

Decision No. 15932.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ROBERT A. PRIEST, JOHN F. WILLIAMS
and M. E. FINN,
Complainants,

vs.

THOMAS PARKHILL and RIDGE PARK IM-
PROVEMENT COMPANY, a corporation,
Defendants.

Case No. 2138.

Donahue, Hynes & Hamlin, by P. B.
Richards, for complainants.

M. H. Hernan, for defendants.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

This is a complaint filed by Robert A. Priest, John F. Williams and M. E. Finn asking the Commission to issue its order compelling Thomas Parkhill and the Ridge Park Improvement Company, a corporation, to resume the service of water for domestic and irrigation purposes to their premises in Ridge Park Tract in Contra Costa County.

The complainants allege in effect that they own property in Ridge Park Tract, a subdivision located near the town of Concord in Contra Costa County; that for a period of about ten years the Ridge Park Improvement Company supplied them and others with water for domestic and irrigation purposes for compensation; that the wells and pumping plant which furnished this water, together

with the land on which they were located, were sold to Thomas Parkhill, who has shut off the water and has refused to continue the service. It is further alleged that defendant's water supply is the only one available in that general vicinity. The Commission therefore is requested to order defendants to resume the water service as heretofore rendered.

By way of answer defendant Parkhill enters a general denial of the matters set out in the complaint, and in his own defense alleges that he purchased the water plant to furnish his own property with water for domestic and irrigation purposes and that he has never delivered water to the complainants except commencing in March, 1925, as a matter of accommodation at the instigation and request of the Railroad Commission. Wherefore defendant Parkhill requests that the complaint be dismissed. No answer was made by or on behalf of Ridge Park Improvement Company.

Public hearings in this matter were held before Examiner Satterwhite in the City of Oakland after all interested parties had been notified and given an opportunity to appear and be heard.

According to the evidence Ridge Park Tract was subdivided and put on the market in 1913 by Ridge Park Improvement Company, a corporation, whose principal agents were Roy Fish and Leurence Fish. A water system was constructed to serve the lot owners within the tract. Wells were drilled on Lot 51, a pump and motor were installed and a storage tank erected on Lot 46.

Many lot purchasers have erected permanent homes on the tract and some have planted small orchards. According to the testimony water was furnished by the Ridge Park Improvement Company to the lot owners for compensation until 1919, when the company became defunct. In 1914 Thomas Parkhill, defendant herein, acquired his property in this tract, including Lots 51 and 46 on which the wells and tank were located, although the Ridge Park Improve-

ment Company reserved title to the wells, pumping plant, tank and other water system properties.

In 1920 immediately following the financial difficulties in which the Improvement Company became involved, Parkhill secured permission from the company to operate the plant, primarily to serve his own property with water. Although the arrangements made with the company were that Parkhill was to deliver water to his own property only, nevertheless he also supplied the other consumers from the plant, the expenses incurred in the operation being divided equally among the users, including Parkhill.

In 1924 Parkhill bought the entire water system from the Ridge Park Improvement Company for two hundred and fifty dollars (\$250). Water was supplied to the consumers under the arrangements as set out above until March, 1925, at which time he endeavored to have the water users agree to a certain fixed rate for service and at the same time agree to release the system from any existing obligations to serve them with water. Upon complaint of certain of the consumers the Commission obtained from Parkhill the agreement to continue the service until such time as the matter could be investigated and definitely determined by the Commission.

It is apparent to the Commission from a careful consideration of the evidence that it was the original intention of the Ridge Park Improvement Company to dedicate this water supply to the public use and that by its acts the water was in fact so dedicated. Set out in the contracts for the sale of lots in this tract was a clause stating that a water system was to be installed by the company to furnish water for domestic purposes. Reservations were made in certain of said contracts for the sale of lots to the effect that rights of way and easements were reserved for the plant installation and pipe lines, as well as reservations made for the rights of ingress and egress for the operation of the

water system. Water was actually sold to lot owners by the company. By these acts this water system was clearly dedicated to the public use by the Ridge Park Improvement Company, which dedication could not be terminated by the mutual division of rates at cost which were in fact charged by defendant Parkhill. The attempted transfer of this water system to Parkhill in 1924, not having been approved by the Commission, was therefore void.

The evidence shows that there is little possibility of the residents of this tract obtaining water from wells on their own property. Several wells sunk by lot owners have proved to be failures. There is no other source of water supply available to these complainants within a reasonable distance of the tract. While the Commission does not as a general rule look with favor upon requiring the owners and operators of small pumping plants serving neighbors with small amounts of water to continue the supply as a public utility unless strong grounds are shown that the service is of a public utility character in fact, yet in this case it appears evident that the original owners of this system did so dedicate this water service to the public and it is also equally clear that this burden of public servitude was not and could not have been terminated by the alleged sale of the property to Parkhill, who as the present operator of the plant owes the duty to the public of continuing the supply until properly relieved by order of this Commission.

Defendant Parkhill has the right, in case the operation of this plant is not remunerative, to apply to this Commission for the fixing of a proper schedule of rates which will yield revenue sufficient to pay the reasonable costs of operation and maintenance, with allowance for depreciation, and at the same time provide a reasonable return upon the capital invested in the system; and if he could show that no rate could reasonably be

fixed which would yield such a return, he might apply for authority to discontinue the service. However, until such time as such authority has been obtained, defendants must serve those members of the public entitled thereto.

O R D E R

Complaint having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted, and the Commission being now fully informed thereon,

IT IS HEREBY ORDERED, for the reasons set out in the preceding opinion, that Ridge Park Improvement Company, a corporation, and Thomas Parkhill as agent and assignee of said Ridge Park Improvement Company, be and they are hereby ordered to resume the service of water to their consumers in Ridge Park Tract, Contra Costa County, on or before the first day of March, 1926.

IT IS HEREBY FURTHER ORDERED that Ridge Park Improvement Company, a corporation, and/or Thomas Parkhill notify this Commission on or before the second day of March, 1926, of the date upon which service was resumed, in accordance with the terms of this order.

The effective date of this order is twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 5th day of February, 1926.

W. B. Brundage
C. S. ...
Leon ...

Commissioners.