Decision No. 11097

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Lillian M. Stewart, H. C. Hill, F. M. West and Henry West,

Complainants,

-vs-

G. H. Richardson,

Defendant.

Case No. 1741.

Clyde Bishop and M. B. Wellington, by M. B. Wellington, for Complainants.

Allen & Lyon, by C. R. Allen, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainants herein are engaged in the business of ranching near Fullerton, Orange County, California. They are owners of land adjacent to, or near, a certain ranch owned and operated by defendant, G. H. Richardson. Defendant is the owner of a water system, deriving its supply from a well or wells located upon his land, from which system complainants have obtained water for irrigation purposes, for a period of approximately eight years. Certain complainants have likewise obtained water from said defendant for domestic purposes also for a period of approximately eight years.

In their complaint, these complainants allege that said defendant now refuses to continue such service of water to them upon their premises unless and until they shall sign an agreement with said defendant waiving their right to be supplied with water except at defendant's discretion; that they have refused to sign such an agreement; that by reason of such refusal they have been deprived of the said water by defendant, and that their lands have been, and will be, damaged because of the refusal of defendant to deliver such water.

In his answer, the defendant denies that the Railroad Commission of the State of California possesses jurisdiction to hear and determine this case on the ground that the defendant is not a public utility according to the laws of the State of California; and defendant alleges that he has never furnished to complainants anything but surplus water from his pumping plant, and that the complainants and other persons receiving water from the defendant secured said water upon the understanding that it was only surplus water. The answer admits that there is no other water supply available to said complainants at the present time.

A public hearing in this proceeding was held before Examiner Williams at Fullerton, California. The evidence there adduced showed that defendant is the owner of 45.80 acres of land, planted largely to citrus fruits. When he first began furnishing water to complainants or their predecessors, he had a small pumping plant on his property, producing approximately thirty-five inches of water. Later, he sank a new well, installed more powerful pumps and secured a flow of approximately seventy-five inches. He continued to supply the persons formerly supplied by him, and at various times undertook to

supply other consumers. The evidence showed that approximately ninety acres, in addition to his own 45.80 acres, have been irrigated from this well, and that approximately forty-five acres of this ninety are set out to citrus and other fruits and walnuts. Defendant did not single out favored individuals, but served all who applied, within the area conveniently served by his system. The evidence showed that defendant never refused to sell water as requested until after a difference of opinion with one of the present complainants. It was then that defendant demanded of these consumers that they execute the new and drastic agreement above-mentioned. On their refusal so to do, defendant shut off the water. (At the hearing it was stipulated that service of water should be resumed by defendant pending decision upon the matter by the Commission, payment to be made at the rates charged by defendant just prior to the shutting off of the water.)

It further appeared at the hearing that, with the exception of the case of one consumer (not one of the complainants herein), no other present source of water supply exists or is available to these persons. Their use of water for irrigation has, in most instances, averaged once a month per consumer during the irrigation season, and the evidence showed that defendant's pump has not been run more than one-half of the daylight hours, even during the heaviest irrigation period. While defendant declared that he had only held himself out to sell water to these persons when he did not himself need it, he, nevertheless, admitted upon cross-examination that, other than by making them wait their turn, he never refused to supply any of the complainants with irrigation water until the occasion when he shut off the water completely. Defendant makes no claim that he no longer possesses more water than is needed for his

own ranch, and therefore, assuming that he held himself out to sell only "surplus water," he still possesses a surplus more than adequate to supply the present consumers.

It therefore appears clear to the Commission that the defendant is, and has, for sometime past, been operating a water system which must be classed as a public utility. We have carefully considered the authorities cited by counsel for the defendant, and have arrived at the conclusion that the present case is clearly distinguishable from them. In the case of Story v. Richardson, 61 Cal. Decs. 785, the plant was built "primarily and preeminently" for supplying tenants of plaintiff's own building. In the present case it would seem that defendant, while already serving some consumers, installed a plant considerably larger than he would need for his own ranch, and that thereafter he undertook to supply other consumers. We think this is clear evidence of intent to serve these consumers, and a dedication of plant and water to this public use, at least, so long as defendant should possess a surplus of water over and above his own needs, though we express no opinion at this time upon this latter point.

In arriving at this conclusion, we have sought to apply to the present situation the test laid down by the Supreme Court of this State in the case of Van Hoosear v. Railroad Commission, 184 Cal. 553; 194 Pac. 1003, in which the court, speaking through Mr. Justice Olney, said (p. 554):

> "The test to be applied is whether or not the petitioner held himself out, expressly or impliedly, as engaged in the business of supplying water to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served by his system as contradistinguished from his holding himself out as serving or ready to serve only particular individuals, either as a matter of accommodation or for other reasons peculiar and particular to them.

(Thayer v. California Dev. Co., 164 Cal. 117 (128 Pac. 21); Pinney etc. Co. v. Los Angeles Gas etc. Co., 168 Cal. 12 (Am. Cas. 1915D,471, L.R.A. 1915C, 282 (141 Pac. 620); Associated Pipe Line Co. v. Railroad Commission, 176 Cal. 518, (L.R.A. 1918C, 849 (169 Pac. 62); Allen v. Railroad Commission, 179 Cal. 68 (8 A.L.R. 249 (175 Pac. 466))."

We have also considered the discussion relative to general policy to which the Supreme Court gave expression in the case of Van Hoosear v. Railroad Commission, supra, and have arrived at the conclusion that, as in that case, the particular circumstances here involved make it impossible for us to conclude that the plant in question is other than a public utility.

At the hearing, evidence was adduced showing the original cost of defendant's plant, the cost of operation thereof and the revenue received. From this evidence it appears that defendant has received from the amounts charged by him a fair and reasonable return upon the value of his plant and services.

The order will, therefore, provide for the continuance of service at the rate heretofore charged, which said rate shall be filed with the Commission, and shall constitute the legal rate until changed in the manner provided by law.

O R D E R

Complaint having been made to the Railroad Commission, as entitled above, a public hearing having been held, and the matter having been submitted and being now ready for decision,

IT IS HEREBY ORDERED, that G. H. Richardson, the

defendant herein, be, and he is hereby, directed to continue water service to the complainants named herein, and to such other consumers as he has heretofore served with water, either for irrigation or domestic purposes.

IT IS FURTHER ORDERED, that the said G. H. Richardson file with this Commission forthwith the schedule of rates formerly in effect for said water service, as a present schedule of rates for such service.

Dated at San Francisco, California, this 11th day of October, 1922.

Commissioners.