

ORIGINAL

Decision No. 19639

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

E.P. Williams, B.C. Brewster,
Albert Douglas, Robert J. Snow,
Wm. F. Donovan, Pete Mitchler,
Amon Tanner, Louis Rafetta,
Antone Malaspina, Annie R. Schaeffle,
Ethel Adams, John Hauselt, Angela
Malaspina, Bertatta Bros., Malaspina
Bros., John Airola, Wm. S. King and
Calaveras Waters Users Association,

Complainants,

vs.

Case No. 2266.

Utica Mining Company, a co-partnership,
and Hobart Estate Company, Emma Rose
and Jane Doe, co-partners doing business
under the firm name and style of Utica
Mining Company, a co-partnership.

Defendants.

Virgil M. Airola, Rowan Hardin and Frank Folletti,
for Complainants.

Edward Van Vranken, for San Joaquin County.

J.W. Coleberd, for San Francisco County Loan Company.

McCutchen, Olney, Mannon & Greene, by Allen P. Mathew,
and John T. Pigott, for Defendants.

LOUTTIT, COMMISSIONER:

O P I N I O N

This is a complaint brought by H.P. Williams and certain
other consumers, together with the Calaveras Water Users Associa-
tion, against Hobart Estate Company, a corporation, and Emma Rose,

owners as tenants in common of certain mining properties, water and power systems, located mainly in Calaveras County and operated under the firm name and style of Utica Mining Company. Among other things, this company is engaged in the business of distributing and selling water for irrigation, domestic, power and mining purposes, and electric energy to the general public in and in the vicinity of Murphys, Douglas Flat, Vallecito, Carson Hill, Angels Camp and Altaville, Calaveras County. The complaint in general alleges in effect that the Utica Mining Company and its predecessors in interest have been engaged in the development, distribution and sale of water as a public utility in Calaveras County for more than sixty years last past; that, until the installation by said company of the Angels (Hydro-electric) Power Plant in 1920, it freely and indiscriminately sold and distributed water to any and all applicants therefor under its system; that, since about the time of the installation of said Angels Power Plant and thereafter, defendants have adopted and maintained the practice and policy of unreasonably and arbitrarily reducing the quantities of water delivered to the irrigationists and other users, and have refused to deliver adequate and sufficient water to meet the requirements of the consumers; that defendants have also frequently, and without good and sufficient reason, refused to serve new applicants for irrigation service, although this policy has not been consistently maintained, and that, during dry seasons when there has been a scarcity of water, defendants have taken water improperly from the irrigation users in order to increase the water available to operate the Angels Power Plant. Wherefore, complainants ask that the Utica Mining Company be required to

provide and adopt reasonable practices, rules and regulations and to furnish and maintain such service as shall prevent further damage and loss to crops and orchards now being served under its system.

Defendants by way of answer deny generally the essential allegations set out in the complaint and also deny that they are engaged as a public utility in the sale and distribution of water to the general public, excepting only the sale of water to the general public in the Town of Angels Camp; and, among other things, allege that the present water system was installed by a predecessor in interest of defendants primarily for mining purposes and has at all times thereafter been maintained and operated solely for mining and power purposes; and further allege that, as an incident thereto, defendants are now supplying water as a public utility in the Town of Angels Camp; that, from time to time, when surplus water has been available therefor, they have also supplied such water as a matter of accommodation to persons owning or occupying lands in the vicinity of defendants' ditches; and, in connection with this service, admit that for many years last past they have refused to supply water for irrigation purposes to new consumers and that it has been their practice in times of water shortage to supply to the Angels Power Plant or mines such water as was required for the operation thereof, and that, by reason of these circumstances, it has been necessary to restrict and reduce the amount of water furnished and delivered to farmers and irrigationists and all other water consumers. Defendants furthermore allege that the gross income from the water supplied for irrigation purposes is less than the bare cost of

operation and maintenance necessary to render such service and therefore request that the complaint be dismissed.

Public hearings were held in this matter at Angels Camp after all interested parties had been notified and given an opportunity to be present and be heard.

According to the testimony, the Union Water Company was organized and incorporated in 1854 and immediately thereafter commenced the construction of diversion works, flumes, reservoirs and canals to divert and store water from the North Fork of the Stanislaus River and convey it to various points in the vicinity of the Town of Murphys, where it was spilled into Angels or Murphys Creek and Peppermint Creek, from which it was again collected and distributed by various ditches principally for mining purposes but also for domestic, agricultural, water power and industrial use in and near Murphys, French Gulch, Douglas Flat, Vallecito, Carson Hill, Albany Flat, Angels Camp, Altaville and Dogtown, in Calaveras County. On or about the year 1888, Hayward, Hobart and Lane acquired the Utica Mine in Angels Camp and during the next few years acquired other quartz mines in the vicinity which were operated by this group as the Utica Mining Company. A contract was made in 1888 by and between the latter and the Union Water Company providing for delivery of water to the Utica properties which were operated by water power and in 1890 it purchased all of the stock of the Union Water Company whose entire properties, after the termination of its corporate existence, were transferred to the Utica Mining Company, which has continued in the ownership and operation thereof to the present time. In 1898, the company built the Murphys Power Plant, for the generation of hydro-electric

power, at a point above the Town of Murphys where the main canal discharges into Angels Creek. Thereafter, in 1918, the Utica Mine was closed down and has so remained ever since. In 1920, the company installed another generating station called the Angels Power Plant, located on Angels Creek at Angels Camp.

Water is collected from the North Fork of the Stanislaus River and certain of its tributaries and stored in Silver Valley, Utica and Union Reservoirs, located in Alpine County and having a combined storage capacity of 9,000 acre feet. From these reservoirs, water is released into the natural stream channels, from which it is later picked up and diverted into the Utica Conduit some twenty-five miles below the reservoirs, at which point the company claims a water right to eighty-eight second feet of water. The Utica Conduit conveys the water approximately twenty-three miles to the Murphys Power Plant, below which the various distribution ditches for all other service take out. There are two small regulating reservoirs, the Ross and Pipe Reservoirs of a total capacity of approximately eighty-two acre feet, located on the ditch supplying Angels Camp. From the Pipe Reservoir, four pipe lines lead to Angels Camp for the municipal and domestic supply and the generation of power at the Angels Power Plant, which discharge into the natural channel of Angels Creek at an elevation below any of the area served by the company with water. The company also has certain rights to appropriate waters from the natural flow of Angels and Coyote Creeks but, as these streams produce very little water after the month of June, each year the additional water supply is of little practicable value. Electric energy is also distributed by the company throughout the area for domestic, agricultural and industrial purposes.

In 1926, there were 134 consumers supplied with water for domestic, irrigation and mining purposes outside of the municipal system in Angels Camp which supplied approximately 314 consumers. The rates in effect for ditch service for irrigation and mining purposes are 20 cents per miner's inch day of twenty-four hours above Pipe Reservoir and 15 cents per inch below. The miner's inch being equivalent to 1/40 of a cubic foot per second, these charges for all practicable purposes are equivalent to \$4.00 and \$3.00, respectively, per acre foot. Rates for domestic service outside of Angels Camp range from \$1.00 to \$3.00 per month, according to the use of water. These rates have been in effect for a great many years and were never established by the Railroad Commission.

Shortly after this complaint was filed, defendants herein made formal petition to the Commission in Application No. 13180 requesting authority to discontinue all service of water for irrigation, mining and domestic purposes, with the exception of the water furnished to the Town of Angels Camp. By stipulation, it was agreed by all interested parties that this matter be combined with said Application No. 13180 for hearing only and that all evidence so received be considered in either proceeding in so far as germane.

The matters herein complained of have been before the Commission informally for the last several years. Efforts to settle the complaints without formal proceedings proved of no avail, whereupon this complaint was filed by the water users, pending which the utility agreed to continue irrigation service upon an adopted temporary delivery schedule until final determination by the Commission.

In connection with the status of this water system as a public utility, counsel for defendants has stated that said defendants will not resist a finding by this Commission that the water service now under review is impressed with a public servitude. In view of the fact that this matter is discussed in some detail in the decision in the above mentioned Application No. 13180, it will be unnecessary in this proceeding to go further than to state that both the domestic and irrigation services of this company are unquestionably public utility in character.

The evidence shows that irrigation water and, in many cases, also domestic water has been supplied at one time or another over a period of many years to various ranches and houses in the vicinity and territory intervening roughly between Angels Camp, Murphys and Carson Hill. Service to all of these lands has not been continuous. At present, about 400 acres are being served water for irrigation purposes, according to available records which are not fully complete. The evidence, however, does show that in the past a considerably greater acreage has been served than is now receiving water from the company.

The defendants are also in the business of generating and distributing electricity and, as they are more favorably inclined to this service, they have consistently pursued for many years the policy of discouraging the use of water for irrigation and domestic use outside of Angels Camp for the obvious reason of diverting such waters for the generation of power during the summer months when the small storage capacity of the reservoirs necessarily results in a curtailment of power output. Although all water is first used at Murphys Power Plant for generating purposes, yet the Angels Power Plant is so located

at the extreme lower end of the system that water run through Angels Power Plant cannot thereafter be used for gravity irrigation purposes by the present consumers who all reside at a higher elevation. This fixed policy on the part of defendants of discriminating against irrigation use not only has resulted frequently in loss of crops by many consumers but also has prevented any extensive or permanent development of the agricultural industry in the area served.

Although defendants have for the past several years generally and arbitrarily refused to supply new consumers with water for irrigation purposes or to permit old consumers to increase their acreage to any substantial extent, yet in numerous instances during the past two years they have extended service to new consumers for mining purposes and have also recently given service to a limited extent to the new tubercular sanatorium at Murphys, erected jointly by the Counties of San Joaquin and Calaveras. While it is not intended to imply that the extension of service to these new consumers is improper or that they are not entitled to receive water from this utility, yet, in the light of concurrent refusal to supply further irrigation service, such action has resulted in unfair discrimination against other consumers and has created no small amount of dissatisfaction among the users of water for irrigation and those who would like to receive irrigation service.

The utility has taken quite a determined stand to discontinue service to one consumer who for several years has received water from one of the company's ditches from which he has pumped the water several hundred feet in elevation by means of a hydraulic ram for irrigation use upon his hillside ranch. The company claims that this consumer did not apply for water in the regular manner but installed the ram without its knowledge or

consent and used water for one or more seasons before the service was discovered. The company further claims that it has never held itself out to deliver water for water power purposes and that the use of a ram for pumping water is very wasteful, beneficially delivering only a small part of the water necessary to operate it. The claims of the defendants are not supported by the evidence. Water is even now being delivered for water power purposes on the Adams' ranch. In addition to this, in the early days of mining a large part of the water was used for water power generally throughout the system; in fact the Utica Mine itself for years was run entirely by water power. This particular consumer has been receiving water for ten years last past, for which the utility has sent bills and received payment. The Commission will not permit discontinuance or further interference with service to this consumer; to hold otherwise would without proper reason result in irreparable financial loss to the consumer and the ruination of his entire orchard. This service shall be continued to this consumer for use by him as in the past, it being understood that payment should be based upon the total gross amount of water delivered and that the spilled water from the operation of the ram also belongs to said consumer and may be used or disposed of by him in any manner he may see fit.

The testimony indicates that practically all of the consumers do not receive as much water now as in the past, although the utility claims that its records show to the contrary. However, as shown in the decision in Application No. 13180, the computations used by the company in estimating the quantities of deliveries are not based upon accurate measurements and are therefore mere approximations and not dependable. During the

past several seasons, the utility admittedly has arbitrarily limited and restricted deliveries to a schedule based upon its estimated deliveries in the past. This has resulted in many consumers getting an insufficient "head" of water for economic irrigation of their lands. Many have not received the amount of water which they have received in the past and which is required for proper irrigation and, therefore, have been forced to reduce their acreages or lose their crops by inability to properly mature them through lack of water.

Defendants have contended that many of the consumers now supplied with water for irrigation purposes are not legitimately entitled to such service and have not the status of consumers. The reasons for such claims are somewhat obscure and it is difficult to reconcile such contention with the evidence. All persons residing within the service area of a public utility are entitled by legal right to service upon application therefor, without discrimination, to the reasonable extent of the utility's facilities, providing that extension of such new service will not unduly prejudice the rights of existing consumers to continued service. No authority was ever requested by this utility, nor granted by the Railroad Commission, permitting the refusal of further public utility irrigation service to new applicants therefor or limiting the service to any particular group of users. On the contrary, defendants have arbitrarily and without legal authority refused to supply new applicants with water for irrigation purposes and have in devious manners curtailed and restricted deliveries to regular water users. The result has been a gradual diminution of the gross amount of water supplied for irrigation purposes with a consequent saving of water available for the generation of power at the Angels Power Plant.

The evidence shows that the amount of water hereto-

fore devoted by this utility to agricultural irrigation purposes has been arbitrarily and unreasonably restricted and diminished to such an extent that economical and efficient crop-raising is practically impossible. The evidence further shows that all present water users, as well as any and all persons residing within the service area of this utility, are rightfully entitled to irrigation water service from this utility and to deliveries in such dependable quantities and at such times as in the judgment of said users is reasonably necessary to satisfy their individual requirements.

The record in this case shows that there is ample water available on this system to properly supply the irrigation needs of an area in excess of the area now served without interfering with the more recent demands of the Angels Power Plant. Until such time as defendants shall have made other arrangements acceptable to this Commission for the distribution of water for irrigation purposes in the territory now served by them, said defendants will be expected and required by this Commission to supply a reasonable and adequate water service to all present water users and any others properly entitled thereto.

The Commission has no objection to the adoption and use of a rotation system of delivering water for irrigation purposes; such a system is in fact recommended, provided, however, that in so doing the consumers are able to receive the waters for which they apply in the quantities and at the times required.

I recommend the following form of Order:

O R D E R

Complaint as entitled above having been filed with this Commission, public hearings having been held thereon, the matter

having been submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that Hobart Estate Company, a corporation, and Emma Rose, owners as tenants in common of certain public utility properties operated under the fictitious firm name and style of Utica Mining Company, be and they are hereby ordered and directed as follows:

1. To supply hereafter without discrimination to any and all applicants for water service for any and all purposes whatsoever, within the area dedicated to water service by this utility, water in such quantities and at such times as said consumers may designate.
2. To file with this Commission, within thirty (30) days from the date of this Order, rules and regulations governing their relations with their consumers, said rules and regulations to become effective upon acceptance for filing by this Commission.
3. To file with this Commission, on or before the first day of June of each year, a complete copy of the schedule of deliveries of irrigation water to their consumers for the ensuing irrigation season.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of April, 1928.

Leon Whitell

Clarence

Emmett

John D. ...

M. A. ...
Commissioners.