

ORIGINALDecision No. 59487

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations)
of EASTSHORE CONSOLIDATED WATER)
COMPANY, a corporation, and) Case No. 6311
JOHN GILBERT LARSON, an individual.)

John Gilbert Larson, for Eastshore Consolidated
Water Company and in propria persona.
Edward G. Fraser, for the Commission's staff.

O P I N I O N

On July 14, 1959, following Decision No. 58703 in Case No. 6229 on the first investigation on this matter, an order instituting a second investigation on its own motion was issued by the Commission into the operations of Eastshore Consolidated Water Company, a corporation, and John Gilbert Larson, an individual. In accordance with said order, public hearings were held at Clear Lake on October 28, 1959 and in San Francisco on November 16, 1959, at which time evidence was presented and the matter was submitted.

Purpose of Investigation

As indicated, this investigation is an outgrowth of the proceedings in the earlier case. In the aforementioned decision on said investigation, the respondents were found to have constructed and to be constructing a public utility water system and an extension to an existing water system without the required certificate of public convenience and necessity. In that decision they were ordered to cease and desist from serving any new consumers and from making any further extensions to their water systems. This investigation is for the purpose of determining whether said respondents should also be ordered to cease and desist from serving their present customers.

Staff's Evidence

The evidence presented by the staff was substantially similar to the evidence presented in the hearings in the first investigation; the exhibits of the earlier case were incorporated by reference into these proceedings. Presently the respondents are serving, without possessing the required certificate, approximately 150 customers, 18 of which are permanent residents, in the service area of the system. About fifty new service connections have been made, although water delivery has not as yet taken place, and approximately 2,000 feet of transmission and distribution mains have been added to the system since the hearings in Case No. 6229. However, no additional construction has occurred nor have service connections been extended since the effective date of Decision No. 58703. At the present time, approximately 80% of the total number of lots, or 6,400, are capable of being served by this utility with its existing distribution lines.

There has been no change in the adequacy of the distribution system since the earlier case; the conditions previously mentioned continue to exist. In addition, testimony was received indicating that recent bacteriological tests show the presence of bacteria in the water usually associated with sewage leakage. However, most of the current users do not use this water for drinking purposes. New house construction is progressing at a rapid rate on lots adjacent to presently constructed transmission lines. It appears that new construction has commenced on approximately 100 home sites since the April hearing in the first case. Out of 8,000 lots in this subdivision, some 5,500 were sold through tax sales.

Respondent's Position

Respondent John Larson, representing himself and Eastshore Consolidated Water Company, confirmed in his testimony that the

evidence presented by the staff was substantially correct. He pointed out, however, that many new service connections to the main transmission pipes occurred without his knowledge or permission. Many lot owners, believing they were part owners in the system, installed their own pipes out from their residences, tapped into the main distribution lines and then withdrew water therefrom.

Additional testimony was received to the effect that although all extensions and connections ceased after Decision No. 58703 became effective, some partially-fabricated cabins, previously contracted for, had been delivered from Marin County after said effective date. Because the contracts of sale had been entered into prior to said effective date, respondent John G. Larson requests Commission authorization to deliver water to these residents.

Findings

We see no occasion for departing from the reasons expressed in our findings in Decision No. 58703. The same rationale applies here with equal force in connection with service to existing consumers. The evidence is clear and unequivocal. Accordingly we find and conclude:

(1) That Eastshore Consolidated Water Company and John Larson have been and are now distributing and supplying water to members of the public in the Clearlake Highlands area of Clearlake, Lake County, without having obtained from the Commission a certificate of public convenience and necessity authorizing such service.

(2) That both respondents should be ordered to cease and desist from furnishing water in the aforementioned area to all and any of their present customers. This order will supplement our order in Decision No. 58703, and thus both respondents will be prohibited from supplying or delivering water to their present, as well as any new, consumers, unless a certificate is obtained.

No good reason has been shown why the order that follows should exempt those individuals who purchased cabins from Mr. John Larson prior to the effective date of said Decision No. 58703. The fact that the contract to purchase was entered into prior to the effective date of Decision No. 58703 is of no consequence; performance by delivery of water would violate the order set forth in said decision.

The order that follows, directing that an operation cease and desist, is, in its legal effect, the same as an injunction by a court. Contempt of the Commission arises when there is a violation of such order. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record.

However, it is our opinion that the execution of this order should be suspended for a period of approximately six months. Evidence was produced at the hearing that legal steps are being instituted by a group of residents in this tract to acquire this utility and to operate it themselves as a mutual water company. We are satisfied, from the evidence presented in both cases, that the respondents fell into their present predicament because of misguided judgment, gross carelessness and a glaring indifference to the law and regulations governing their activities. It would be unjust under the circumstances to penalize the present customers who purchased these lots in good faith expecting to receive water without first giving them the opportunity to acquire and operate this system as a mutual water company. This suspension will provide the time necessary to effectuate this anticipated acquisition. Mr. Larson has indicated that he is willing to transfer, without compensation, all his right, title and interest in said utility to these landowners.

Four other water companies, two of which are mutual water systems, are located in the vicinity of the subdivision on which the respondents' water system is located; however, none of them desired to furnish water to the residents of this area.

O R D E R

Public hearings having been held in the above-entitled matter, the matter being duly submitted and the Commission now being fully advised,

IT IS HEREBY ORDERED:

1. That respondents Eastshore Consolidated Water Company and John Gilbert Larson shall cease and desist from furnishing or delivering water to any individual or premise, directly or indirectly, in the area of Clearlake Highlands, Lake County, more particularly described in Application No. 38589, as amended, and in Decision No. 55048, dated May 28, 1957, and in paragraph E(9) of Chapter 1, Exhibit 2, received into evidence in the hearings in Case No. 6229, and incorporated by reference into this proceeding, unless and until they jointly or individually shall first secure from this Commission a certificate that public convenience and necessity require the same.

2. That the order referred to in the first paragraph shall apply to Mr. John Gilbert Larson in his individual capacity and in his position as director and treasurer of the Lakeshore Construction, Inc., and as trustee for the following trusts: (1) Clearlake Trust Fund, (2) Eastshore Consolidated Water Company Fund, (3) Highland Trust Fund, (4) Larson and Osterholt Fund, (5) Lake County Trust Fund.

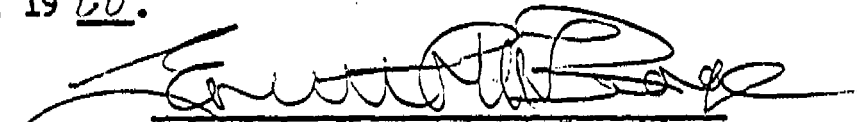
3. That said respondents shall cease and desist from aiding and abetting any other person, firm or corporation, directly or indirectly, or by any subterfuge or device, in engaging in any or


all of said operations as a water system unless and until said respondents shall first secure from this Commission a certificate that public convenience and necessity require the same.


4. That the Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondents.

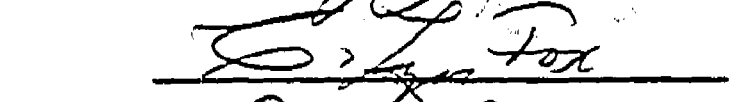
Execution of this order shall be suspended and deferred for a period of 180 days from and after the date of such service. If no further order of the Commission is issued affecting said suspension, said suspension and deferment shall be vacated and this order shall become effective on the 180th day from and after the date of such service.

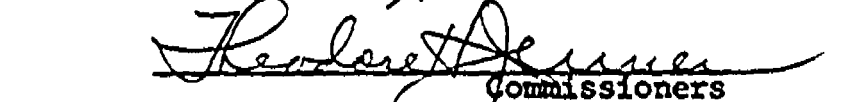
Dated at San Francisco, California, this 12th
day of January, 19 60.



President








Commissioners