

ORIGINAL

Decision No. 22948

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

FRED W. HECKER, CARL LIND,
OLIVER NEIGHBOURS, W.E. FITCH,
R.G. DERNY and E.J. HEDGE,

Complainants,

vs.

Case No. 2855.

LOS VERJELS LAND AND WATER COMPANY,

Defendant.

Erling S. Noroy, for Complainants.

Evan J. Hughes, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainants herein seek an order from the Railroad Commission declaring that defendant, as a public utility water system, is under the duty of supplying water for household use to its consumers and further request that rates be fixed therefor. Defendant in its answer denies that its water system has been dedicated to supply water for domestic and household purposes and alleges that its sole obligation as a public utility is the furnishing and delivery of water for irrigation purposes.

Upon the issues thus joined, a public hearing was held before Examiner Williams at Marysville, at which time the matter was submitted and now is ready for decision.

Complainants base their claim of right to domestic

water upon alleged verbal promises of defendant made in 1915 in connection with vendor's contracts for the sale of land in the Los Verjels district northeast of Marysville. A copy of the contract executed with complainant Hecker in March, 1915, was introduced (Exhibit No. 1) and it was stipulated that all other sales contracts were of similar form. This contract contained the following provision:

"and, with said land, as an appurtenance the right to the use of water for irrigation to the extent of one miner's inch to each six acres, the charge therefor to be paid by the purchaser, after the expiration of the first five years, aforesaid, to be such as may be agreed upon or established by the State Railroad Commission of the State of California, but in no case to exceed \$36.50 per miner's inch."

Defendant is a corporation possessing, among other powers, the power to sell water for irrigation or domestic purposes. Rates for irrigation use were established by this Commission by Decision No. 13482, issued April 25, 1924, in Application No. 9621, and same have been and still are in effect. No rate for domestic use has ever been so established or filed with this Commission.

Complainants by the testimony of F.W. Hecker, Carl Lind and E.J. Hedge sought to show that the vendor company, represented by its President, F.M. Turner, in 1915 agreed verbally to supply domestic water which was to be taken from the company's ditches at the pleasure of the consumers. There is no testimony that the water so taken was used for domestic purposes except by Hecker, who testified that he had used it for watering stock and chickens, for garden irrigation and for household use other than for drinking. Other witnesses testified that they had watered stock at the ditch or had used seepage water from a ravine. It was their

testimony that the ditch was always supplied with a flow of water until December, 1929, when defendant closed the gates at the head of the ditch. This action on the part of the company is the alleged basis for the request that the gates be opened during the winter to permit a continuous flow of water for the domestic uses as set out above. Both Hecker and Lind were foremen of the system at different times and each testified that a small head of water was kept flowing in the ditch during the non-irrigating season. Hecker further testified that he had constructed a pipe line 1,100 feet long to transport water from the ditch to his home where he maintained yard and barn taps and that this pipe line was authorized by defendant in writing in 1923 for "the proper cultivation of your orchard or for domestic purposes" (Exhibit No. 4). This letter constituted authority for a right of way across the lands of defendant, for which right of way Hecker had made application but without reference to the use to which he intended to put the water.

It was not disputed by defendant that its fifteen consumers, or most of them, used the ditch water to water stock or that ordinarily there was a flow of water in the ditch during the entire year except for a few short periods. Nearly all of the stock-watering was at the main ditch but only Hecker had installed a pipe line. F.M. Turner, President of defendant corporation, testified that it had always been the practice of the company to keep a flow of water in the ditch from its reservoir on Dry Creek after the demands for irrigation had ceased until such time as the winter rains commenced, that this flow was continued for the purpose of freely supplying water for

stock on grazing lands as an accommodation and that, when the rains started each year, the headgates on Dry Creek were closed to protect the ditch from flood damage. Turner further testified that as a result of the winter rains the natural flow from Tennessee Creek provided sufficient water for the users on the ditch after the headgates on Dry Creek were closed for the winter and that it is not necessary to deliver water from the company's reservoir or divert water from Dry Creek. He denied that in selling the lands under the system the company had ever promised purchasers any other supply of water than for irrigation purposes.

The record does not show that there was any unequivocal dedication of the water of defendant for any purpose other than for irrigation. The contracts themselves and also the open ditch system for the delivery of the water indicates that irrigation use only was intended on the system. It is further shown that animals have access to the ditch and that pollution is probable therefrom. Only Hecker contended that it could be used for all "domestic purposes" except drinking. Other witnesses have dug wells for domestic supply but Hecker testified that the rock under his land prevented him from digging more than a few feet. The entire record fails to disclose either a contract right to domestic use or dedication by use as no payment was ever made by any user except for irrigation purposes at the rates lawfully on file with the Railroad Commission. The parole testimony offered by complainants cannot be considered as affecting the contracts entered into by and between the company and the purchasers of land. The record shows that such domestic use as has been rendered

has been gratuitous and delivered as an accommodation only and that the system is under no servitude except for irrigation purposes. The complaint therefore will be dismissed.

O R D E R

The above entitled complaint of Fred W. Hecker, et al., against Los Verjels Land and Water Company, a corporation, having been heard and duly submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the complaint herein be and the same is hereby dismissed.

Dated at San Francisco, California, this 7th day of October, 1930.

Al. J. ...
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Commissioners.