

ORIGINAL

Decision No. 51466

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUNKIST HOMES, INC., a
corporation,

Complainant,

vs.

SOUTHERN CALIFORNIA WATER
COMPANY, a corporation and
public utility,

Defendant.

Case No. 5622

William A. Reppy, attorney, for complainant.
O'Melveny & Myers, attorneys, by Lauren M. Wright,
for defendant.
M. Arthur Waite, attorney, for San Antonio Water
Conservation District, interested party.
George F. Tinkler, for the Commission staff.

O P I N I O N

Sunkist Homes, Inc., ^{1/} a corporation, filed the above-entitled complaint against Southern California Water Company, ^{2/} a public utility corporation, on February 14, 1955. An answer and further answers were filed by the utility on March 9, 1955.

Public hearings in this matter were held before Examiner Stewart C. Warner on April 6 and 7, 1955, at Ojai. The matter was submitted and is now ready for decision.

Allegations of Complainant

Complainant alleged as follows:

1. That it is the owner and subdivider of approximately 48 acres of land located adjacent to the intersection of Ventura Avenue and Maricopa Road in the City of Ojai, Ventura County.

^{1/} Hereinafter referred to as Sunkist or complainant.
^{2/} Hereinafter referred to as the water company, the utility, or defendant.

2. That said acreage was annexed to the City of Ojai on February 8, 1954.

3. That said acreage has been subdivided into lots for homes and commercial buildings, and that the final subdivision map of the acreage was approved by the City of Ojai and recorded December 16, 1954, in Book 22, Pages 24 and 25 of Miscellaneous Maps of the County Recorder, Ventura County.

4. That complainant has completed plans for the erection of 156 homes intended to sell in the bracket of between \$14,000 and \$17,000 each, that construction of said homes is ready to be commenced, and that any delay in said commencement would cause complainant irreparable financial loss.

5. That the defendant holds a franchise from the City of Ojai for the distribution of water within the city limits, and that said franchise was originally granted to Ojai Power Company in 1927 by Ordinance No. 38 of said city; that defendant acquired said franchise in 1937; and that as a condition of said franchise defendant undertook to "meet and fill the reasonable needs of the inhabitants of the territory to be served".

6. That complainant's subdivision lies within the area which defendant is dedicated to serve.

7. That prior to the time that complainant submitted its subdivision map to the City of Ojai for acceptance and committed itself to the construction program, complainant made known to defendant its desire to obtain water for the subdivision and defendant orally advised complainant that if the subdivision map were accepted and recorded the defendant would furnish water to said subdivision.

8. That on January 10, 1955, complainant formally made application in writing to defendant for water service, and that on

January 13, 1955, defendant advised complainant in writing that it would not provide water service to the subdivision, giving as its reason that complainant had stock in Ojai Mutual Water Company^{2/} which was appurtenant to complainant's land and suggested to complainant that it should apply to the mutual for water service.

9. That complainant does not own any stock in the mutual and that mutual stock is not and never was appurtenant to complainant's land; that no mutual stock can be acquired by complainant and that even if mutual stock were available to complainant, it is the claim of a substantial amount of mutual stockholders that it is not permissible for the mutual to issue stock to owners of land to which the original issue of mutual stock was not expressly made appurtenant, and that any stock issued in the past contrary to such arrangement was invalid and is not now entitled to receive any water from the mutual, and that an action is now pending in the Federal Court in which this issue is presented for determination.

10. That defendant has, or has reasonable access to, a source of water supply adequate for complainant's subdivision, along with defendant's present consumers.

11. That complainant has been injured and is being injured by reason of the refusal of defendant to furnish water service to complainant's subdivision as applied for.

Relief Sought

Complainant seeks relief by an order which would require defendant to furnish water to complainant's subdivision, and any other and further relief which appears to the Commission to be just and proper.

^{2/} Hereinafter referred to as the mutual.

Answer of Defendant

Defendant answered as follows:

1. That the annexation to the City of Ojai on February 8, 1955, and the approval by the City of Ojai and recordation of subdivision map on December 16, 1954 were admitted.
2. That complainant applied for water service on January 10, 1955, and that defendant answered said application on January 13, 1955, by letter, copy of which was attached to the answer as Exhibit A.
3. That as to all other allegations defendant either had no information or belief, and denied each generally and specifically.

Further Answers of Defendant

Defendant further answered as follows:

1. That the subdivision is near but not within defendant's Ojai District service area.
2. That defendant's sole water supply for its Ojai District consists of wells producing water from the San Antonio Basin (Ojai Basin), and that there are a number of other parties producing water from said basin.
3. That defendant's water supply from the San Antonio Basin for its Ojai District is not adequate to serve any area other than its present service area.
4. That to render water service to complainant's proposed subdivision of 156 homes would require the acquisition and development of an additional water supply, and that there is no economically feasible additional water supply available in or for the area at the present time.

Evidence of Record

The evidence of record comprises 17 exhibits received and 258 pages of testimony taken in the two days of hearing.

Exhibit No. 1 is a copy of a resolution of the City of Ojai granting to Ojai Power Company for 40 years from and after the first day of August, 1927, a franchise to use the streets, alleys, public roads, highways and public places in said City of Ojai. One of the conditions of Paragraph 2 of Section 5 of Ordinance No. 38 dated October 10, 1927, granting such franchise, was that the grantee should in good faith diligently commence the laying of water pipe lines and water works construction so as to meet and fill the reasonable needs of the inhabitants of the territory to be served. The franchise is silent on grantee's obligation to serve areas subsequently annexed to the city.

Exhibit No. 2 is a copy of the recorded map of Ojai Terrace^{4/} comprising 156 residential lots and 2 commercial lots of 2.317 acres and 4.227 acres each, as recorded in Ventura County on December 16, 1954.

Exhibits Nos. 3, 4 and 5 comprise the exchange of communications between complainant and defendant regarding complainant's application for water service and its refusal by defendant. These exhibits and the testimony relating thereto show that they are complainant's first formal application for water service to and by defendant except a telephone call placed by Mr. Henry Horn, complainant's president, to a vice president of defendant four or five days prior to January 10, 1955, and the writing of the initial letter in connection therewith. The letter, Exhibit No. 5, contradicts complainant's allegation that defendant advised complainant that the latter owned stock in the mutual. Such exhibit suggested that complainant contact the mutual for water service to its subdivision for the reason that the subdivision

^{4/} Complainant's proposed subdivision.

was within the boundaries of the mutual's service area, and that defendant would, under no circumstances, encroach on property that was within the mutual's territory.

Exhibit No. 6 is a copy of a letter to complainant's predecessors in interest dated August 24, 1954, answering an inquiry on August 3, 1954, by said predecessors regarding the supplying of water by defendant to Ojai Terrace subdivision. This exhibit shows that defendant was unable to assure the proposed subdividers, at that time, that such water supplies were available or would be available for the reason that, during the dry cycles which defendant had experienced, there had been times when the water tables in the Ojai Valley were very low and that citrus growers just a few years back had suffered considerable damage by their inability to pump the desired amount of water from the Ojai Basin. This exhibit shows that defendant felt that the Ojai City Council should give its approval in writing to defendant if it deemed it advisable for defendant to serve the proposed subdivision. It also advised complainant's predecessors that when the subdivision first came up, there were several threats by local people of an injunction against defendant for taking water out of Ojai Valley to Ojai Terrace which does not overlie the Ojai Basin, and threats of throwing the Valley into litigation.

Exhibit No. 7 is a copy of a contract between defendant and the Ventura County Flood Control District for 50 acre feet of water from the Matilija Dam during the calendar year 1955, subject to reduction of the contract amount if the estimated safe yield from said dam for the calendar year 1955 were not sufficient to supply the full demand of all purchase contracts. This contract was dated December 28, 1954. The charge for semitreated water for

nondomestic use from the dam is \$25 per acre foot delivered at or near the District's pipe line at a place designated by the District. The record shows that defendant has not utilized any water under the terms of this contract. The record further shows that the contract is on a year-to-year basis, only, and is not considered by defendant to be a firm source of water supply for the future.

Exhibit No. 7 is also a copy of a letter dated February 15, 1955, from the mutual to complainant replying to an application by the latter, dated February 11, 1955, to the mutual for water service. This letter stated that the subdivision was in the City of Ojai and that the mutual felt that defendant was the appropriate instrumentality to supply complainant with water. This letter further stated that mutual did not feel that it was in a position at that time to extend its water service to the subdivision. Exhibit No. 8 is the hereinbefore referred to copy of letter by the complainant to the mutual, dated February 11, 1955.

Exhibit No. 9 is a copy of a letter dated March 25, 1955, to complainant from Kenneth N. Prairie, Councilman for the City of Ojai, which stated that the City Council had taken a strictly "hands off" policy in the dispute over water service in the Ojai Terrace subdivision. The Councilman's stated reasons were (1) that the reluctance of defendant to furnish Ojai Terrace with water was based on the threat of an adjudication suit by the San Antonio Water Conservation District and an organized group of ranchers and (2) that defendant had a franchise to serve water in the City of Ojai, the wording of which was very vague and did not spell out what the utility must do to maintain its agreement with the City, and (3) that defendant's responsibility to serve the City water should be determined by this Commission.

Exhibit No. 10 is a map showing defendant's Ojai system. The tariff service area limits as filed with the Commission in accordance with Decision No. 48051, dated December 16, 1952, in Application No. 33470, an application by defendant for an increase in rates in its Ojai District, are outlined in red on the map. The boundaries of Ojai Terrace are outlined in blue, the pipe lines of the mutual are designated in green, and defendant's existing pipe lines and their size are shown in black. The location of the sources of defendant's and the mutual's water supply are also shown. This map shows that the proposed subdivision is about three fourths of a mile southwest of defendant's nearest 4-inch main and about one mile from its nearest 8-inch main. It also shows that an 8-inch main of the mutual approaches the proposed subdivision to within about 400 feet.

Exhibits Nos. 11 and 12 are charts submitted by defendant showing the static and pumping water levels from defendant's San Antonio wells in its Ojai District. The accumulated departure from mean annual rainfall in Ojai for the years 1905 to date and the accumulated departure from mean annual rainfall for Los Angeles from 1877 to date are shown. Exhibit No. 11 shows that the pumping water level dropped from 50 feet in 1947 to 350 feet in 1951, but had recovered to 105 feet by 1953 due to the combination of additional rainfall and spreading operations from Matilija Dam. As of March, 1955, the pumping water level from defendant's San Antonio wells in Ojai Basin had dropped to 200 feet. These charts also show defendant's total water production in acre feet in its Ojai system for the years 1929 through 1954, the customers as of July 1 of each year during that period, and the acre feet per consumer for the same period. They show that total water production has increased from approximately 150 acre feet to

570 acre feet, the number of consumers has increased from 400 to 1,130, and the acre feet per customer per year has increased from .35 acre feet to .52 acre feet.

Exhibit No. 13 is a United States Geological Survey map of the area showing boundary lines of the drainage area, the Ojai service area, and the valley fill or water production area.

Exhibits Nos. 14 and 15 are charts showing the changes in the ground-water elevation in the Ojai Valley from 1928 to 1952.

Exhibit No. 16 is a history of defendant and its predecessors as it relates to Commission decisions affecting the question of franchise, transfer of properties, and delineation of defendant's Ojai District service area.

Complainant introduced oral testimony by a real-estate broker that there was a need for the type of homes proposed to be built in the City of Ojai. It also introduced, through its president, oral testimony outlining the circumstances of its application for water service to and by defendant. Its consulting engineer, outlined the estimated costs of the proposed water system including 3,230 feet of 8-inch cast-iron pipe line connecting with defendant at Butman and Ojai Avenues. Such estimated total cost, including 6-inch cast-iron mains in the tract, with service to each and every lot, was \$45,470. He estimated the total water usage of the tract to be 65 acre feet per year. This witness testified that the tract might be outside the Ojai Basin but that the tract was inside the Basin's watershed. He testified that no water would flow back into the Ojai Basin from the tract.

A Ventura County supervisor and former vice president of the United Water Conservation District, and chairman of the Ventura County Flood Control Board, testified for complainant regarding the availability of water from the Matilija Dam and his testimony

was corroborated by the Chief of Water Resources of the Ventura County Department of Public Works. Their testimony and further evidence of record showed that when water spreading operations were conducted out of Matilija Dam by the Flood Control District, the water levels in the wells in the Ojai Basin had risen markedly and to nearly normal levels. Such spreading operations were conducted in 1951, 1952, 1953 and 1954 and could be conducted in a normal rainfall year when water was flowing over the spillway of the Dam. In March of 1955, since the rainfall year 1955 had not been normal, water allocations from the dam for irrigation purposes had been rationed.

Witnesses for the San Antonio Water Conservation District testified that during the critical year 1951 their citrus groves had been seriously damaged by lack of water, many wells had gone dry, new wells had been drilled at substantial expense, crops had been depleted, and trees had been injured. The president of the Board of Directors of the District indicated that the Board would sue either defendant or the mutual if either furnished water service to the proposed subdivision. The basis of such suit would be to secure an adjudication of water supply of the Ojai Basin.

A witness for defendant testified that defendant was furnishing water service to some 91,000 consumers in 29 water systems throughout Southern California, and that it was anxious to expand its water sales and its water systems. He testified further, however, that an engineering survey of defendant's water supply in its Ojai District had indicated to defendant that an extension outside of the area designated by the red line in Exhibit No. 10 as its service area within the City of Ojai, would jeopardize the water supply to its present consumers and to those consumers which it estimated would be added to its water system within said present

service area. He estimated that, considering the present population density and potential residential development, the number of consumers within said area might increase in the future by 60 per cent. The record shows that defendant's present sources of water supply from its two wells in the Ojai Basin had a total production capacity of 1,100 gallons per minute. Its total storage capacity was 500,000 gallons. Defendant's witness testified that during 1951 the pumps on wells had been throttled down in order to keep them from breaking suction, and that during a dry, or less-than-normal rainfall year, water might have to be rationed. He testified that the 50 acre feet contracted for by defendant with the Ventura County Flood Control District, hereinbefore referred to, since that contract was for a one-year period only, could not be and was not considered by defendant to be a firm source of water supply supplementing defendant's present well sources. He foresaw no possibility of developing other firm water supply sources in its Ojai District.

Consideration of Evidence and Conclusions

We have considered the needs of the proposed subdivision for water service, the location of said subdivision, the benefits to the community of the addition thereto of some 156 homes and a commercial area to the limited extent that such benefits are disclosed by the record, the sources of water supply available to complainant, or the lack of them as such are disclosed by the record, the circumstances surrounding the development and transfer of ownership of the proposed subdivision, the sources of water supply available to defendant and its present and future consumers within its service area, and all other evidence of record in this proceeding.

The record shows that defendant's present sources of water supply are adequate to provide for the needs of its present consumers and the estimated additional consumers within its present service area. The record further shows that there are no other firm sources of water supply which defendant could develop for its present Ojai District service area.

It is concluded and found that the furnishing of water service by defendant to complainant would not be meeting a reasonable need of the inhabitants of the City of Ojai, as such term is used in the franchise granted by Ordinance No. 38, and that the subdivision's requirements, in fact, would constitute an unreasonable need, would jeopardize defendant's supplies of water available to its present and future consumers within its present service area, and that to require defendant to meet such unreasonable needs and jeopardize its water supplies would be contrary to the public interest.

We conclude, therefore, that the complaint should be dismissed.

O R D E R

Complaint as above entitled having been filed, public hearings having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY FOUND AS A FACT that, due to the limited water supply in defendant's Ojai District, the public interest requires that defendant not furnish water to the subdivision involved herein and, therefore, we conclude that this complaint should be dismissed, therefore,

IT IS HEREBY ORDERED that the complaint of Sunkist Homes, Inc., a corporation, versus Southern California Water Company, a corporation, be and it is dismissed.

The effective date of this order shall be twenty days from the date hereof.

Dated at Los Angeles, California, this 16th day of May, 1955.

W. E. Mitchell
 President

Justin J. Caswell

Paul J. ...

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Commissioners