

Decision No. 18492.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Complaint of  
W. J. PARKER, W. B. McNEES, A. W.  
FULLER, W. H. DENNMAN, S. R. SMITH,  
D. CALENDER, TOM NICCIOS, E. H.  
HAMLIN, Jr.,

Complainants,

Case No. 2285.

vs.

C. GULLING,

Defendant.

W. J. Parker, for complainants.

L. B. Fowler, for defendant.

BY THE COMMISSION:

O P I N I O N

This is a case filed by W. J. Parker and seven other water users complaining against the inadequate and interrupted water service furnished by C. Gulling, defendant, who owns and operates a water system supplying water for domestic and commercial purposes to the inhabitants of the town of North Portola, in Plumas County.

The complaint alleges in effect that for the past 16 years defendant has been engaged in the business of supplying water for compensation to the residents of North Portola; that defendant is also engaged in the real estate business and during the past three years has sold lots in and about North Portola, agreeing to furnish to each lot purchaser sufficient water for

household and other purposes; that the water supply is now and for several years last past has been entirely inadequate to meet the reasonable requirements of existing consumers, and that notwithstanding this limited water supply defendant continues to add new consumers to the system, thereby depriving the former consumers of the water to which they are entitled. It is further alleged that for long periods during each day defendant has maintained the practice of shutting off the water supply to the older consumers in order to furnish water to the recent purchasers of lots sold by him. Complainants request that defendant be directed to place in effect and observe such rules and regulations governing the sale and distribution of water as will not deprive the older consumers of the use of water heretofore enjoyed by them.

By way of answer defendant alleges that he has been the owner of certain lands in Portola for a period of 16 years; that a part of such lands has been subdivided into lots which he has sold and is now selling to various people; that he has delivered water to the purchasers of lots as a matter of accommodation and not for profit. He alleges that he has never sought or acquired a franchise for permission to operate a public utility water system, and therefore alleges that the service being rendered by him is not public utility in character. Defendant further alleges that during the past year he has expended not less than \$2,000 for the purpose of obtaining an additional water supply, but that by reason of the limited precipitation and general water shortage in the vicinity of Portola the water supply has been far below normal. Defendant therefore requests that the complaint herein be dismissed.

A public hearing in the above entitled matter was held before Examiner Geary at Portola after all interested parties had

been notified and given an opportunity to appear and be heard.

From the evidence it appears that this water system has been in operation continuously during the past 16 years, serving water for domestic and commercial purposes to residents of the community of North Portola, located on the northerly side of the Feather River immediately opposite the town of Portola. The water supply is obtained from three springs, augmented by pumping from a well. Distribution is made by gravity from a small reservoir by means of 2-inch and 3/4-inch mains.

Although rates and annual reports have been filed by the defendant with the Railroad Commission, in accordance with its rules and regulations, the schedule of rates set out therein has not been followed by defendant. The rates now in effect on this system for water delivered to consumers are the same as the rates established by this Commission for the Portola Water Company in Decision No. 3722, dated September 28, 1916. The system now serves 30 consumers on a flat rate basis.

The testimony very clearly indicates that the present water supply of this system is wholly inadequate for the necessary and reasonable demands of the present consumers, and that for several years last past during the summer months defendant has followed the practice of shutting off one part of the system for a period of 12 hours while water was being delivered to the remaining part. By alternating deliveries under this method to the two sections of the community a certain amount of water was delivered to all consumers. However, this plan has been very unsatisfactory and has not resulted in the delivery of an adequate or reasonable amount of water to any of the people. Although some effort has been made to increase the water supply, additional water has not as yet been obtained to properly take care of the requirements of the system. Notwithstanding this

condition of wholly inadequate water supply, defendant has continued to add to the system all new consumers who applied for service. While the evidence shows that by reason of the long period of low rainfall an abundance of water for domestic purposes is not easily obtainable in this vicinity except at considerable expense, it is apparent that defendant has not taken proper measures or made any reasonable effort to fulfill his obligations to the public to obtain an additional water supply to adequately serve his consumers.

Defendant will be expected to take such measures to acquire additional water by pumping from the Feather River or otherwise as may be necessary to relieve the inadequate service conditions existing on his system. In the mean time defendant will be restricted from adding any further consumers to the system until such additional water is obtained. Should the added investment required to obtain the necessary water be not adequately provided for in the schedule of rates now in effect, defendant may if he so desires apply to the Commission for such adjustment in the existing schedule of rates as may be necessary to afford a reasonable return upon the capital investment over and above the proper costs of maintenance and operation of the system.

In connection with the contention of defendant that he is not operating as a public utility, it is sufficient to say that the evidence clearly indicates that defendant for a period of approximately 16 years has been delivering water for compensation to all members of the general public residing in and about North Portola who applied for such service; that he has filed rates and annual reports with the Railroad Commission in compliance with its rules and regulations; and that on all monthly bills sent to the consumers for service rendered there appears,

printed thereon, a statement in part as follows: "In accordance with regulations of the Railroad Commission this bill is due and payable at the Company office or to its agent", etc.

In view of these facts it is clear that defendant is operating his water system as a public utility and is therefore under the jurisdiction of the Railroad Commission.

### O R D E R

W. J. Parker et al. having made formal complaint 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:

1. That C. Gulling file with this Commission within thirty (30) days from the date of this order the schedule of rates now in effect on his water system at North Portola.
2. That within thirty (30) days from the date of this order C. Gulling file with this Commission revised rules and regulations governing the relations with his consumers, said rules and regulations to become effective upon acceptance for filing by the Commission.
3. That C. Gulling be and he is hereby directed to file with this Commission within thirty (30) days from the date of this order a special rule and regulation setting forth a schedule of hours for the delivery of water to his consumers, to be placed in effect as soon as water conditions

require and to continue in effect until such time as the additional water supply directed to be provided for herein shall be made available to his consumers.

4. That C. Gulling be and he is hereby ordered not to supply or agree to supply water to any new consumers from and after the date of this order except by authority of this Commission.
5. That C. Gulling be and he is hereby directed to file with this Commission plans for the obtaining of an additional and adequate supply of water for the consumers served by his water system at North Portola, said additional supply to be available to the consumers on or before the 15th day of July, 1927.

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 30th day of March, 1927.

Frank West  
H. B. ...  
C. ...  
Thos. S. ...  
Commissioners.