Company".

A copy of this agreement, dated May 25, 1934, is  
attached hereto marked Appendix B, and a preliminary memorandum  
of this agreement between the same parties, dated May 21, 1934,  
is attached hereto marked Appendix A. It should be noted that  
A. F. Hicks died on March 3, 1944, and Thos. A. O'Donnell

died in January of 1945. The present dispute arose after the deaths of these two individuals and is now presented by their successors in interest.

The successors in interest of Thos. A. O'Donnell have filed a petition in this matter, requesting that the above-mentioned application of the Palm Springs Water Company be denied.

A public hearing was held in this matter on October 7, 1949, in Los Angeles, and the matter was submitted. The attorneys for the respective parties filed Memoranda of Points and Authorities. Subsequently, on December 6, 1949, the submission was set aside and the matter reopened for further hearing. Under date of May 2, 1950, there was filed with this Commission a stipulation signed by the attorneys for the respective parties, a copy of which is attached hereto as Appendix C. This stipulation requests that the Commission determine and order that the contracts in question "are and each of them is invalid and unenforceable".

The agreement dated May 25, 1934, and previously referred to, was entered into by A. F. Hicks for the Palm Springs Water Company, and it was not until after his death that the other officers of the company learned of this contract. From that time on the water company refused to recognize the agreement.

Pursuant to the terms of this agreement, there was advanced to the water company approximately \$7,221.33, which sum was applied to the cost of performing the work set out in

paragraphs 1 and 2 of the agreement. Likewise, there was paid to the water company the sum of approximately \$2,000.00, under paragraph 4 of the agreement, to cover the cost of maintenance and repair of the Snow Creek intake and transmission line.

At the time the agreement was entered into, the first party of the aforesaid agreement owned the golf course referred to therein, and it was stated in the agreement that the parties were desirous of obtaining an increased supply of water to the golf course.

Subsequently the original first party transferred his interest to Messrs. Dougherty and Milnor, and they asserted a claim to the full flow of 20 miner's inches of developed water, primarily from Snow Creek, with the right to use it any place they desired. It should be noted that the golf course had been transferred to the City of Palm Springs. The water company's contention was that the agreement had been made for the furnishing of water to a golf course, and for no other purpose.

However, in view of the possibility of extended litigation, the matter was finally settled and disposed of by the water company paying to Messrs. Dougherty and Milnor the sum of \$9,100.00.

In addition, the water company, in its capacity as a public utility, has now agreed to furnish water to a parcel of land of Messrs. Dougherty and Milnor at the same rates and in the same manner as it extends service to its other customers.

After a consideration of the entire record in this matter, and with particular regard to the stipulation filed by the parties, we are of the opinion, and hereby find, that the memorandum agreement of May 21, 1934, and the contract of May 25, 1934, attached to this decision as Appendices A and B, respectively, are invalid and unenforceable against the Palm Springs Water Company, inasmuch as these agreements were not entered into with the approval of this Commission. We further find that the settlement reached by the parties, as outlined herein, is not inimical to the interests of the utility or the public concerned.

O R D E R

The Commission being fully advised in the premises, and good cause appearing,

IT IS ORDERED that the application of F. C. Dougherty Elsie Dougherty, H. W. Dougherty, Nathan F. Milnor and Virginia Milnor, requesting dismissal of the application of Palm Springs Water Company be, and it hereby is, denied.

IT IS FURTHER ORDERED that the preliminary memorandum of contract dated May 21, 1934, and the contract dated May 25, 1934, both documents being signed by Thos. A. O'Donnell and A. F. Hicks, be, and they hereby are, declared to be invalid and unenforceable against the Palm Springs Water Company.

APPENDIX A

May 21 - 1934

Agreement between Mr. Thos. A. O'Donnell and  
A. F. Hicks for the Palm Springs Water Co.

#1 The expense of drilling or whatever work  
is done on wells to be borne 50% by each Party.

#2 For the right to 20 in of water from Snow  
Creek Mr. O'Donnell agrees to furnish 5000.00 as a part  
of building the pipe lines.

Thos. A. O'Donnell  
for O'Donnell Oil & Securities Co.

A. F. Hicks  
for the Palm Springs Water Co.

APPENDIX B

THIS AGREEMENT, made in duplicate, this 25th day of May, 1934, between THOS. A. O'DONNELL, representing the O'DONNELL OIL & SECURITIES COMPANY, party of the first part, and A. F. HICKS, representing the Palm Springs Water Company, party of the second part.

W I T N E S S E T H:

THAT, WHEREAS, the party of the first part is the owner of a certain parcel of ground in the unincorporated town of Palm Springs, California, and is desirous of having an adequate supply of water for the golf course now maintained on said ground, and

WHEREAS, the part of the second part is now drilling a well and installing transmission lines to increase the distribution of water,

NOW, THEREFORE, in consideration of the mutual advantages accruing to each of the parties hereto, and of mutual promises hereinafter contained, it is hereby agreed between the parties as follows, to-wit:

1. The party of the first part agrees to pay to the party of the second part one-half of the net cost of the drilling of one well and the two experimental pits, such cost to be represented by engineering expenses, shaft work, drilling and casing.
2. The party of the first part agrees to pay to the party of the second part the net sum of Five Thousand (\$5,000.00) dollars, which sum is to be applied to the cost of the transmission line necessary to deliver such developed water from Snow Creek to the present high pressure reservoir.
3. The party of the second part agrees to deliver to the party of the first part at the high pressure reservoir twenty miners inches of water by California measurements, to be used as irrigation water only on the property now owned by the party of the first part, known as the Desert Golf Course in Palm Springs, and to further give to the party of the first part the privilege of using the lower reservoir of approximately 150,000 gallons capacity as a storage reservoir. Any connections for the delivery of the water to and from this reservoir to be made at the expense of the party of the first part.
4. The party of the first part agrees to pay to the party of the second part 20/75ths of the cost of the maintenance and repair of the Snow Creek intake and transmission line.
5. In the event that the available supply of water from Snow Creek shall not be adequate to supply the service demand of the party of the second part, together with the twenty miners inches to be delivered to the party of the first part under this agreement, then and at such time, the party of the first part agrees to pay to the party of the second part his pro rata share of the cost of water developed in Snow Creek Canyon and water developed by pumping, in the proportion that twenty inches bears to the entire amount of water necessary to meet the service requirements of the party of the second part, plus the twenty inches to be delivered to the party of the first part.

6. This agreement shall at all times be subject to such changes or modifications by the Railroad Commission of the State of California, as said Commission may from time to time direct in the exercise of its jurisdiction. In the event of change by said Commission, which is not satisfactory to the party of the first part, then the party of the first part will have the option to cancel this agreement and demand the return of the investment without interest.

(signed) Thos. A. O'Donnell

Party of the first part.

(signed) A. F. Hicks

Party of the second part.

APPENDIX C

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

In the Matter of the Application  
of Palm Springs Water Company  
for an order of the Public Utilities  
Commission of the State of California  
determining that a contract dated May  
25, 1934, signed by Thomas A. O'Donnell  
and A. F. Hicks is invalid and unen-  
forceable against Palm Springs Water  
Company.

} APPLICATION NO. 30493

} STIPULATION

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA:

It is hereby stipulated and agreed by and between Palm  
Springs Water Company, a corporation and public utility of the  
State of California, and F. C. Dougherty, Elsie Dougherty, H. W.  
Dougherty, Nathan F. Milnor and Virginia Milnor, through their  
respective counsel, that these proceedings shall be determined  
and disposed of, and orders of this Commission entered herein as  
follows:

FIRST: That the Commission shall determine and order  
that the contracts of May 21, 1934 and May 25, 1934 (copies of  
which are attached as Exhibits A and B to the application of Palm  
Springs Water Company filed in these proceedings on or about  
July 10, 1949), are and each of them is invalid and unenforceable  
against Palm Springs Water Company, that same required but did not



receive the approval of the Commission and that they are discriminatory and preferential against the other consumers of said water company.

SECOND: That the application by said F. C. Dougherty, Elsie Dougherty, H. W. Dougherty, Nathan F. Milnor and Virginia Milnor filed in these proceedings on or about October 5, 1949 and requesting dismissal of the application of Palm Springs Water Company referred to in the caption above - shall be denied, and

THIRD: That all necessary and proper orders to accomplish the foregoing shall be made and entered by the Public Utilities Commission.

DATED: April 19, 1950.

Palm Springs Water Company,  
a corporation and public utility  
of the State of California,

THOMPSON & COLEGATE

By Roy W. Colegate  
Its Attorneys

F. C. Dougherty, Elsie Dougherty,  
H. W. Dougherty, Nathan F. Milnor  
and Virginia Milnor,

WELLBORN, BARRETT & RODI

By Karl B. Rodi  
Their Attorneys

The effective date of this order shall be twenty (20)  
days after the date hereof.

Dated at San Francisco, California, this 1<sup>st</sup>  
day of September, 1950.

R. E. Zimmerman  
Justice J. Gaenen  
Quart. Lawrence

Kenneth Potter  
COMMISSIONERS