

Decision No. 24616

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

G.W. Britton, Margaret Hamilton,
Mary McMartin, Ted Eastman,
Ed Claypool, Charles Meek and
Harry Meek,

Complainants,

vs.

Chas. Weitz,

Defendant.

Case No. 3186.

In the Matter of the Investigation on
the Commission's own motion into the
operations, contracts, practices,
rules, regulations, classifications,
reasonableness of rates and service,
or any of them, of Chas. Weitz in the
distribution and sale of water in and
in the vicinity of Mountain View,
California.

Case No. 3194.

ORIGINAL

E.L. Maxwell, for Complainants.
Charles T. Benjamin, for Defendant.

BY THE COMMISSION:

O P I N I O N

Case No. 3186 is a complaint filed by seven residents of the Hamwood Tract near the town of Mountain View, Santa Clara County, in which matter it is alleged that the defendant Charles Weitz is a rancher who owns and operates a water system that has furnished water to complainants for periods varying from two to eleven years for both domestic and irrigation purposes. The rate for domestic water, the complaint states, is one dollar and fifty cents (\$1.50) per month and for irrigation water one dollar and fifty cents (\$1.50)

per hour full flow of the pump. It is further alleged that defendant proposes to raise the domestic rate to two dollars and fifty cents (\$2.50) per month; that defendant has sufficient water to supply 100 or more families with water and is operating as a public utility; for which reasons the Commission is asked to fix a reasonable rate for water service and direct the continuation of service for the future.

As the above complaint requested the establishment of rates by the Commission and the number of signatures thereto was less than the twenty-five required by Section 60 of the Public Utilities Act in matters involving the reasonableness of rates or charges, under such circumstances the Commission on its own motion instituted the above entitled investigation, Case No. 3194, into the operations of the Charles Weitz water system.

In his answer to Case No. 3186, defendant admits the allegations made in Paragraphs 1 and 5 of said complaint in reference to the service of water and domestic rates of one dollar and a half per month and irrigation rates of one dollar and a half per hour; admits that he owns and operates a well but denies that he has been furnishing water for irrigation and/or domestic purposes to all persons named in the complaint, but alleges that he has furnished surplus water only to said parties. The answer specifically denies that water has been furnished to complainants Ed Claypool, Charles Meek and Harry Meek and denies that defendant proposed to raise rates to two dollars and a half or that said rate is unreasonable and further alleges that defendant has furnished water to complainants named who are his neighbors as a matter of accommodation as provided by and in Section 1 of "Act for Regulation of Water Companies." The Commission is therefore asked to dismiss Case

No. 3186.

A public hearing was held in these proceedings before Examiner Johnson at Mountain View, both matters being consolidated for hearing and decision.

Counsel for defendant entered a general objection to the jurisdiction of the Commission in both of these cases on the ground that the water operations of Mr. Weitz were private in nature and therefore not subject to its regulation or control.

The water system involved herein obtains its supply from a 10-inch drilled well, 195 feet deep, located on the four-acre ranch of defendant Weitz in the Hamwood Tract, near the corner of Evandale and Whisman Roads about one mile southeasterly of Mountain View. The well was drilled in 1921 and was equipped at first with a centrifugal pump with the original purpose and intent of obtaining water for his household use and to irrigate berries and other crops on his own land. Upon request of two of his neighbors, Mrs. McMartin and Mr. O'Grady, former husband of Mrs. Margaret Hamilton, irrigation water was furnished to them at the rate of one dollar and fifty cents (\$1.50) per hour's run of the pump. On November 1, 1923, Mr. Weitz leased his property to a Japanese and was absent therefrom until November 1, 1927. Complainants testified that water service of a similar nature was supplied to them by the lessee during the above period. After his return, Mr. Weitz furnished domestic water service to certain of his neighbors in addition to water supplied for irrigation use. In all cases, defendant herein installed no service pipes or conduits for the delivery of water, the consumers having installed these facilities to the premises of defendant at their own expense. The irrigation pipe was portable, sheet-iron surface casing with the exception of a

small section of concrete pipe installed under the roadway by Mrs. Hamilton. The domestic lines were of 3/4-inch standard screw pipe. These service relations continued unchanged until September, 1931, when Mr. Weitz informed his neighbors that he would thereafter charge two dollars and a half (\$2.50) per month flat rate for domestic service; no change in the agricultural rate was intimated but, however, a prepared form of contract was presented to said consumers for signature. This contract is as follows:

CONTRACT

This agreement, made the _____ day of _____, 193____, between Chas. Weitz, of Hamwood Subdivision, near Mountain View, California, First Party, and _____, of the same place, Second Party, Witnesseth:

That the said First Party, in consideration of the covenants on the part of said Second Party, hereinafter contained, hereby covenants, with the said Second Party, that the said First Party will deliver to the said Second Party a portion of the surplus water from the well of First Party, to be used for domestic purposes only on the property of the Second Party. It is mutually agreed the 'Surplus Water' as mentioned means water from said well over and above the amount required for other uses by First Party.

And the said Second Party, in consideration of the said covenants on the part of said First Party, hereinbefore contained, agrees to and with the said First Party, that the said Second Party will pay to the said First Party the sum of \$2.50 per month, in advance, for said water, for domestic purposes only.

It is further mutually agreed that this contract may be terminated by either party upon ten (10) days written notice to the other party.

It is further mutually agreed that First Party may at any time, upon reasonable (10 days) written notice, terminate this contract, should it be impossible or impracticable for any reason to continue the water service.

First Party

Dated _____

Second Party"

This contract the consumers refused to sign.

At present there are four domestic water users receiving service under the one-dollar-and-a-half per month rate pending the outcome of this proceeding. There are no irrigation consumers now taking water as the season for this service has not as yet arrived. However, set out below is a statement showing the consumers served since the beginning of water deliveries as far as such information could be obtained from the testimony presented. Defendant kept no records prior to the leasing of his land and subsequent thereto kept only a partial record of payments by consumers and no accounts are available for the operations during the period the service was rendered by the Japanese tenant.

Year	:Number of: :Consumers: :Domestic	:Number of: :Consumers: :Irrigation:	: :Revenues :Domestic	: :Irrigation: :Revenues	: :Total :Revenues
1922	None	2	None	\$ 200.00	\$ 200.00
Jan. 1, 1923 to Nov. 1, 1923	None	2	-	200.00	200.00
Nov. 1, 1927 to Dec. 31, 1927	4	-	\$ 8.00	-	8.00
1928	6	7	72.00	417.45	489.45
1929	3	6	36.00	661.40	697.40
1930	3	3	46.50	343.70	390.20
1931	3	1	54.00	19.35	73.35
		Total	\$216.50	\$1,841.90	\$2,058.40

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As shown above, the annual revenues received from the past three years' operations, 1929, 1930 and 1931, were \$697.40, \$390.20 and \$73.35, respectively, or an average of \$387.00 per annum for the three-year period. The evidence shows that Mr. Weitz' operation ex-

penses as he recorded them, consisting principally of electric power costs for pumping, averaged \$326 for the years 1929 to 1931, inclusive, without allowance for depreciation.

Mr. Weitz testified that the water level in his well has been dropping at an alarming rate, adding very considerably to the cost of pumping. Due to the increased expenses of operation and also to the fact that constantly larger quantities of water were being used by Mr. Weitz' neighbors for domestic use on an unmeasured basis, the defendant attempted to obtain some relief by increasing his domestic rate and circulated the contract referred to above. Mr. Weitz further testified that he desired to be in a position to discontinue the furnishing of water upon notice to the present consumers so that he could devote the water from his well to the development of his own property which adjoins the United States Naval Air Base now under construction.

From a consideration of the evidence presented in these proceedings, it is clear that at the beginning of service to the original consumers defendant Weitz had no knowledge that certain public utility liabilities and obligations could be incurred through the rendering of such service and apparently did not become aware of the possibility that such water deliveries might place a servitude upon his water plant until perhaps some time in 1931 when the above mentioned contract was prepared for him by his attorney, also counsel for him in these cases. The consumers supplied by defendant at no time exceeded six for domestic service and seven for irrigation, there being four domestic consumers at present and but one irrigation customer last season. All users are neighbors residing upon adjacent parcels of land either adjoining or immediately across the road from the Weitz premises. All consumers could be embraced within a radius of

less than a quarter of a mile and in no case did the acreage irrigated by any of the consumers exceed two acres.

There has been no conclusive evidence presented in these proceedings which would justify or warrant this Commission in finding that the defendant intended to dedicate his water supply to the public use either in whole or in part. The record quite clearly indicates that the service rendered was more in the nature of an accommodation to neighbors from excess waters available in the well. The testimony shows that no understanding of any kind was ever had with any of the consumers at any time regarding the status of the service to be or being furnished. In view of the fact that under such circumstances and conditions as are presented herein the record should be clear and unequivocal as to the actual intent and overt acts reflecting dedication to support a finding of public utility status, it is evident that no course is open other than to dismiss this complaint and investigation for lack of jurisdiction.

ORDER

Complaint as entitled above having been filed with this Commission and an investigation on the Commission's own motion having been instituted to inquire into the water operations of Chas. Weitz, a public hearing having been held thereon, the matters having been submitted and the Commission being now fully advised in

the premises,

IT IS HEREBY ORDERED that the above entitled proceedings
be and the same are hereby dismissed.

Dated at San Francisco, California, this 21st day
of March, 1932.

C. J. Sawyer
Leon A. ...
M. A. ...
M. B. ...
Frederic G. Stewart
Commissioners.