

*Appendix Overview of Case Law Construing Section 1759 of The Public Utilities Code, continued*

***People v. Superior Court (Dyke Water) & Waters v. Pacific Bell***

Prior to 1995, the two cases most frequently cited as delineating the scope of Section 1759 were *Waters v. Pacific Bell*, 12 Cal. 3d 1, 114 Cal. Rptr. 753 (1974) and its predicate, *People v. Superior Court (Dyke Water Company, Real Party In Interest)*, 62 Cal. 2d 515, 42 Cal. Rpt. 849 (1965) (*Dyke Water*).

*Waters* in particular addresses the apparent conflict between (a) *Section 1759* which prohibits the Superior Court from reviewing, reversing, correcting or annulling any order or decision of the Commission or interfering in any respect with the Commission in the performance of its official duties and (b) *Section 2106*<sup>52</sup> which provides a personal cause of action to anyone damaged by a public utility failing to do anything required by law. *Waters* harmonized the two statutes by holding that Section 2106 “must be construed as limited to those situations in which an award of damages would not hinder or frustrate the Commission’s declared supervisory and regulatory policies.” Applying that test, the *Waters* court held that the Commission’s approval of a limitation of liability provision in Pacific Bells’s tariffs barred the Superior Court from entertaining a complaint by a Pacific Bell customer seeking damages in amounts which would exceed the limitation set forth in the Commission-approved tariff.

Earlier, in *Dyke Water*, the Supreme Court held that Section 1759 barred the Superior Court from adjudicating rights in a sum of money being held for a refund to water company customers. Specifically, the court held that so long as the fate of the sum at issue was before the Commission, the Superior Court had no jurisdiction to adjudicate rights in it. *Dyke Water* held in part that *had the Commission already adjudicated those rights, the relevant parties could have sought to enforce them in the Superior Court*. The oft-cited text from *Dyke*, frequently found in 1759 jurisprudence, provides that the Superior Court may exercise its jurisdiction when it “*is in aid and not in derogation of the jurisdiction of the Commission.*”

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<sup>52</sup> Section 2106 provides that:

*Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.*

*No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt.*