

Decision No. 103.6

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

MRS. FRANK L. STEELE  
and  
JAMES P. STEELE,  
Complainants,

vs.

H. G. BITTLESTON,  
Defendant.

Case No. 1703.

James P. Steele, for complainants.

Amend and Amend, by F. B. Amend,  
for defendant.

BY THE COMMISSION.

O P I N I O N

The complaint in the above entitled proceeding alleges in effect that defendant is the owner of a well and pumping plant located upon land adjoining the property of complainants; that complainants have received their supply of water for irrigating purposes from defendant's plant for a period of over eight years; and that defendant now refuses to furnish water to complainants except in emergencies. Complainants therefore ask that defendant be compelled to furnish them with water as in the past; that defendant be required to keep his well in a reasonable state of repair; and that the Commission fix the rates to be charged for the service rendered.

Defendant's amended answer to the complaint alleges that service was given only upon solicitation by complainants; that the plant was originally constructed for private uses; that the yield is limited and is not sufficient to furnish an adequate supply for his own use and for complainants; and that the plant has never been operated as a public utility.

A public hearing in this matter was held at Los Angeles before Examiner Williams, briefs have been filed, the matter has been submitted and is now ready for decision.

It appears that in 1912 defendant purchased approximately six acres of land located immediately south of the limits of the City of Los Angeles. At the time of the purchase of this land there was located thereon a well and pumping plant, installed by the former owner for the purpose of supplying water for domestic and irrigation use thereon. In 1914 it became necessary to install a new well and thereafter in 1915, complainants, who owned an adjoining tract, desired to use water, and were permitted to obtain a supply from defendant's plant, being charged therefor at the rate of 60 cents per hour run of the pump.

This use of water was continued by complainants during each year after commencement, but in varying quantities. Only a nominal use of water was made in 1915, 1916 and 1920. During 1920 and 1921 defendant's plant was in poor condition and complainants purchased the greater part of their supply from a pumping plant on the property of John Shindler, and it is questionable if any part of the supply would have been taken from defendant's plant had not the Shindler plant been closed down a part of the time for repairs.

Testimony shows that, including complainants, five different parties have been supplied with water from defendant's plant at various times. Service to these consumers was not in all cases continuous and in one instance at least was furnished only as an emergency measure during repairs to the consumer's own plant.

It is evident that none of those served at different intervals by the Bittleston plant relied upon it for their entire supply, and when the plant was closed for repairs in 1921 no apparent damage resulted as there were other sources of supply available which were used.

Mr. Shindler, whose pumping plant has previously been referred to and is located only a short distance from complainants' property, testified that he is ready and willing to supply them with water. The supply from this plant is greater and much more dependable than the supply from the Bittleston plant, but complainants object to its use upon the ground that they have been unable to obtain a right of way for conducting the water across a tract of land 370 feet wide lying between their property and that of Mr. Shindler. During their use of water from the Shindler plant in 1921 they temporarily used an open flume to cross the intervening strip of land. It appears, however, that the right to conduct the water across this property can be obtained if use is made of a buried pipe, or some other method which will be unobjectionable to the owner, and although this right may not be entirely permanent, it will afford a means of securing the supply in an economical and feasible manner.

It also appears that defendant has in several instances

refused to furnish water to applicants therefor, and it seems that such service as was rendered has been more upon the basis of neighborly accommodation than as a dedication to a public use.

It is plain that complainants have an alternative and more dependable supply available, and that the continuation of the supply from the Bittleston plant is not essential for the irrigation of their land.

O R D E R

Mrs. Frank L. Steele and James P. Steele, having made complaint against H. G. Bittleston, a public hearing having been held thereon, and the matter having been submitted,

It Is Hereby Found as a Fact that complainants have an alternative and more dependable supply of water available than can be secured from the well and pumping plant owned by defendant, and that the continuation of the supply by defendant is not essential for the irrigation of complainants' property.

And basing the order upon the foregoing finding of fact and upon the statements of fact contained in the preceding opinion,

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

Dated at San Francisco, California, this 29th day of March, 1922.

H. W. Bond

Charles H. Bond  
J. H. Bond  
Commissioners.