

Decision No. 17357 . .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Complaint of )  
MOORPARK FARMERS WATER COMPANY )  
for a restraining order against )  
A. E. HITCH selling water. )

Case No. 2324.

Gibson, Dunn & Crutcher, by Paul R. Warkins,  
for complainant.  
Clarke & Bowker, by Don G. Bowker, for defendant.  
Edward Henderson, for County of Ventura.

BY THE COMMISSION:

O P I N I O N

In this complaint the Moorpark Farmers Water Company, a corporation, supplying water as a public utility in and in the vicinity of Moorpark, in Ventura County, requests the Commission to restrain A. E. Hitch from selling water to the Ventura County Water Works District No. 1, or to any other consumers. The complaint alleges in effect that one of the company's principal purchasers of water is the Ventura County Water Works District No. 1; that complainant has an ample supply of water which is permanent and in excess of present or anticipated needs of all of its consumers; that defendant A. E. Hitch plans to develop wells and construct a distribution system for the purpose of selling water to said District and some other of complainant's customers, which will deprive complainant of revenue and income necessary for the successful prosecution of its business as a public utility. The Commission therefore is asked to restrain said A. E. Hitch from

selling water to the County of Ventura, or to the said Ventura County Water Works District No. 1, or to any other of complainant's consumers.

Defendant by way of answer denies generally the allegations set out in the complaint and alleges that the Ventura County Water Works District No. 1 is desirous of securing water from his wells; that his water supply is ample and of good quality and suitable for domestic use, whereas the water of complainant is impure and so highly impregnated with minerals as to render it unfit for human consumption; that his wells are so located that water can be pumped directly into the District's reservoir, from which it may be delivered by gravity throughout the distribution system of said District without the necessity of additional pumping, whereas the water furnished by complainant must be pumped at considerable expense by said District before it can be delivered to its consumers; that complainant has only furnished water to said District for approximately eight months, as an emergency measure, and that defendant has entered into a contract with said District to supply water for its requirements until said District can provide or acquire a permanent water supply of its own. Wherefore the Commission is requested to dismiss the complaint.

The County of Ventura has intervened in this proceeding and also filed an answer on behalf of the Ventura County Water Works District No. 1. This answer in general covers the same matters set up by defendant, and among other things alleges that the water supply of A. H. Hitch is more desirable to the consumers of the District's water system, especially for domestic use, and that the cost of the necessary installations to secure water from the Moorpark Farmers Water Company was far more expensive than would be required to receive water from defendant Hitch. The Commission

is asked to deny the request of complainant herein.

A public hearing in this matter was held at Moorpark before Examiner Williams, after all interested parties had been duly notified and given an opportunity to appear and be heard.

The Moorpark Farmers Water Company has been engaged for several years in the business of distributing water as a public utility, mainly for irrigation purposes, in the Moorpark District, in Ventura County. The water supply is obtained from wells located in Arroyo Simi. The Ventura County Water Works District No. 1 is a duly organized district existing under the laws of this state and was organized primarily for the purpose of supplying adequate water for domestic use to the people residing within the District, which embraces territory in and in the vicinity of Moorpark. As a result of the recent failure of its wells the District, according to the testimony, entered into an agreement with the Moorpark Farmers Water Company, complainant herein, to supply to said District in wholesale quantities the water necessary to satisfy the demand of its consumers for domestic water. This agreement provided a rate for the services to be rendered and was filed with and approved by this Commission. Water was thereafter delivered to the District under the above agreement for a period of approximately eight months.

About a year ago A. E. Hitch, a resident of Moorpark, drilled a well upon his ranch properties situated not far from the town and procured an abundant supply of water which it is claimed is softer and of a much better quality for domestic and household use than the water supplied by the wells of complainant. Thereafter on the second day of March, 1926, an agreement was entered into by and between A. E. Hitch and the Board of Supervisors of Ventura

County as representatives of the Water District, wherein it was agreed that the District would take its entire domestic water supply from Hitch at a fixed price and said Hitch agreed to supply the water for a period of one year with the option of discontinuing service at the end of this period. Subsequent to the making of the above agreement and upon the completion of the necessary connecting pipe lines the District discontinued the purchase of water from the Moorpark Farmers Water Company and secured its entire supply from defendant A. H. Hitch.

The evidence shows that complainant has a sufficient supply of water to satisfy all reasonable requirements of the District. Considerable controversy arose during the hearing of this matter as to the quality of the water supplied by complainant and the adequacy of defendant's supply. However, a consideration of the vital points involved herein indicates that the determining issue is whether or not defendant had dedicated his water supply to the public use, and if so, whether by so doing said defendant has improperly invaded the territory heretofore supplied by complainant.

It is the contention of counsel for complainant that defendant Hitch has so dedicated his supply to the public use and is operating as a public utility without proper sanction of this Commission; that the contract entered into by defendant with the County Board of Supervisors to supply water to the District, while setting forth therein that such service is temporary and for purposes of accommodation only, is in fact a mere subterfuge by means of which the attempt is made to avoid the duties and liabilities of a public utility. It is further contended that the sale of water by Hitch to the County Water District for resale and general distribution constitutes a dedication of defendant's water supply to the public and renders defendant a public utility as to

such service and subject to the jurisdiction and regulation of the Railroad Commission by the specific provisions of Section 2 (dd) of the Public Utilities Act, which in part reads as follows:

"Furthermore, when any person or corporation performs any service or delivers any commodity to any person or persons, private corporation or corporations, municipality or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, perform such service or deliver such commodity to or for the public or some portion thereof, such person or persons, private corporation or corporations and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act."

Counsel for the defendant and for the intervenor, the County of Ventura, take the position that the water supply heretofore used by the Water District having failed, it thereupon became necessary for the District to provide at once a new source of water supply to take care of the requirements of its consumers for domestic water; that it has been and now is the policy of the District and the desire of the water users residing within said District to own and control its water supply; that pending the acquisition of such a supply the District was necessarily under the duty of acquiring temporarily sufficient water to meet its requirements; that the water obtained from the wells of defendant A. E. Hitch was more desirable to the consumers from the standpoint of potability and could be obtained at less financial outlay upon the part of the District than water from complainant; that the contract entered into by and between A. E. Hitch, defendant, and the County of Ventura for the supply of water to the District is temporary in character and for the purposes of accommodation only, and that such service is specifically exempt from the jurisdiction of the Railroad Commission under the provisions of the Act for the Regulation of Water Companies, Section 1,

Chapter 80, Statutes 1913 as amended by Statutes of 1923, Chapter 172, which in part reads as follows:

"provided, however, that whenever the owner of a water supply not otherwise dedicated to public use and primarily used for domestic purposes by such owner or for the irrigation of such owner's lands, shall sell or deliver the surplus of such water for domestic purposes or for the irrigation of adjoining lands, or whenever such owner shall, in an emergency water shortage sell or deliver water from such supply to others for a limited period not to exceed one irrigation season, or whenever such owner shall sell or deliver a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available then such owner shall not be subject to the jurisdiction, control and regulation of the railroad commission of the State of California."

The agreement between defendant Hitch and the County of Ventura, entered into March 2, 1926, for the supplying of water to said District provides, among other things, that Hitch will supply water for a period of one year at the rate of 12 cents for each 540 gallons, with the option at the end of said period of discontinuing the service; that Hitch will incur no liability for failure to deliver an adequate supply or for inability to furnish water because of the condition or state of repair of the wells or equipment and that Hitch shall have reserved the right to use water from the wells for domestic and irrigation purposes upon his own property provided such use does not interfere with the needs of the District. Upon the face of this instrument it is set out that the contract is entered into by the County of Ventura as an emergency measure to secure water for the District; that Hitch is supplying the water as a neighborly act and as an accommodation, and that it is not the intention of either party to the contract to dedicate to the public use the water from said wells by reason of the carrying out of the provisions or the terms thereof.

The testimony clearly shows that the water supply owned by defendant Hitch had never been dedicated to the public use at any time prior to March 2, 1926, the date he entered into the agreement with the County Supervisors to supply water to District No. 1, and according to the evidence defendant has supplied water for compensation to only one consumer, to-wit, Ventura County Water Works District No. 1. From the provisions of the above contract the expressed intent was to avoid a dedication of this water to the public use and was for temporary purposes only until such time as the Water District could acquire a permanent supply of its own. The subsequent acts of defendant show that up to the present time no other consumers have been served water from his system and that he has not held himself out to supply the public generally or any portion thereof other than the one consumer, District No. 1. This particular service has not been rendered by defendant long enough to warrant the Commission at this time in declaring that it is other than temporary and for purposes of accommodation. The Commission is of the opinion that the water service being rendered by defendant A. E. Hitch at this time does not constitute a dedication of the waters so served to the public use and the Commission therefore is without jurisdiction to proceed further into this inquiry.

#### O R D E R

Moorpark Farmers Water Company having made application as entitled above, a public hearing having been held thereon, the matter having been submitted, the Commission being now fully informed in the premises, and it appearing that this Commission possesses no jurisdiction over the subject matter in the petition herein under the provisions of the Act for Regulation of Water

Companies, Chapter 80, Statutes 1913 as amended by Statutes 1923, Chapter 172,

NOW, THEREFORE, IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed, without prejudice, for want of jurisdiction.

Dated at San Francisco, California, this 21st day of September, 1926.

H. H. Brundage

O. Cheney

Ernest West

Leon Whitely

Thos. S. Rutter

Commissioners.