

ORIGINALDecision No. 55751

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Kent Estate Co.,
a corporation,

Complainant

vs.

Stinson Beach Water Company,
a corporation (formerly Arenal
Water Company, a corporation),

Defendant.

Case No. 5831

In the Matter of the Application of
Stinson Beach Water Company, a cor-
poration, for approval of an agree-
ment between applicant and William
Kent Estate Co., for service to real
property of the latter, and for
authorization to issue promissory
note.

Application No. 39028

Vaughan, Paul & Lyons, by John G. Lyons,
for Stinson Beach Water Company, appli-
cant in Application No. 39028 and
defendant in Case No. 5831.

W. Kevin Casey of Thatcher, Jones, Casey &
Ball, for William Kent Estate Co., com-
plainant in Case No. 5831.

John D. Reader, for the Commission staff.

O P I N I O N

On October 15, 1956, William Kent Estate Co., hereinafter called Kent, filed its complaint herein against Stinson Beach Water Company, hereinafter called Stinson, alleging that although Stinson is required by law and by agreement dated December 31, 1948, to extend water service to all of Kent's properties known as Sandspit and Ranch lands, Stinson has refused and still refuses to furnish

water to Subdivision No. Two which is a part of said Sandspit and said Ranch lands and is contiguous to that part of said lands known as Subdivision No. One which Stinson now serves. On December 6, 1956, Stinson filed its answer to said complaint denying all allegations of the complaint except paragraphs 1 and 3 and alleging that Kent has refused to sell to Stinson its two 30,000-gallon water tanks together with the water supply in Black Canyon for said storage tanks, and that the extension of water service to Kent's new subdivision would be unreasonable and a detriment to Stinson's other consumers in view of the lack of assured water supply.

On April 29, 1957, Stinson filed Application No. 39028 herein requesting the Commission to make its order granting all necessary approval for the execution of three agreements attached to the application as Exhibits "A", "B" and "C", because (1) said agreements will lead to settlement of the complaint in Case No. 5831 herein, (2) they will make available to applicant water at very reasonable rates, and (3) they will provide necessary funds in the amount of \$10,000 to purchase a jeep and water tanks and to replenish Stinson's working capital.

Exhibit "A" to the application herein is a copy of an agreement, dated April 5, 1957, between Stinson and Kent, which provides that for the sum of \$5,831.05 Stinson shall purchase from Kent two 30,000-gallon water tanks located in the South Fork of Black Canyon, the water meter thereon, a certain intake pipeline running in an upstream direction from said tanks, an easement for the purpose of maintaining and servicing said water tanks, and an easement for water pipelines running in a downstream direction from said tanks to Panorama Highway. The agreement further provides that the agreement dated December 31, 1948, relating to the conditional sale by Kent to

Stinson of certain water pipe shall continue to December 31, 1958, at which time said water pipe shall be conveyed by Kent to Stinson. Stinson agrees to serve Seadrift Subdivision No. Two at Stinson Beach under a main extension agreement which deviates from Stinson's filed main extension rule in two respects: (1) Kent is required to donate \$2,100 for the cost of fire hydrants, and (2) the amount to be refunded by Stinson to Kent is to be on the basis of 22 per cent of the actual annual revenues rather than 22 per cent of the system average revenues. The parties also agree to execute and file with this Commission a joint stipulation consenting to the dismissal of the complaint herein, and Kent agrees to release Stinson from any claim for damages arising from the failure of Stinson to serve Seadrift Subdivision No. Two prior to the closing date of the escrow created by the agreement. This agreement referred to as "Agreement for Sale of Tanks and Easements" is: (1) subject to and contingent upon Commission approval of the main extension agreement, (2) subject to and contingent upon the completion of the sale of the real property described in Exhibit "B" to George P. Leonard, hereinafter referred to as Leonard, and (3) subject to and contingent upon Commission approval of the agreement between Leonard and Stinson providing for the loan of \$10,000 to Stinson and the sale of water by Leonard to Stinson as set forth as Exhibit "C" to the application.

Exhibit "B" provides for the purchase by Leonard from Kent of certain watershed land from which the two water tanks to be purchased by Stinson are supplied with water. The purchase price is \$4,000. Exhibit "B" is subject to and contingent upon the completion of the sale provided for in Exhibit "A".

Exhibit "C" provides that Leonard agrees to lend or cause his wife to lend Stinson \$10,000 repayable on or before five years

after the effective date to be used for the following purposes: (1) \$5,831.05 for the purchase of water tanks, meter and pipe, and easements pursuant to Exhibit "A", (2) \$2,236.00 to reimburse Leonard for an amount advanced for the purchase of a 1957 Willys Jeep and (3) the remainder of \$1,932.95 to be used for additional working capital. Exhibit "C" also provides that Leonard shall sell to Stinson, during a period of ten years from the effective date thereof, such water from the water shed of Black Rock Creek as Stinson may require for the two 30,000-gallon tanks to be purchased from Kent. As compensation Stinson agrees to pay 7-1/2 cents per 100 cubic feet for all water withdrawn from said water tanks during the period from May 1 to November 30 in each year, and 5 cents per 100 cubic feet for all water used during the period from December 1 to April 30 in each year, subject to a minimum payment of \$87.50 per quarter. Leonard also agrees to furnish Stinson water at the aforesaid rates subject to a minimum annual payment of \$600 from the following sources of supply: East Stinson Creek, West Stinson Creek, Upper Fitzhenry Creek, Lower Fitzhenry Creek, and Fitzhenry No. One for a ten-year term. The agreement also provides for two successive five-year extensions at adjusted rates mutually agreed upon and subject to approval by this Commission. Exhibit "C" is made subject to approval by the Commission and is contingent upon Commission approval of Exhibit "A".

Public hearing was held in these matters before Examiner John M. Gregory at San Francisco on June 18, 1957. At the conclusion of the hearing the matter was taken under submission.

The record shows that Leonard is the President of Stinson and that he owns all of the stock of Stinson with the exception of a few qualifying shares.

Both Kent and Stinson are fully aware of the nature and effect of the proposed deviations to Stinson's main extension rule which are incorporated in the Main Extension Agreement which is a part of Exhibit "A", and both have agreed to such deviations. Such deviations will be authorized.

The Commission staff engineer took exception to Stinson's proposal to purchase water from Leonard. In the rate proceeding before this Commission in 1948 the Commission included in the rate base an amount representing the value of the ranch lands used in supplying water to the utility.

Counsel for Stinson has advised that in support of any future application for increase in rates Stinson will seek to have included as an expense the charges for water which are set forth in Exhibit "C".

The rates proposed to be charged Stinson for water by Leonard are the same as those previously charged by Kent for water which it has sold to Stinson. Under the proposed agreement, however, a part of the facilities owned by Kent and used in the supplying of the water to Stinson will be sold to Stinson. Only the water shed land will be sold by Kent to Leonard. Nevertheless, Leonard testified that the proposed charges for water to be sold by him to Stinson are very low. No other evidence regarding the reasonableness of such charges was introduced at the hearing.

The record clearly establishes the fact that Leonard and his predecessors have dedicated the sources of water supply referred to in Exhibit "C" for the purpose of supplying water to Stinson for distribution for domestic use. In this connection we refer to Section 216(c) of the Public Utilities Code which reads as follows:

"(c) When any person or corporation performs any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the State, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the Commission and the provisions of this part."

In view of this provision of the Public Utilities Code the Commission concurrently with the issuance of this decision will institute its own order of investigation for the purpose of determining the status of Leonard as the owner and operator or owner or operator of a water system or water supply and for the further purpose of establishing rates and charges in the event the Commission finds and declares Leonard to be the owner and operator or owner or operator of a public utility water system or water supply.

Findings and Conclusions

We hereby find that the complaint of Kent against Stinson, Case No. 5831, should be dismissed.

We further find that the proposed deviations from Stinson's filed main extension rule are justified and should be authorized.

We further find that the transfer of public utility properties as proposed in the application herein will not be adverse to the public interest and accordingly such transfers will be authorized.

We hereby further find that the money, property or labor to be procured or paid for through the issuance of the promissory note as requested in the application herein is reasonably required by Stinson for the purposes set forth in said application; and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. Stinson will be authorized to issue such promissory note. The term "quarterly" at the beginning of line 6 in paragraph 5 on page 5 of Exhibit "C" should be changed to "monthly" so as to conform the agreement set forth as part of Exhibit "C" to the request of the application and the terms of the

proposed promissory note attached to said agreement.

We further find that the agreements and other documents set forth as Exhibits "A", "B", and "C" to the application herein will not be adverse to the public interest and that Stinson, Kent and Leonard should be authorized to execute the same and that said agreements should be approved by this Commission.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred or of the reasonableness of the charges for water to be furnished by Leonard to Stinson pursuant to Exhibit "C".

O R D E R

Based on the evidence of record and on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that:

1. The complaint of William Kent Estate Co. against Stinson Beach Water Company, Case No. 5831, herein, is hereby dismissed.
2. Stinson Beach Water Company and William Kent Estate Co. are hereby authorized to execute and to effect the transfers of property as provided in the Agreement of Sale of Tanks and Easements and the Main Extension Agreement which comprise Exhibit "A" attached to Application No. 39028 herein, and said Agreement for Sale of Tanks and Easements and said Main Extension Agreement are hereby approved.
3. William Kent Estate Co. and George P. Leonard are hereby authorized to execute, and to effect the transfer of property as provided in the Agreement for Sale of Real Property which is attached to Application No. 39028 herein, and said Agreement for Sale of Real Property is hereby approved.

4. George P. Leonard and Stinson Beach Water Company are authorized to execute the agreement set forth as Exhibit "C" to Application No. 39028 modified by the substitution of the word "monthly" for the word "quarterly" at the beginning of line 6 of paragraph 5 on page 5 of said Exhibit "C" and said agreement as so modified is hereby approved.

5. Stinson Beach Water Company is hereby authorized to execute and issue to Wilma Leonard the promissory note, set forth as Exhibit 1 to Exhibit "C" to Application No. 39028 herein, in consideration of the sum of \$10,000 to be used for the purposes set forth in said Application No. 39028.

6. Stinson Beach Water Company shall file with this Commission within thirty days after the effective date of this order two certified copies of the Main Extension Agreement and of the agreement substantially as set forth as Exhibit "C" to Application No. 39028, as executed, together with a statement of the date on which each agreement was deemed to have become effective.

7. Within thirty days after the completion of the transfers of public utility properties herein authorized Stinson Beach Water Company and George P. Leonard shall notify the Commission in writing of the fact and file with the Commission a true copy of any bills of sale, deeds or other instruments of transfer executed to effect the same.

8. Stinson Beach Water Company shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

9. The authorization herein granted to issue a promissory note will become effective when Stinson Beach Water Company has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities

Code, which fee is \$25. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 28th day of OCTOBER, 1959.

[Handwritten Signature]

President

[Handwritten Signature]

Commissioner

[Handwritten Signature]

Commissioner

Commissioner

Commissioners

Peter E. MITCHELL
Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.

