

Decision No. 17848.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

R. MORRIS,
Complainant,

vs.

HAROLD J. COWDREY, ELLIS E.
WOOD, and Harold J. Cowdrey do-
ing business under the ficti-
tious name of MORAGA REDWOOD
HEIGHTS WATER COMPANY,
Defendants.

Case No. 2252.

Ben F. Geis, for complainant.

Ellis E. Wood and Harold J. Cowdrey,
for defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding R. Morris has filed a complaint in which it is alleged that Ellis E. Wood and Harold J. Cowdrey, doing business under the fictitious name of Moraga Redwood Heights Water Company, are failing to render adequate water service from a public utility water system serving a tract of land known as the Moraga Redwood Heights, located in Contra Costa County, that much inconvenience is caused thereby, and that the defendants have made no effort to remedy the situation. The complaint further alleges that a certain purported transfer of the water system from Ellis E. Wood to Harold J. Cowdrey is void because no authority was obtained from the Railroad Commission for the transfer.

The defendants made no formal answer.

A public hearing was held before Examiner Satterwhite at Sequoia September 20, 1926, after all interested parties had been notified and given an opportunity to appear and be heard.

The evidence shows that the defendant Ellis E. Wood owns and operates a small water system on the Moraga Redwood Heights Tract, situated about ten miles east of Oakland, in Contra Costa County. This water system was installed in 1912 to aid the sale of lots in the above tract, containing forty-three acres, of which approximately twenty-seven acres have been subdivided. There have been built in this tract many summer and country homes and at present there are forty-six active consumers on the system, sixteen of whom are permanent residents requiring water continuously throughout the year. The remaining consumers use water only during the summer season. All service is at flat rates.

The water supply is obtained from springs developed on the steep hillside on the easterly portion of the property and is stored in a small wooden tank from which it is delivered directly into the distribution mains by means of a pump operated by a three horse-power gasoline engine. Any excess water above demands is stored in a second wooden tank located upon the ridge above the tract.

Mr. Wood acquired the above property, including the water system, in 1914, and has recently transferred the unsold lots in the tract to defendant Harold J. Cowdrey, who has been operating the water system at the request of and as the agent for defendant Wood, who is still the owner of the water system.

The testimony shows that the existing water supply is entirely inadequate for even the barest necessities of the present consumers. In addition to this, the State Board of Health has now condemned the supply as polluted. According to the testimony of E. A. Reinke, one of the engineers of the State Board of Health, the samples of water from the springs showed gross

pollution. He was unable to assign the direct cause of this condition but indicated that the supply was subject to surface contamination apparently having its source in the cesspools of the houses located upon the hill above the springs. This Board however has indicated that by the installation of certain suggested improvements in the methods of collecting the water, together with chlorination, the supply can be made entirely safe for domestic purposes. The location of this tract is such that there is no other water system or source of additional water available except at such a distance as to render the cost absolutely prohibitive. The location of the various houses upon the steep hillside naturally results in an unequal distribution of the water by reason of the fact that the consumers at the lower elevations receive much better pressure, and when using water make it difficult for those located above to secure service. These natural handicaps have been seriously aggravated by the fact that defendants have made little or no effort to repair and maintain the system and have had no local representative to take responsible charge of the plant. The pump and motor are not housed and the upper storage tank is in such a state of disrepair that it can hold only a small part of its total capacity. In this connection it might be well to point out that the general attitude of defendants in the operation of this system is well illustrated by the fact that the consumers donated to the utility a tank and had it delivered at the proper location for the purpose of replacing the dilapidated upper regulating tank, but the defendants failed to place it in service, apparently upon the claim that the water available from the springs was insufficient to require greater storage than that afforded by the existing tank in spite of its condition. The result of these conditions has been that during the summer months when a few hours' pumping per day exhausts the entire supply of water, the consumers

have been forced to collect the water when available in various receptacles in order to have any supply on hand for household purposes.

During 1925 the residents of the tract made up a fund of about \$400 for general improvement work in the community, a large amount of which was turned over to defendant Wood for the purpose of improving the water system and water supply. An investigation and report was made by a water supply expert, who recommended the construction of a tunnel to further develop the production from the springs. A forty-foot tunnel was constructed, as suggested, but the output of water was not increased to any material degree.

The evidence shows that water from the springs has been supplied without charge to the Redwood Inn, located near Sequoia Station outside the boundaries of the Moraga Redwood Heights Tract. This service has been rendered under the terms of a certain agreement entered into by and between Ellis E. Wood and Conrad Williamson, dated February 8, 1916, and attached to the deed by which the Inn property was conveyed by Wood. This agreement granted to Williamson the right to certain waters from a box located in the Moraga Redwood Heights source of supply. The agreement does not definitely specify the quantity of water reserved other than that the supply pipe is to be one inch in diameter, together with the statement that the amount of water should be sufficient to supply the Inn and one small house. The right to the remaining portion of water is expressly reserved to Wood. The evidence clearly shows that this agreement granting a purported water right to said Williamson was entered into at a time subsequent to the dedication of the entire water supply to the public use and therefore is subject to the regulation of the Railroad Commission. Because of the location of the pipe serving

the Inn, water has been taken by this user upon more favorable conditions than many of the regular consumers. This service therefore has resulted in an unfair discrimination and should be discontinued and the Inn property placed upon the same operating basis as the other consumers. This may be accomplished by collecting the flow of all springs in a common receiver and distributing the water to the consumers from such receiver.

The evidence shows that the present supply is wholly inadequate for the requirements of the community. This is caused primarily by the actual physical limitations of the water supply in this area. It is further recognized that there is no certainty of obtaining an increased or adequate water supply from further tunneling or by well boring in that particular locality. The present source possibly may be further developed, or a wet winter perhaps may increase the supply, but if these conditions do not bring additional water the consumers must face the unfortunate fact that the water supply will continue to be inadequate for their proper needs and therefore must, by conservative use of water, make the limited quantity available go as far as possible. However, it is clear that Mr. Wood has been very negligent in his conduct of the affairs of this system and has wholly failed in his duty to the public as the operator of a public utility in taking no reasonable precautions to properly conserve the available water or make equitable and fair distribution thereof. Defendant Wood will be expected to take immediate steps to collect all water available in a suitable sump or tank; to place a responsible party in charge of the plant, and completely meter all services in order to further conserve the supply, reduce possible careless use of water and more equitably distribute the charges for service among the consumers according to their actual use of water. Provisions for carrying out these requirements will be set forth in the following order.

Should the installation of the improvements outlined above result in increasing the cost of providing service beyond the revenues produced by the existing rates, it may be necessary for this utility to make application to this Commission for an adjustment of the rate schedule under which it is now operating. In this connection it should be noted that several of the consumers testified that they would not protest against any reasonable increase in rates provided the service rendered was raised to some reasonable standard of efficiency under the conditions existing in the area served.

O R D E R

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

IT IS HEREBY ORDERED, for the reasons set out in the opinion which precedes this order, that Ellis E. Wood, doing business under the fictitious name and style of Moraga Redwood Heights Water Company, be and he is hereby directed to file with this Commission, subject to its approval, the following plans:

1. Detailed plans shall be filed within thirty (30) days from the date of this order, outlining a program for the complete metering of all active service connections on the above water system on or before the first day of June, 1927.
2. Within thirty (30) days from the date of this order detailed plans shall be filed setting forth the methods to be adopted to manage and operate this water system in the future and the improvements to be installed for the proper conservation of the waters produced from the springs used

to supply the water for this system.

IT IS HEREBY FURTHER ORDERED that Ellis E. Wood, doing business under the fictitious name and style of Moraga Redwood Heights Water Company, be and he is hereby directed to file with this Commission within sixty (60) days from the date of this order revised rules and regulations governing the relations with consumers, said rules to provide, among other things, for a schedule restricting the hours during which water may be used by consumers for lawn and garden irrigation during the summer period of low flow of the springs furnishing the water supply for this system, said rules and regulations to become effective only upon acceptance for filing by this Commission.

IT IS HEREBY FURTHER ORDERED that Ellis E. Wood, doing business under the fictitious name and style of Moraga Redwood Heights Water Company, be and he is hereby directed to discontinue within thirty (30) days from the date of this order, the method heretofore practiced in serving water to Conrad Williamson for use upon the Redwood Inn properties, and thereafter render service of water to said Williamson upon the same basis as that of the other consumers receiving water from this system, and within ten (10) days after such change has been made said Ellis E. Wood shall notify this Commission in writing to that effect.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 6th day of ~~December~~ January, 1929.

H. A. Bunnage

C. Seavey

Ernest J. Galt

Leon Whipple

Thos. S. Rowley

Commissioners.