

Decision No. 59633**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of INDEPENDENCE WATER
COMPANY to increase rates for
water service, Independence, Inyo
County, California.

Application No. 41104

SUPPLEMENTAL OPINION AND ORDER

By Decision No. 59476 dated January 5, 1960 in the above-entitled application, the Commission granted in part the increases in rates for water service requested by Independence Water Company, a corporation. However, in that decision no conclusion was reached concerning another part of applicant's request concerning certain free water service heretofore rendered by applicant. Paragraph 10 of the application reads as follows:

"10. Applicant for many years has had the problem of free water service obtained and claimed by certain property owners, and now by their successors or assigns, as a perpetual right to have water delivered to certain properties without cost by reason of certain provisions of conveyance deeds sometimes and herein designated as the 'Mollie Conklin Deed' and the 'Stubblefield Deed'. Copies of said two deeds taken from the official records of Inyo County are attached as Appendix A and Appendix B to 'Exhibit B' to this application. The Commission is requested to make such findings in this matter as are just and proper and to specifically set forth in its 'Order' in this proceeding all conditions under which applicant shall or shall not furnish free water service to anyone or to any property in and within the vicinity of Independence for domestic use or for any other purpose."

The Conklin deed, dated June 29, 1887, names Mollie Conklin as the party of the first part and the Independence Water Company as the party of the second part and reads in part as follows:

"... the said party of the first part ... in consideration of the sum of one dollar to her in hand paid ... does grant, bargain, sell and convey unto the said party of the second part, ... four inches ... of the waters of those certain creeks ... in the County of

Inyo ... commonly known and designated as the Little Pine Creek and Pinnon Creek, together with the right and privilege of taking said waters from any point on the line of said creeks, or the ditch leading from said Creeks, and conveying said water by pipe or other means, to and through the town of Independence,

"The said party of the first part hereby reserving to herself, her heirs or assigns, from said waters a sufficient quantity thereof for household and domestic purposes, and sufficient of said waters to irrigate those certain lots situate in the town of Independence, ... described on the plat of said town as being Lots Nos. one (1), two (2), four (4), six (6) and eight (8) in Block No. fifteen (15) or any equal amount of land at any other place or location in said town as she or they may desire.

"And the said party of the second part hereby grants and gives to the party of the first part and to her heirs and assigns, as a part of the consideration of this deed, the right and privilege to tap the main of the pipe of the party of the second part at any point or place she or her heirs or assigns may see proper for the purpose of conveying the waters herein reserved and convey the same therefrom and to such point as she or they may desire by any means she or they may see fit."

The Stubblefield deed, dated August 17, 1888, names David Stubblefield and H. A. Stubblefield, his wife, as parties of the first part and the Independence Water Company as party of the second part and reads in part as follows:

"... the said parties of the first part ... in consideration of the sum of one dollar, ... to them in hand paid ... do grant, bargain and sell, convey and confirm, unto the said party of the second part ... all their right, title and interest in and to the waters of Little Pine and Pinon Creeks ... in the County of Inyo, ... together with the right and privilege of taking said waters from any point on the line of either of said Creeks, and conveying said waters by pipe or other means to and through the town of Independence.

"The said parties of the first part hereby reserving to themselves their heirs and assigns from said waters a sufficient amount thereof for household and domestic purposes and also sufficient of said waters to properly irrigate those certain pieces or parcels of land situate lying and being in the said town of Independence, ... described as follows, to wit: Lots numbers nine and eleven, and the south half of Lot number seven, all in Block number Sixteen as the same more fully appears by

the official map of said town of Independence ... And it is further agreed ... that the said party of the second part will without cost to the parties of the first part, tap the main of said Company on Washington Street in said town of Independence and will lay or cause to be laid from said main an iron pipe one and one half inch in size and conduct water therein for the use of said parties of the first part, to a point twelve feet inside of that portion of the now inclosure of said parties of the first part bounded by said Washington Street. And it is further understood and agreed that said parties of the first part shall not be liable to pay water rates to said Company but shall be wholly exempt therefrom."

In each of the deeds there is included a paragraph reading (with minor variations) as follows:

"And it is further agreed by and between said parties, that should the party of the second part, or its assigns, from any cause cease to use or divert said waters for the purpose of water works for said town of Independence, that the said water hereby conveyed shall revert to and become the property of the party of the first part, as in the first instance and the right and title thereto which is conveyed by this indenture shall become null and void."

While there are some differences in the provisions of the two deeds, by reason of both documents the present owners of the properties described therein, including their tenants, now refuse to pay bills for water service based upon the contention that they have a right to water service without cost to themselves because the property has a perpetual right to free water service. Furthermore, under the Conklin deed, the assigns of the properties specified therein maintain that they have the right to have free water service to any equal amount of land within the town of Independence.

In Exhibit No. 2, applicant has expressed its belief that free water service to a resident or property under special privileges not available to like users of water is discriminatory. In order to avoid such discrimination, applicant's engineer witness suggested that it would be proper to make a service charge of about 50 percent of the charge normally applicable. In his opinion, such a service

charge would approximately cover the costs of purification, sanitation and certain other services performed in connection with the supply of water which were not contemplated by the parties at the time of making the deeds dating back to 1887 and 1888.

At the hearing, a consumer witness testified concerning the right to free water to Lots Nos. 6 and 8 in Block No. 15 which she and her sister, assigns stemming from the Mollie Conklin deed, have been enjoying under the terms thereof. On July 30, 1959, they entered into an agreement to sell the lots but with the intention of reserving the water rights to be transferred to other property in the townsite. This witness questioned the jurisdiction of the Commission to decide upon the validity of these water rights. She also protested the service charge suggested by applicant on the grounds that it would be a violation of the reservation of the deed and, moreover, that the proposed amount of the service charge (one half of the normal rate) is greater than the cost of treatment of the water thus supplied.

Exhibit No. 6 is a map showing the lots in the two blocks of Independence to which reference is made in the two deeds, together with certain other information indicated thereon. Service is being rendered to the 2-1/2 lots (on which two houses are located) in Block No. 16 through a 1-1/2-inch (or larger) connection as stipulated in the Stubblefield deed. That property and Lot No. 2 (with one house) in Block No. 15 are now owned by the City of Los Angeles. Water has not been delivered to the vacant Lot No. 1 in Block No. 15 for over ten years. The potential revenues obtainable from delivery of water to these properties heretofore receiving water free of charge, including Lot No. 1 of Block No. 15 if built upon, would be approximately \$300 per year at the flat rates just authorized in this proceeding.

Such service of water, whether rendered free of charge or even for a service charge as suggested by applicant, is or would be clearly preferential to such users and discriminates against applicant's customers who are required to pay for similar service at the applicant's filed rates. In our opinion such service is unreasonably discriminatory and should be terminated.

The deeds involved herein are in the nature of agreements or contracts negotiated by the respective parties prior to the enactment of the Public Utilities Act and before the existence of the present Commission.

There is no longer any question as to the power of a state to fix rates for a public utility service which will supersede rates for such service previously fixed by private contract between the consumer and the utility. It has been conclusively settled that the interference with private contracts by the state regulation of rates is but a legitimate effect of a valid exercise of the police power which neither impairs the obligation of a contract nor deprives of property without due process of law. (Law v. Railroad Commission, 184 Cal. 737, 739.)

We find that the service of water to consumers at no charge or at rates other than those duly authorized by this Commission and on file as part of applicant's tariffs constitutes unreasonable discrimination between consumers or classes of consumers. Therefore, applicant will be required to discontinue the present free water service and to supply all water users at the regularly filed rates authorized in this proceeding.

It does not follow, however, that the successors in title to the grantors named in the so-called Conklin and Stubblefield deeds have no redress for any loss or damage resulting from having to pay for water service formerly enjoyed free of charge. Such

redress, however, can be granted only by the courts. It is to be hoped, of course, that resort to the courts will not be necessary, and the applicant is urged to negotiate with those persons who have succeeded to whatever rights were reserved in those deeds for the purpose of arriving at a reasonable compromise. Therefore,

IT IS HEREBY ORDERED that applicant shall cease supplying water free of charge to the specific properties indicated on Exhibit No. 6 in this proceeding and shall serve all of its consumers at its regularly filed tariffs on and after the effective date of this order.

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

Dated at San Francisco, California, this 9th day of February, 1960.

Robert A. Page
President
John E. B. Smith
Matthew J. Gable
Theodore J. Givner
Commissioners