

Decision No. 13638.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

NICOLA De LORENZO and ANNA GUIDA,
Complainants,

vs.

SAN JOSE WATER WORKS,
Defendant.

ORIGINAL

Case No. 1997.

Fry and Jenkins by Desmond I. Jenkins,
for complainants,

Lieb and Lieb for defendant.

WHITTLESEY, Commissioner:

O P I N I O N

The complaint in this case alleges that Nicola de Lorenzo and Anna Guida are the respective owners of two contiguous tracts of land adjoining the Cambrian reservoir of the San Jose Water Works; that for a period of more than thirty years the defendant has supplied the complainants with water from this reservoir for irrigation purposes at a yearly charge of fifty dollars, except for the years 1922 and 1923 when the defendant refused to accept payment for the water furnished, and has refused to supply any water for irrigation since 1923; that the lands of the complainants are planted to orchards and will suffer great damage unless they are irrigated as heretofore by the waters from said reservoir.

The Commission is asked to direct the defendant to continue to supply water for irrigation purposes to complainants as

heretofore and to fix a reasonable charge to be paid for such service.

The defendant's answer in general is a denial of the allegations of the complaint, but admits, however, that for many years past it has allowed the various occupants of the two tracts of land now owned by the complainants, to use such waste or surplus waters as from time to time have overflowed from the Cambrian reservoir, for the use of which an annual flat charge of \$50.00 has been made. The answer further states that during the years 1921, 1922 and 1923 the Cambrian reservoir was reconstructed and enlarged, and that because of the increased capacity of the reservoir and the present abnormally dry year, there is at this time no surplus water available for the lands of the complainants; but that the defendant is now and at all times has been willing to allow the complainants to put to beneficial use any waste or surplus waters which may be available at the Cambrian reservoir.

A public hearing in the above entitled matter was held in San Jose May 26, 1924.

The San Jose Water Works is a public utility supplying water for domestic and commercial purposes to the residents of the City of San Jose, the Towns of Los Gatos and Saratoga and the intervening territory in Santa Clara County. Under normal operating conditions, Los Gatos and Saratoga and adjacent communities are supplied by gravity water obtained from catchment areas in the Santa Cruz Mountains and the operating surplus is stored in the Cambrian reservoir for delivery to San Jose.

Although the territory traversed by the transmission lines of the San Jose Water Works is most completely given over to intensive fruit growing, the evidence in this case shows that this company has consistently confined its public utility sales

of water to domestic, municipal and industrial uses, and has never held itself out to supply, nor has it supplied, any water for the irrigation of farms and orchards except in the specific instance of the lands owned by the complainants where such service has been strictly limited to waste waters overflowing the Cambrian reservoir.

Uncontroverted evidence shows that the water delivered to complainants' lands was waste water only and that there never had been a definite date or time set by the company for water deliveries to the complainants or any of the former owners or occupants of the premises; in fact, the overflows occurred at irregular and intermittent intervals and frequently at inconvenient hours, but nevertheless had to be utilized when available rather than upon the demand of the users.

As a result of insufficient rainfall and the consequent depleted storage, the San Jose Water Works is now facing a serious water shortage. The inadequacy of the gravity waters which in normal years maintained the reserve supply in the Cambrian reservoir, has already made it necessary to pump back at considerable expense into this reservoir from the wells in San Jose. Obviously there will be little, if any, surplus water available for irrigation purposes while such conditions exist.

At the request of the defendant, no rate will be established at this time for the future delivery of surplus water from the Cambrian reservoir for irrigation purposes because of the general rate proceeding of the San Jose Water Works, Application No. 9579, now pending before the Commission.

It is evident that the complainants herein have failed to establish any right to receive irrigation service from the reservoirs or pipe lines of the defendant, San Jose Water Works, except as to such waste or surplus waters as from time to time may be available at the Cambrian reservoir. The complaint therefore must be dismissed.

