

Decision No. 59439

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Water Co.,

Complainant,

vs.

Dyke Water Company,

Defendant.

Case No. 6370

Moss, Lyon & Dunn, by George C. Lyon, for complainant.
E. O. Van Petten and Frederick L. Simmons, for
defendant.
J. T. Phelps and J. Calvin Simpson, for the Commission
staff.

O P I N I O N

On October 22, 1959, Pacific Water Company, a California corporation, filed a complaint against the Dyke Water Company. Based upon the allegations set forth in this complaint, the Commission, on October 23, 1959, issued a temporary restraining order whereby Dyke Water Company, its officers, agents, and employees were ordered to cease and desist from commencing or continuing, directly, or indirectly, the construction of any water line, plant, or system to or within certain subdivision tracts located in Orange County or within any territory whatever, without having first obtained a certificate of public convenience and necessity to do so from this Commission. This restraining order was to remain in effect until the further order of the Commission. Subsequent thereto, on November 3, 1959, the defendant filed its answer to the complaint.

Public hearing was held on November 4, 1959, at Los Angeles before Commissioner C. Lyn Fox and Examiner W. L. Cole, at which time the matter was taken under submission.

Complaint and Answer

The complaint alleges, in effect, that the complainant is a public utility water company operating in Orange County; that the defendant is a public utility water company likewise operating in Orange County; that both the complainant and defendant have received certificates of public convenience and necessity from this Commission to operate as water companies in certain specified areas in Orange County; and that the complainant is certificated in the area surrounding the intersection of Hazard Avenue and Bushard Street.

The complaint further alleges that certain subdividers are presently completing the development of certain property known as Tract 2944 and tentative Tracts 3546 and 3570; that these tracts lie in the area of the intersection of Hazard Avenue and Bushard Street, and within the area certificated to the complainant; that the defendant has negotiated with the subdividers in question to serve these tracts with water; that the defendant has extended its pipeline from its Well No. 14 south 900 feet and across Hazard Avenue to the east boundary of Tract 2944 and is preparing to connect this tract and the two tentative tracts to its water system and to supply water to this tract and the two tentative tracts; and that in extending its water system to these tracts and arranging to supply water thereto, the defendant is violating the order of the Commission and Section 1001 of the Public Utilities Code. The defendant's answer denies all of the allegations contained in this latter group. As a separate defense, the defendant alleges that it, at all times mentioned in the

answer, has complied with each and all of the provisions of any decision affecting it issued by this Commission.

The complaint requests a temporary restraining order; an order requiring the defendant to permanently cease and desist from negotiating or executing any contract to purchase or install water supply facilities or to render water service in or to Tract 2944 and tentative Tracts 3546 and 3570; that the Commission require the defendant to terminate all contracts into which it has entered to supply water to Tract 2944 and tentative Tracts 3546 and 3570; that the defendant be ordered to remove its pipeline extensions which it has made in the area in question to connect its system to these tracts and for such further relief as may be proper. The answer requests that the complaint be denied and that the defendant be awarded costs.

Findings and Conclusions

Based upon the pleadings and evidence of record in this proceeding, the Commission hereby makes the following findings and conclusions:

1. That the complainant is a California corporation and is a public utility water corporation operating public utility water systems in Orange County, California.
2. That the defendant is a California corporation and is a public utility water corporation operating public utility water systems in Orange County, California; that the entire common stock of the defendant corporation is owned by members of the Lansdale family.
3. That the complainant has been issued certificates of public convenience and necessity by this Commission to operate as a public utility water corporation in Orange County by Decisions Nos. 53362, 55354 and 55730.

4. That included in the area certificated to the complainant is that area located in Orange County hereinafter referred to as Tract 2944.

5. That the defendant has been issued certificates of public convenience and necessity by this Commission to operate as a public utility water corporation in Orange County by Decisions Nos. 46758, 47058, 49393, 50041, 50339, 51352, 53858, 55848, and 59212.

6. That Decision No. 53858 contains the provision that the defendant shall not extend its water system outside its certificated service area boundary without further order of the Commission.

7. That the area certificated to the defendant does not include the area hereinafter referred to as Tract 2944.

8. That the Tietz Construction Company is in the process of developing a residential subdivision in Orange County in a portion of the area bounded by Hazard Avenue, Bushard Street, Bolsa Street and Cannery Street, which subdivision is known as Tract 2944; and that this Tract 2944 is located in the City of Garden Grove.

9. That an off site water main has been constructed across the northern side of Tract 2944 along the southern side of Hazard Avenue; that this main is to be an integral part of the water system serving Tract 2944; and that this main was constructed by the Dyman Corporation for the Tietz Construction Company.

10. That the Dyman Corporation is a construction company, the stock of which is owned entirely by L. D. Lansdale, the vice president of the defendant who is also the father of Dyke Lansdale, the general manager of the defendant.

11. That the water mains that are to be located within Tract 2944 proper had not been laid as of the time of the hearing. The

Dyman Corporation is not the construction company engaged to lay the balance of this main in the tract.

12. That, at the time this complaint was filed, the Dyman Corporation, on behalf of the defendant, had laid a water main across Hazard Avenue such that the southern end of this main lies at approximately the northeast corner of Tract 2944; that at the time this complaint was filed, the Dyman Corporation, on the behalf of the defendant, was in the process of extending this water main north to the defendant's Well No. 14 which is located north of Tract 2944.

13. That the defendant either itself or by means of contract with the Dyman Corporation, was in the process of effectuating a connection between the main which crosses Hazard Avenue and the main referred to in paragraph 9 which is an integral part of the water main system of Tract 2944.

14. That the defendant was preparing to connect Tract 2944 with its water system for the purpose of supplying water to that tract.

15. That in extending its water system for the purpose of serving Tract 2944, the defendant is disregarding the provisions contained in Decision No. 53858 which provide that defendant shall not extend its water system outside its certificated service area boundaries without further order of the Commission.

Defendant's Position at Hearing

It was the defendant's position at the hearing that the water main being constructed from its Well No. 14 south across Hazard Avenue was being installed for the purpose of connecting Well No. 14 to the defendant's Tibbitts' water system. This water system is located to the south and east of Tract 2944. It was testified by Mrs. Arlene Lansdale, defendant's secretary-treasurer, that the defendant had only one well serving the Tibbitts System and

that defendant's officers were worried about this fact. It is apparent from the foregoing findings and conclusions that the Commission rejects this position. An examination of all of the evidence in this matter, particularly the testimony of the Commission staff's hydraulic engineer that the defendant already has a water main extending through a grid system from its Well No. 14 to the well in the Tibbitts System and that an extension across Hazard Avenue at Tract 2944 to tie into the Tibbitts System would be a very uneconomical construction, indicates that little weight should be given to the defendant's contention.

Relief to be Granted

In view of the findings and conclusions hereinabove set forth, it is the Commission's opinion that the defendant should be ordered to permanently cease and desist from constructing, directly or indirectly, any water line, plant or system, or any extension of any line, plant or system now owned, controlled, operated, or managed by defendant to or within Tract 2944.

As previously indicated, the complaint requests that the defendant be ordered to remove the pipeline extensions which it has made to connect its water service with Tract 2944. The evidence adduced at the hearing indicates that there was as yet no physical connection between the mains laid by the defendant and the mains which constitute an integral part of the water system of Tract 2944. In view of this, it is possible that the mains laid by the defendant may be used by it in some legitimate operation of its water system. For this reason the Commission will not order the defendant to remove such mains.

O R D E R

The above-entitled complaint having been filed, a public hearing having been held thereon, the matter having been submitted and now being ready for decision,

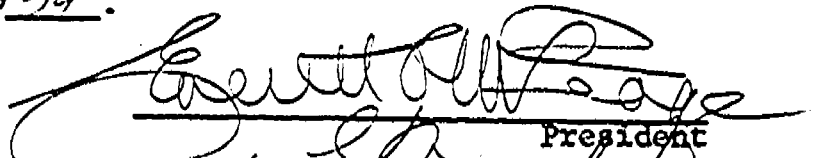
IT IS ORDERED:


1. That Dyke Water Company cease and desist construction, directly or indirectly, of any water line, plant or system or any extension of any line, plant or system now owned, controlled, operated or managed by it, to or within that area located in the City of Garden Grove and designated as Tract 2944.

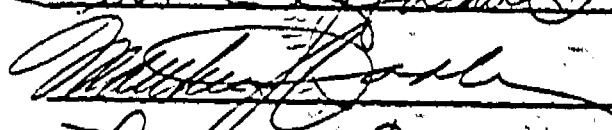
2. That Dyke Water Company shall not directly or indirectly serve water to that area located in the City of Garden Grove and designated as Tract 2944.

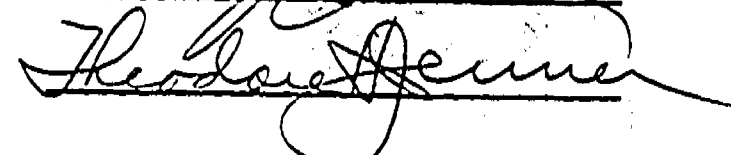
The Secretary of the Commission is directed to cause personal service of this order to be made upon Dyke Water Company and this order shall be effective twenty days after the completion of such service upon the defendant.

Dated at San Francisco, California, this 21st day of December, 1959.



President






Commissioners

Commissioner.....C. Lyn Fox....., being necessarily absent, did not participate in the disposition of this proceeding.