

Decision No. 67323

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM J. CLARK and EMMY CLARK,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CALIFORNIA WATER COMPANY, INC.,

Defendant.

Case No. 7878

ORDER OF DISMISSAL

Summarizing the complaint herein, it is alleged that defendant utility, without the knowledge and consent of complainant customers, has added fluorine to the water supply used by the people in King City and by those in the surrounding area. It is alleged fluorine is a poison, does not stop all tooth decay, and may cause additional damage to teeth; fluoridation is the imposition of mass medication; the proposed additional cost per household of 40 cents per month is excessive; there are individuals allergic to fluorine and its compounds; fluorine may cause extensive damage to water pipe lines; and there has been no recent vote of the people of King City relating to fluoridation, officials of the city having refused to place before the people any measure which would allow public discussion of the pros and cons of fluoridation and thereafter cast their secret ballot on a proposed measure. Complainants seek an order prohibiting fluoridation.

Defendant has filed an answer and a motion to dismiss. Attached to the motion is a certified copy of an excerpt from the minutes of the meeting of the City Council held on

December 18, 1963, showing adoption of a motion that "California Water Service Company is to be instructed to fluoridate the city water supply as expeditiously as possible * * * ."

Also attached to the motion to dismiss is a certified copy of Resolution No. 848, adopted by the City Council on March 18, 1964, by which "California Water Service Company be, and it is hereby authorized and directed to treat the water furnished to water consumers in the City of King by adding to its contents fluorine compounds in amounts and qualities and in compliance with the standards established and approved by the State Board of Health relating to the purity, wholesomeness and potability of public waters in this State."

Another attachment to the motion to dismiss is a copy of an amendment to defendant's existing domestic water permit, issued by the Department of Public Health, authorizing fluoridation of defendant's water supply.

In City of Oroville and County of Butte v California Water Service Company, 55 Cal. P.U.C. 407, complainants, having adopted resolutions requesting defendant utility to add fluorides to the water supply, sought a Commission order requiring the utility to do so. This defendant there contended it was within the discretion of the water supplier whether it would or would not undertake to fluoridate the water, and stated it would do so only on condition that there be an election of the water users determining whether or not they desired fluoridation. After hearing, and upon a record "replete with expert medical, dental, chemical, and other scientific testimony on both sides of the question as to the advisability of the fluoridation of a domestic water supply", the Commission found that injection of fluorides "will promote the health of the customers of defendant and will not cause injury to the consumers of such water."
(55 Cal. P.U.C. at 409.)

It was also found that constitutional rights would not be unlawfully infringed by requiring defendant to fluoridate its water supply. In ordering the defendant to do so, the decision stated such action "is not to be understood as holding that a water public utility which does not fluoridate its water supply, necessarily, is violating the law. All we hold is that, based upon the facts revealed by the record herein, it is appropriate for us to direct the defendant utility to fluoridate its water supply." (55 Cal. P.U.C. at 410.) Recognizing that fluoridation may require additional expense, the decision noted that the complaint proceeding was not the proper one for determination of such additional cost, and if after fluoridation commenced defendant found it needed rate relief it could make an appropriate application.

The Supreme Court of California denied a petition for a writ to review the Commission decision. (Henderson et al. v Public Utilities Commission, S.F. Nos. 19736 and 19738.)

Based upon the exhibits attached to the motion to dismiss, and upon the decision in Oroville, Case No. 7878 is hereby dismissed.

Dated at San Francisco, California, this 3rd day of JUNE, 1964.

William W. Bennett
President
[Signature]
[Signature]

We concur in the order of dismissal. However, we do so on the merits and not solely because a similar result was reached in the Oroville case. That type of prior decision is entitled to respectful consideration but is not, in any legal sense, a "controlling" precedent.

George F. Trover
Fredrick B. Halchett 3.