

ORIGINAL

Decision No. 62654

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT,

Complainant,

vs.

RIVERSIDE WATER COMPANY,
a corporation,

Defendant.

Case No. 7093

Alexander R. Tobin and Robert J. Webb, for
complainant.

Best, Best & Krieger, by James H. Krieger,
for defendant.

C. O. Newman and Jerry J. Levander, for the
Commission staff.

O P I N I O N

By the complaint herein, filed on April 10, 1961, San Bernardino Valley Municipal Water District (District) alleges among other things, that it is a municipal water district organized under the Municipal Water District Act of 1911; that it is entirely within the County of San Bernardino; that defendant Riverside Water Company (Riverside) is a California corporation and a water company engaged in the production, sale and distribution of water in the Counties of San Bernardino and Riverside, and operating as a public utility to the extent it has dedicated certain of its property and service to the general public; that it is the right and duty of District to supply water to cities therein, including the City of San Bernardino

(San Bernardino); that there is now, and will be, in the foreseeable future, a shortage of water within District with which to supply the minimum needs of the cities therein; that Riverside now sets rates and provides water service to that portion of the public served by San Bernardino, subject to no regulation whatever; that Riverside has made a public dedication of its services and has delivered specified amounts of water to the inhabitants of San Bernardino during the years 1959 and 1960; that Riverside refuses to continue water service to San Bernardino; and that such refusal will produce a critical shortage of water in San Bernardino. The complaint prays that the Commission make its order:

(1) That Riverside is a public utility subject to the jurisdiction, control and regulation of the Commission.

(2) That Riverside be ordered to cease and desist the withholding of services and setting of rates to San Bernardino or the residents thereof without authorization from the Commission.

(3) That Riverside be ordered to continue to deliver to the residents of San Bernardino water in an amount not less than 2,000 acre-feet annually.

(4) That Riverside be forthwith enjoined from withholding deliveries of water to San Bernardino, or District inhabitants within San Bernardino, until further order of the Commission.

By Decision No. 61864, dated April 19, 1961, in Case No. 7093, the Commission denied the extraordinary relief prayed for, and set the matter for hearing before Commissioner C. Lyn Fox and Examiner Kent C. Rogers in Los Angeles on May 4, 1961.

On May 1, 1961, Riverside filed its answer to the complaint. Therein, among other things, it admits that it is a California corporation engaged in the production of water in the Counties of San Bernardino and Riverside and that it sells and distributes water in the County of Riverside within a prescribed service area to its stockholders and contract users; alleges that it is a mutual water company and exempt from the Public Utilities Act; denies that it sets rates and provides water service to or in San Bernardino; denies that it has dedicated its water service to the public; and denies that it ever furnished water to San Bernardino.

Pursuant to the order of the Commission, public hearings were held in Los Angeles on May 4 and June 9, 1961, at the close of which the matter was submitted subject to the receipt of concurrent briefs and replies thereto. The replies to said briefs were filed on August 8, 1961. The briefs and replies thereto have been considered by the Commission, and the matter is ready for decision.

Several issues were raised during the hearing of this matter which could be completely determinative thereof. The primary issue, however, is whether the defendant is in fact a public utility water company which has dedicated a portion of its property to the public service. Disposition of this issue is desirable before consideration of any other issues raised.

An engineer called by the complainant as an adverse witness testified that the City of San Bernardino was never in the service area of Riverside and that the service area was entirely in Riverside County. At the request of the Presiding Commissioner, the defendant's lawyer filed a letter (Exhibit No. 9) which defines Riverside's service area "as lying primarily within the city limits of the City of Riverside, but including also a small area extending north from the city limits to the Riverside-San Bernardino County line, and also including a portion of the valley floor area lying between the City of Riverside and Corona."

The record in this matter shows conclusively that until the year 1959 the defendant at no time furnished any water to any customer which water was used by any consumer in any portion of San Bernardino County.

In 1959 San Bernardino was fearful of a shortage of water. The superintendent of its Municipal Water Department (superintendent) commenced negotiations with Riverside, as the closest water company, for a temporary emergency water supply. The parties

reached an oral understanding, and on July 14, 1959, the general manager of Riverside (manager) sent a letter to San Bernardino confirming the arrangement (Exhibit No. 2). In paragraph 1 thereof the letter states that it confirms the verbal agreement for a "temporary and emergency" delivery of water. In the next to the last paragraph it is stated, "It is understood by the City of San Bernardino that this delivery is of a temporary and emergency nature only and shall continue for a period of one year only, the period being from March 11, 1959, to March 11, 1960, and it is understood that the City of San Bernardino shall gain no water right by reason of such delivery nor the right to demand a continuance thereof beyond the period set forth in this letter." The letter was received by superintendent who signed a copy and returned it on July 20, 1959, to manager with a letter stating, among other things, "The Water Board wished me to express our sincere appreciation for the help which your Company has given us in our current water problem, and that the informal type of arrangement which has been made for the delivery of water to this City is entirely satisfactory to them." (Exhibit No. 3).

The water furnished was water which could have been delivered to Highlanders Water Company, a shareholder of Riverside, pursuant to 1,500 shares of Riverside's stock owned by said company.

On July 14, 1959, Riverside billed San Bernardino for \$6,750 for an assessment in March, 1959, of \$4.50 per share on the 1,500 shares of Highlanders' stock and advised San Bernardino it would be receiving a bill for the cost of water delivered

(Exhibit No. 4). This sum was paid on or about August 3, 1959 (Exhibit No. 16). The water bills were paid, as presented, directly to Riverside.

The assessments were levied each six months. In September, 1959, another assessment was levied by Riverside, and was paid to Highlanders on November 16, 1959 (Exhibit No. 15).

After the original agreement was made, San Bernardino requested the continuance of the water supply for an additional period, plus extra water if available.

On December 28, 1959, the temporary arrangement for water through the 1,500 shares of Riverside's stock owned by Highlanders, plus an additional 1,000 shares of such stock owned by Highlanders, was made. On said date, manager addressed two letters to superintendent, one referring to the water to be delivered pursuant to a block of 1,500 shares of Riverside's stock (Exhibit No. 5), and one to the water to be delivered pursuant to a block of 1,000 of such shares (Exhibit No. 6). The letter referring to the 1,500 shares states that it supersedes the agreement of July 14, 1959, and extends the water delivery period until December 31, 1960. The letter relative to the 1,000 shares states in the first paragraph that the agreement is for a "temporary emergency" delivery of water.

Each letter states in the next to the last paragraph:

"It is understood and agreed that this delivery to the City of San Bernardino is a matter of accommodation only, and is of a temporary and emergency nature to assist the City of San Bernardino in its current water shortage." Each letter specified

that the water delivery should continue during the calendar year 1960 only, and that "The City of San Bernardino shall not gain any water right by reason of such delivery, nor the right to demand a continuation thereof, and the City of San Bernardino shall not rely upon the continued delivery of this water beyond December 31, 1960."

A copy of each of these agreements was signed by superintendent and returned with an acknowledging letter (Exhibit No. 8) on January 4, 1960.

On January 18, 1960, San Bernardino paid the September, 1959, assessment on the additional 1,000 shares of stock (Exhibit No. 17), and on April 18, 1960, paid the March, 1960, assessment on all 2,500 shares (Exhibit No. 1).

In 1960, the City of Riverside acquired the Highlanders Water Company (Decision No. 60723, dated September 13, 1960, on Application No. 42255) and thereby acquired the 2,500 shares of stock of Riverside owned by Highlanders pursuant to which San Bernardino had been receiving Riverside water. Riverside advised San Bernardino that it could no longer deliver water under Highlanders stock as such stock had been acquired by the City of Riverside. San Bernardino thereupon orally advised Riverside it could no longer use the stock to secure water and would, therefore, have to terminate the letter agreements for purchase thereof. This termination was agreed to by Riverside (Exhibit No. 21) and water deliveries to San Bernardino ceased on or about July 29, 1960.

It is undisputed that Riverside's service area did not extend outside of Riverside County at any time prior to the year 1959. During that year, and the year 1960, at the request of

San Bernardino's Municipal Water Department, water was furnished by Riverside to San Bernardino as an accommodation to relieve a water shortage. This water was furnished on a purely "temporary" and "emergency" basis, through a transmission main owned by San Bernardino and extending from one of Riverside's wells.

The record is clear that Riverside provided water to San Bernardino as a matter of accommodation only, to enable the city to meet an acute need. The record is equally clear that the service rendered was on a temporary basis, a fact which both parties to the arrangement clearly understood and recognized. The record is clear also that at no time did Riverside dedicate any portion of its property to the public use.

Upon the record herein, we find and conclude that complainant has failed to show that Riverside is or was a public utility water corporation as defined by California statutes. In view of the above finding, all other issues raised become moot.

O R D E R

Public hearings having been held, evidence having been presented, the matter having been submitted, and the Commission having found that the complaint should be dismissed, and based on such finding,

IT IS ORDERED that the complaint herein be, and it hereby is, dismissed.

The Secretary of the Commission is directed to cause service of this order to be made on the respective parties. This order shall become effective twenty days after such service on said parties.

Dated at San Francisco, California, this 10th
day of OCTOBER, 1961.



President





Commissioners

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

Commissioner George G. Grover did not participate in the disposition of this proceeding.