

Decision No. 71802**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF SAN JOSE, a municipal corporation)  
of the State of California,

Complainant,

vs.

Case No. 8245

SAN JOSE WATER WORKS, a private corpo-  
ration,

Defendant.

Ferdinand P. Palla, City Attorney, by Donald C. Atkinson, for the City of San Jose, complainant.McCutchen, Doyle, Brown, Trautman & Enersen, by Robert Minge Brown, for San Jose Water Works, defendant.Alexander MacKay, in propria persona, intervenor.  
Quentin H. Smith and John R. Butler, for Mary Sickel, et al., intervenors.John T. Ball, for Dental Health Association of Santa Clara County, intervenor.John B. Vasconcellos, Jr., for San Jose Junior Chamber of Commerce, intervenor.Wallace F. Epolt, for the Commission staff.INTERIM OPINION AND ORDER

By its complaint filed August 11, 1965, the City of San Jose requests an order of the Commission requiring San Jose Water Works, a private corporation, to take all necessary and appropriate action to cause the fluoride concentration of water furnished by it, to people or premises in the City of San Jose, to be increased to the optimum extent recommended or approved by the California State Board of Public Health for the purpose of promoting dental health.

Public hearing was held before Commissioner Grover and Examiner Daly at San Jose and covered a period of thirteen days. The matter was submitted upon concurrent opening and closing briefs, the latter being filed on or before October 24, 1966.

Defendant provides a public utility water service to the Cities of San Jose, Los Gatos, Monte Sereno, Saratoga, Cupertino, Campbell and portions of Santa Clara, and in unincorporated areas of the County. It serves approximately 120,000 customers, sixty-seven percent of whom reside within the City of San Jose. The water system is completely integrated and because of the nature of its construction and operation any attempt to fluoridate a portion thereof would, of necessity, require fluoridating the entire system.

According to the complaint the City Council submitted to the electors of the City of San Jose an advisory question on the issue of fluoridation. A special election was held on November 3, 1964, and the total number of qualified electors who voted was 100,899. Those voting in favor of fluoridation totaled 59,324, and those voting against fluoridation totaled 41,575. On June 28, 1965, the City Council of San Jose adopted Ordinance No. 12752 whereby it determined that the public health and welfare of the city would be served and enhanced by increasing the fluoride concentration of the water to that recommended by the State Board of Public Health. By the same ordinance the City Council requested defendant to take all necessary and appropriate action to fluoridate the water furnished to the people or premises in the City of San Jose. A copy of Ordinance No. 12752 was mailed to defendant on July 30, 1965, but defendant refused and still refuses to fluoridate its system unless certain conditions have been complied with.

By its answer filed August 26, 1965, defendant indicated its willingness to add fluorides to the water supply, provided:

- a. A majority of all the customers of San Jose Water Works desires such addition;
- b. All of the water supply is fluoridated, not merely a portion of it;

- c. San Jose Water Works is properly compensated for the added costs of fluoridation; and
- d. The order of this Commission is obtained authorizing fluoridation and an increase of rates to offset the added costs of such fluoridation.

As part of its answer defendant indicated that because it was interested in the opinion of all of its customers, it transmitted to its customers a ballot relating to the matter of fluoridation. Defendant received 28,502 replies, which represent approximately 25 percent of its customers. Those voting in favor of fluoridation totaled 13,788 and those who voted against fluoridation totaled 14,714.

If required to fluoridate, defendant estimates that the cost of the additional capital investment would be \$740,000 with the annual cost of fluoridating the system estimated at \$450,000. This would amount to \$3.81 per customer per annum, or an additional service charge of 31 cents per customer per month.

On September 27, 1965, Mary U. Sickel and fifty-one other individuals filed a petition for leave to intervene. On October 19, 1965, the Commission, by Decision No. 69829, granted their petition. These individuals contend that any attempt to fluoridate defendant's water system pursuant to Ordinance No. 12752 adopted by the City Council of San Jose would violate their constitutional rights under the Fourteenth Amendment to the Constitution of the United States in that as customers of defendant, residing outside the City of San Jose, they would have had no opportunity to voice their preference with regard to fluoridation either by a vote or through their duly elected representatives.

By subsequent orders the Commission also granted leave to intervene to Alexander MacKay<sup>1/</sup>, who opposed fluoridation, and to the San Jose Junior Chamber of Commerce and the Dental Health

1/ The Commission has learned with regret of the recent death of Mr. MacKay. During his illness, Dr. Helen E. MacDonald was authorized to file briefs in his behalf.

Association of Santa Clara County, which supported fluoridation.

Fluorides are soluble inorganic compounds of the element fluorine, which are yielded whenever fluorine combines with a base to form a salt. They are compounds found in the rock and soil of the earth. When water flows over soil or rock containing fluorides, they are dissolved in the form of soluble fluoride ions. As a result most drinking water, including that supplied by the defendant herein, contains natural fluorides to a varying degree. According to the testimony of record there is no difference between natural and artificial fluoridation; the fluoride ion is exactly the same.

It was discovered several years ago that in areas having water with a high content of natural fluorides the inhabitants had few, if any, dental caries; however, where the fluoride content was unusually high there was a correspondingly high degree of mottling or discoloration of teeth. After considerable research it was determined that, following human consumption, fluorides enter into the calcium structure and have the effect of hardening bones and teeth. Further research determined that at the rate of one part per million the beneficial dental effects of fluoridated water could be preserved without causing teeth to discolor.

The City of San Jose presented numerous scientific experts, many of whom have conducted original studies. They testified that the use of fluorides in water at the rate of one part per million reduces dental caries and has no harmful effect. The health officers of the City of San Jose and Santa Clara County testified that fluoridation was essential in meeting the dental needs and requirements of children, and there was evidence that fluoridated water is beneficial to the bones of elderly persons. It was further established that controlled fluoridation of water

has been endorsed by the California Dental Association, the Santa Clara County Medical Society and the Santa Clara County Dental Society. The Director of Public Health for San Francisco testified that that city's water supply has been fluoridated since 1953, and during that time he has received no notice of any adverse effects.

In general, several expert witnesses introduced through Mr. MacKay admitted that fluorides may have a beneficial effect in reducing dental caries, but they strongly contended that their use in water, even at the rate of one part per million, is not safe and endangers public health. In substance they argued that fluoride is not a nutrient, but a poison being used as a drug; this position was predicated upon the fact that fluoride may be purchased only on a doctor's prescription. They argued that the very possibility of dental fluorosis (mottling or discoloration) condemns the practice of artificial fluoridation, and that rather than being a benefit, fluoridated water can produce many harmful effects, such as delayed eruption of teeth, lower nerve reflexes with children having mottled teeth, a greater number of mongoloid births, damage to soft tissue, and even death, particularly to those suffering from kidney diseases. These harmful effects, they contended, are attributable to the fact that fluorides will accumulate in the human system, including soft tissue, faster than they can be eliminated, particularly in the case of the sick and aged. They further argued that it is impossible to control the amount of fluoride that a person may consume because this will depend upon the climate, the type of work performed by an individual and the geographical location. They pointed out that a person living in a warm climate and performing hard labor will drink more water than the average person. They also claimed that

people living in a fluoride pollution area will absorb a certain amount of fluoride and additional fluoride may be consumed in fruits and vegetables grown near a source of fluoride air pollution. Basically, they contended that there is no deficiency of fluoride ingestion by humans and there is no need to endanger human health by adding poison to the water systems. Some of these witnesses suggested that recent research has cast doubt on the earlier findings of the United States Public Health Service regarding the safety of fluoridation, and they recommended a halt in fluoridation programs until further research has been conducted.

As alternatives they suggest that the very young, who are the ones who will benefit from fluoridation, receive fluoride in the form of pills or by direct application to the teeth by a dentist.

The question of fluoridation has been considered by the Commission in other matters (City of Oroville and County of Butte v. Cal. Water Service Co. (1957), 55 Cal.P.U.C. 407; and Clark v. Cal. Water Service Co. (1964), 62 Cal.P.U.C. 752). With respect to the purity and safety of drinking water the Commission will not question the findings and recommendations of the California Department of Public Health, which is charged with such responsibility. The Department of Public Health has found that controlled fluoridated water is safe for human consumption.

It does not follow, however, that fluoridation should be ordered for every water utility under the Commission's jurisdiction. The question of primary importance in this proceeding is whether the people to be affected have had an opportunity to express themselves. Fluoridation, although recommended by various public health agencies, is not required by state law. In the case

of publicly owned water systems, fluoridation usually comes about as a result of an election by the affected users or, at the very least, by action of city, county or district officials elected by the voters of the area involved.

As to the possibility of isolating the City of San Jose, the record is clear that changing the system so that only that portion which **SERVES RESIDENTS** of the City of San Jose could be fluoridated would be so costly (if in fact it could be done at all) that it warrants no consideration.

The City of San Jose in a special election held on November 3, 1964, received a total of 100,899 votes; 59,324 favored fluoridation and 41,575 opposed it. Later the San Jose Water Works balloted all of its customers, but only 28,502 replies were received. Of these only 13,788 favored fluoridation and 14,714 were opposed. The City of Campbell stated it held an election and that the majority voted against fluoridation. The City of Saratoga, through its Mayor, requested no action on fluoridation until the people of Saratoga have had an opportunity to express themselves in an election.

The Commission is of the opinion that it should not authorize fluoridation of any system under its jurisdiction before those to be affected thereby have had an opportunity to express themselves, either personally or through duly qualified representatives. As we see it, there are at least two possible procedures by which the Commission could receive advisory information from the users. The first would be to conduct an unofficial balloting of our own by mail, and the second would be inclusion of the question in the next general election (or any appropriate earlier special election). We favor the second course as being superior to and more desirable than the first.

The City of San Jose in its closing brief, while arguing that a vote as a precedent to fluoridation is not only unnecessary but also undesirable, suggested that, if a vote should be required, the issue

should be submitted as a measure at a general election in which all of the service area of San Jose Water Works could be included. The San Jose Water Works in its reply brief, while favoring a systemwide election under the supervision of the California Public Utilities Commission, stated it would have no objection to a more formal election conducted by the County of Santa Clara at some regular county election, provided it could be accomplished without undue expense to the company.

We trust the possibility of holding a systemwide election of an official nature will be explored with the County by the utility and the various political subdivisions involved, all of which are situated in Santa Clara County. We urge the County to assist in making possible such an expression by the voters affected.

Complainant did not demonstrate to the satisfaction of the Commission that the defendant's conditions for satisfying the complaint were unreasonable as stated in a. and b. on mimeographed page 2 herein and c. and d. on mimeographed page 3 herein, and the Commission deems them to be reasonable.



O R D E R

IT IS ORDERED that submission of Case No. 8245 is hereby vacated to permit the parties to arrange for an official election as hereinabove discussed.

The Secretary of the Commission is instructed to cooperate with the parties and public agencies affected.

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

Dated at San Francisco, California, this 30th day of December, 1966

*John E. Mitchell* President  
*George T. Grover*  
*Fredrick B. Holaliuff*  
*Augusta Ann*  
 Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.