

Decision No. 19065-

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

P.F. LANDE, MRS. E. BAUMAN,  
R.H. MORGAN, ROBERT C. CASH,

Complainants,

vs.

THE NAPA RANCH, W.G. GROVE, Supt.,  
W.J. HOTCHKISS, Owner,

Defendants.

Case No. 2195.

**ORIGINAL**

Wallace Rutherford for complainants.

C.G. Dall for defendants.

BY THE COMMISSION:

O P I N I O N

This is a complaint filed by certain consumers against W.J. Hotchkiss, who for a number of years has supplied water to a part of the residents of the town of Yountville, in Napa County. The complaint alleges in effect that for several years the defendants have failed to provide a proper and sufficient supply of water; that every summer there has been practically no water available for domestic use for hours at a time, and that defendants have recently arbitrarily increased the rate for service rendered from \$1.25 to \$1.60 per month. Wherefore, the Commission is requested to issue its order requiring defendants to provide an adequate and proper water supply.

By way of answer W.J. Hotchkiss, one of the above named defendants, enters a general denial of the allegations set

out in the complaint, and in addition thereto alleges that he is the owner of certain property in Napa County known as the Napa Ranch; that certain portions of the surplus natural waters developed on the said Napa Ranch have been for several years, and now are, being conducted through pipe lines and delivered to certain purchasers in the unincorporated town of Yountville; that he acquired this water system through the purchase of the ranch properties, and although having continued the supply of surplus waters to certain users thereof in accordance with the acts of his predecessors in interest, he has never represented the supply of water to be dependable or suitable as to quality and quantity for domestic consumption; and that neither he nor his predecessors in interest have ever undertaken the obligation of providing a public water supply other than to sell to those who may desire to purchase the limited quantity of surplus waters available on said Napa Ranch over and in excess of the requirements of said ranch. Defendant further alleges that the revenues received from the sale of water have always been entirely inadequate to justify even such service as has been rendered; that he has never held himself out to serve water as a public utility and is therefore under no obligation or liability to increase the quantity or improve the quality of the water served. Wherefore, defendant asks that the above complaint be dismissed.

Public hearings were held in this matter before Examiner Satterwhite at Yountville after all interested parties had been notified and given an opportunity to appear and be heard. The case was submitted at the adjourned hearing held April 29, 1926, but for the purpose of receiving additional and newly discovered evidence the Commission by its order issued May 19, 1926, set aside said submission and reopened the proceeding for further

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hearing. This hearing was held on September 1st, 1926, at which time the case was finally submitted.

From the evidence it appears that the water supply furnished to the complainants herein is obtained from small springs having their source in a canyon located approximately two miles west of the town of Yountville, on the Napa Ranch properties. Water is stored in a small reservoir and in tanks, from which it is transmitted through a 4-inch pipe line running directly to a large winery on the ranch. From this pipe line a branch takes off which is used for the purpose of serving approximately 30 consumers in and about Yountville. Water is also supplied to the station buildings and water tank of the Southern Pacific Company, as well as a small quantity to a few ranches in the immediate vicinity of Yountville. Only about one-third of the residents of Yountville receive their domestic water supply from defendant's system, the remainder obtaining water by means of privately owned wells and pumping plants.

The Napa Ranch, consisting of about 1130 acres, was acquired about the year 1879 by one Grozenger, who constructed a winery upon the premises. In order to provide a water supply for the winery and certain parts of the ranch property, Grozenger developed water from certain springs located upon the ranch and constructed a 4-inch pipe line to the winery. Some years later the Napa Ranch and winery was purchased by J.K. Pryor, who on June 15, 1898, obtained a permit or franchise from the Board of Supervisors of Napa County for the laying of water mains and pipe lines along and across the public highways in and in the vicinity of the town of Yountville for the purpose of furnishing the citizens of that town with water. Immediately thereafter said Pryor con-

structed and installed a distribution system in Yountville which was connected with and received its water supply from the pipe line located upon the Napa Ranch. Water was furnished by Pryor to many consumers in Yountville, including the Southern Pacific Railroad Company for its station building and section house, and for engine supply. Water was also sold to the County of Napa for road sprinkling purposes. So far as the evidence discloses, water was also supplied for certain operations upon the Napa Ranch at this time, the amounts not being definitely shown by the evidence other than the fact that the quantity used by the ranch varied from time to time. In 1912 the present owner, W.J. Hotchkiss, defendant herein, acquired from J.K. Pryor the Napa Ranch and winery, and according to the evidence the new owner continued to supply water to consumers in Yountville through the Napa Ranch water system in the same manner as the former owner. New consumers were taken on from time to time only to the extent that old consumers discontinued service. Monthly charges were made for the service rendered and the collections therefor were made for Hotchkiss by W.G. Grove, manager of the Napa Ranch. The monthly charge for water was increased in June, 1924, from \$1.25 to \$1.87 upon instructions issued by Mr. Hotchkiss. No application was made to the Railroad Commission for authority to increase the rates, nor was such authority ever granted to Mr. Hotchkiss by this Commission.

No separate accounts have been kept of the operations of the water system, which have usually been carried along in common with the other business affairs of the Napa Ranch. However, the revenues during the past few years have averaged \$65. per month for domestic service and \$25. per month for water furnished to the Southern Pacific Company, making a total annual

revenue of approximately \$1,080., subject to deduction for amounts refunded to the consumers at times during the summer months when service was inadequate.

The testimony shows that since its inception water has been used by the Napa Ranch for various activities conducted thereon. It also appears that the supply available upon the Napa Ranch has always been entirely inadequate for the demands of the consumers, and as far as the record discloses, very little effort has been made by the owners of the Napa Ranch to take care of and maintain a sanitary condition at the springs and storage facilities. At present and for several years last past, the water requirements of the Napa Ranch have not been extensive. The winery is not in operation and has not been for many years. The ranch at present has about 200 acres under cultivation in bearing prune trees not receiving irrigation water from any source, and in addition uses water for about 15 head of stock and the ordinary requirements of the ranch house. According to the testimony, the average use of water by the Napa Ranch has been approximately one-third of the normal available supply.

There is no other water system, public utility or otherwise, operating in this general neighborhood. The water used by those people not connected to this system is obtained mainly from private wells. The testimony indicates that most of the wells in this district are shallow and produce but very little water and that, by reason of the past several dry years, it is becoming increasingly more difficult to obtain sufficient water from underground sources.

It is the contention of the consumers that water has been supplied to them through the water system of the Napa Ranch continuously for over 30 years; that the present owner of the

system, defendant herein, has continued this service since 1912; that the water supply has thereby been dedicated to the public use, at least as to those waters heretofore served to the consumers; that the operations of defendant are public utility in character, and that therefore it is the duty of defendant to continue the supply of water to the consumers as in the past and to take whatever measures may be necessary to acquire an additional supply of water.

Defendant contends that the supply of water to consumers in Yountville has been furnished only from such surplus waters as were not required for use upon the Napa Ranch; that the water developed upon said ranch was originally intended for use upon the ranch and in the winery only; that for purposes of accommodation surplus waters over and above the actual requirements of the ranch and winery were delivered to certain residents in and about Napa; that the present defendant since ownership of the ranch and water system has never filed his rates, rules and regulations with the Railroad Commission and has always maintained that the service rendered to the consumers on this water system in no case amounted to a dedication of such water to the public use; that additional water can only be developed at a very great expense, and that the revenues to be derived from those consumers who can be served by the existing system are now and will be insufficient to pay for the cost of operation and depreciation alone, without making provision for a proper return upon the cost of the investment. Defendant alleges that for these reasons he is not operating as a public utility and therefore is under no obligation either to improve the present service or to continue it against his will.

We are of the opinion that the record in this case clearly indicates that the waters of the Napa Ranch heretofore used in supplying the consumers in and in the vicinity of Yountville have been dedicated to the public use at least to that extent evidenced by present service and that the defendant is operating a public utility water system. Documentary and other evidence shows that in 1898 J.K. Pryor, then owner of the Napa Ranch, obtained a franchise from the County of Napa to install a system of mains and pipe lines to furnish and deliver water to consumers in and about the town of Yountville, and acting under the rights and authority granted in this franchise, the said Pryor thereafter, during the same year and/or the following year, installed a water system supplied by and from the waters of the Napa Ranch, and immediately thereafter commenced the delivery of water to consumers. The evidence further shows that ever since this time water from the Napa Ranch has been supplied continuously by this system to customers in and near Yountville, a period of at least twenty-seven years.

While the testimony indicates that a greatly increased water supply cannot be developed at the present sources except at unwarranted expense, it is also apparent that defendant has made little or no effort to improve and increase the existing facilities to their full extent. The Commission requires each and every public utility water system to furnish an adequate and reasonable supply of water to its patrons at all proper times, and, when existing facilities and supply are inadequate, the utility is expected and required to expend all reasonable efforts to improve conditions and obtain additional water. It should also be pointed out that the fact that existing revenues may be insufficient to provide for a fair net return upon the invest-

ment in the utility properties does not discharge the duty of a public utility to render reasonable and adequate service where the facilities provided by the Public Utilities Act to obtain rates sufficient to net a fair return have not been availed of by such utility.

Based upon the foregoing facts, we are of the opinion that defendant is operating as a public utility and is subject to the control and jurisdiction of this Commission, and, as such, said defendant should take at once whatever measures are reasonably necessary to remedy and improve the inadequate water service existing upon his system.

O R D E R

P.F. Lande, Mrs. E. Bauman, R.E. Morgan and Robert C. Cash having filed formal complaint with the Railroad Commission as entitled above, public hearings having been held thereon, the matter having been submitted and the Commission being now fully informed in the matter, and the Commission being of the opinion that W.J. Hotchkiss is serving water to certain consumers in and in the vicinity of Yountville in Napa County, California, as a public utility, and, as such, said service is under the jurisdiction and control of the Railroad Commission,

IT IS HEREBY ORDERED that W.J. Hotchkiss be and he is hereby directed to file with this Commission within thirty (30) days from the date of this order:

1. The schedule of rates heretofore in effect on this system prior to the unauthorized rate increase made on or about the month of June 1924.
2. Revised rules and regulations governing the service to and relations with his consumers, said rules and regulations to become effective upon acceptance for filing by this Commission.



3. Detailed plans for the improvement of storage and distribution facilities, and for the improvement and increasing of the water supply, such improvements to be completed on or before April 30, 1928.

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 1<sup>st</sup> day of December, 1927.

Edward C. Coto  
Al Seaver  
Leon Whitell  
Thos. J. Houtell  
W. J. Cunn  
Commissioners