

Decision No. 21362

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MAX MERRIMAN,
Complainant,

vs.

GEORGE A. HENSLEY, ELMER E. ALLEN,
and the MONTA VISTA WATER SUPPLY
SYSTEM,
Defendants.

ORIGINAL

Case No.2637

In the Matter of the Investigation on
the Commission's own motion of the
reasonableness of the rates, charges,
practices, contracts, rules, regulations,
schedules and conditions of service, or
any of them, of George A. Hensley,
Elmer E. Allen, and the Monta Vista
Water Supply System, operating the water
system in the vicinity of Monta Vista,
Santa Clara County, California.

Case No.2680

In the Matter of the Investigation upon the
Commission's own motion into the rates,
charges, practices, contracts, rules,
regulations, schedules, conditions of
service, or any of them, of Monta Vista
Estates, Inc., a Delaware corporation,
operating a water system in the vicinity
of Monta Vista, Santa Clara County,
California.

Case No.2691

S. Schwartz, for the Complainant, and appearing as
a consumer of the Monta Vista Water Supply System.
George A. Hensley, in propria persona, and for
Elmer E. Allen and the Monta Vista Water Supply
System, Defendants and Respondents.
Christopher M. Jenks, appearing as amicus curiae.

BY THE COMMISSION -

O P I N I O N

In these proceedings, Case No.2637 was filed by Max
Merriman against George A. Hensley and Elmer E. Allen and the
Monta Vista Water Supply System. This system supplies water for
domestic purposes to residents on certain tracks of land known as
Monta Vista Estates at Monta Vista, Santa Clara County. The
Commission subsequently instituted two investigations on its own

motion, Case No.2680 filed April 11, 1929, and Case No.2691 filed May 6, 1929, in order to include all the operations of defendants within the scope of the proceeding and to include as defendants the Monta Vista Estates, a corporation not named in the original complaint. The complaint of Mr. Merriman alleges that George A. Hensley and Elmer E. Allen operate a water system upon which the residents of Monta Vista Estates are wholly dependent for water service and that the service rendered is inadequate and insufficient. No answers to this complaint were filed by any of the defendants.

A public hearing was held before Examiner Handford at Cupertino, at which hearing the three matters were, by stipulation, consolidated for hearing and decision.

The territory served by the water system consists of a series of suburban subdivisions at Monte Vista in Santa Clara County, comprising a total area of 440 acres. Water is obtained from a shallow well in Stevens Creek and is pumped directly into the supply mains which consist of approximately 48,000 feet of pipe ranging from four inches to two inches in diameter. Storage consists of a 50,000 gallon wooden tank. About 120 consumers are served at present. The rates in effect provide for a monthly charge of \$2.00 for metered service which entitles the consumer to 1100 cubic feet of water, with a charge of 15¢ per 100 cubic feet for additional quantities. About one-half of the consumers are metered, the balance being served on a flat rate charge that varies from \$1.50 to \$2.00 per month, depending upon the size of the premises. The rates now charged were fixed by the plant operators and have never been established by public authority. No certificate of public convenience and necessity has ever been applied for by this utility nor granted by the Commission.

The main issues involved in these proceedings are the complaint of poor service and the question of the ownership of the system and responsibility for its future operations.

The testimony shows that the original water system was installed to provide irrigation service for a portion of the Doyle Ranch. This ranch was purchased about the year 1916 by defendant Hensley in behalf of certain real estate operators for subdivision purposes. In order to provide domestic water service for residents of the tract, the old irrigation system was extended to meet the demands of the purchasers of lands in the tract. The plant was first operated by Hensley under the fictitious name of Monta Vista Water Company. A corporation, called the Peninsular Land and Investment Company, with a capital stock of \$10,000, was thereafter formed to handle the land operations. It was found that the capital stock would have to be increased in order to enable the company to issue bonds in the amount of \$225,000 so in order to avoid the delay in obtaining permission to increase the stock, a new California corporation was formed in 1917 called the Santa Clara Valley Land Company, to which all the assets of the Peninsular Company were turned over, including the existing water system. This company issued bonds on its property for \$225,000, of which some \$15,000 was set aside to provide additional water facilities for the property when subdivided. In 1924, the Monta Vista Estate Company, a Delaware corporation, was formed, which company paid off the indebtedness of the Santa Clara Valley Land Company and acquired the property and placed a new incumbrance of \$200,000 upon its holdings. This loan was obtained through William R. Staats Company of San Francisco, for which the Bank of Italy was trustee. None of these transactions were approved or authorized by the Railroad Commission.

In 1928, in order to make possible the transfer of a bonded winery property located on the Doyle Ranch, all of the capital stock of the Santa Clara Valley Land Company was transferred to Chester Damico, a resident of Monta Vista and a consumer of the system, who still retains the stock. The Santa Clara Valley Land Company failed to pay the State franchise tax for last year and was for this reason suspended on March 2, 1929. The company, however,

be restored to again function legally upon payment of the delin -
quent tax and the statutory penalty.

The evidence shows that the water system was formerly operated by Hensley individually but that in 1924 it was leased without authority from this Commission by Santa Clara Valley Land Company to Elmer E. Allen who has operated the system to the present time. The lease provided that Allen make certain betterments to the plant, such as the installation of a new pump and the extension of certain tunnels from the well and that he provide adequate water service to the consumers, for which Allen was permitted to retain all of the collections for water service rendered during the term of the lease. The lease also provided that it would terminate in 1932, at which time the entire water system would revert to Santa Clara/^{Valley} Land Company.

The testimony indicates that for many years last past water has been continuously sold to any and all residents of the tract upon application for service at fixed charges, which clearly establishes the operations of this plant as public utility in character and therefore subject to the jurisdiction of the Railroad Commission. No testimony was presented or claims made that the system was not in fact a public utility or that the owners or operators ever at any time intended or contemplated otherwise.

The record in this proceeding clearly shows that the dedication of this water service to the public occurred under the ownership of the system and its operation by the Santa Clara Valley Land Company whose responsibility for the continuation of service and for the improvement of the existing inadequate water supply and distribution facilities still exists. The various subsequent transfers and leases of the water system having all been made without the necessary authority of the Railroad Commission are therefore void under the provisions of the Public Utilities Act.

In connection with the complaint of inadequate service, consumers testified to the effect that interruptions in service were frequent, that leaks in the mains were not repaired and that

the supply was insufficient. The testimony further shows that the poor service is largely the result of the small sized mains, that some of the pipe lines are entirely worn out and should be replaced at once and that the plant has had practically no supervision at all. Meters should be installed on all services which will prevent the present waste of water on the flat rate services.

The testimony shows that the lack of supervision on the part of the owners of this utility in protecting their interests and water rights has resulted in certain parties intercepting the waters in the sub-surface flow on the stream from which the water supply is obtained. This adverse user has already seriously depleted the quantity available for the consumers to such an extent that during the summer months the utility has been forced to purchase water from outside sources. It is suggested that the Santa Clara Valley Land Company take immediate steps to protect its water supply against hostile appropriation and diversion.

Free water has been, and is now being furnished to five consumers on the system. One of these consumers received free water in consideration for the right to tunnel under his property in developing water, which situation appears to have been the result of negotiations between private parties prior to the dedication of the service to the public and, for this reason, the existing arrangement will not be disturbed. The other four users, however, have been given water through friendship and to aid in the sale of lands subsequent to the dedication of service to the public. Such practices result in an unfair discrimination against those consumers who must pay the regular rates. Hereafter, these four consumers shall be charged for all water used at the lawfully established schedule of rates.

ORDER

Complaint as entitled above having been filed with this Commission and investigations on the Commission's own motion having

been instituted in connection therewith, a public hearing having been held thereon, the matters having been duly submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that Santa Clara Valley Land Company, a corporation, be and it is hereby authorized and directed to file with the Railroad Commission, within thirty (30) days from the date of this Order, the following schedule of rates for all water delivered to its consumers residing in the Monta Vista Estates, Santa Clara County, on and after the Tenth day of July, 1929:

FLAT RATES

\$ 2.00 per month for domestic use.

METER RATES

Minimum Monthly Charges:

5/8 inch meter	\$ 2.00
3/4 inch meter	2.25
1 inch meter	3.00
1 1/2 inch meter	4.50
2 inch meter	6.00
3 inch meter	14.00
4 inch meter	25.00

Each of the foregoing "Minimum Monthly Charges" will entitle the consumer to the quantity of water which that minimum monthly charge will purchase at the following monthly quantity rates.

Monthly Quantity Rates:

First 1100 cubic feet, or less	\$ 2.00
Over 1100 cubic feet, per 100 cubic feet	.15

IT IS HEREBY FURTHER ORDERED that Santa Clara Valley Land Company, within thirty (30) days from the date of this Order, be and it is hereby ordered and directed as follows:

1. To file with the Railroad Commission rules and regulations governing its relations with its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

2. To file, subject to the approval of this Commission, a map or a statement setting forth or describing its service area.

3. To have meters installed on all active service connections on or before one year from the date of this Order.

4. To file with this Commission, subject to its approval, detailed plans and specifications for improvement and repair of its storage tank and distribution mains, said improvements to be installed and in operation in a manner satisfactory to this Commission within six months from the date of this Order.

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 8th day of

July, 1929.

Paul S. Lunt

W. A. Seavey

W. A. Seavey
COMMISSIONERS.