

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
the BROOKDALE LAND COMPANY, a corpo-  
ration, for an order authorizing  
increase and adjustment of rates  
for the sale of water in Brookdale,  
Santa Cruz County, California.

Application No. 1477.

Decision No. 2606

H. L. Breed for applicant.

DEVLIN, Commissioner.

O P I N I O N

This is an application of the Brookdale Land Company, a corporation, for authority to increase the rates to be charged for water, and establishing rules and regulations to govern the distribution and sale of water to the inhabitants of Brookdale, Santa Cruz County, for domestic, irrigation and fire protection purposes. The application alleges in effect that the present rates charged for water are inadequate and insufficient to provide for operating expenses, depreciation and interest on investment in the system of applicant.

Applicant asks that the following rates be established:

- (1) \$9.00 annually to be paid in advance by each consumer receiving fire protection in addition to domestic service.
- (2) \$6.00 annually to be paid in advance by each consumer who does not receive fire protection.
- (5) In addition to the above charges, the following monthly rates for water furnished:

(a) Metered Service—\$.75 for first 5000 gallons or less. \$.15 for each 1000 gallons or fraction thereof in excess of 5000 gallons up to 15,000 gallons.

(b) Flat Rates—\$.75 per month per connection.

Brookdale is a summer resort in the Santa Cruz mountains and at present consists of approximately 200 summer cottages, one store, two hotels, a postoffice, a fish hatchery, and a railroad station.

In 1899 streets were laid out and lots placed on sale by Sarah A. Grover and Catherine F. Logan, predecessors in interest of the Brookdale Land Company, and the owners proceeded to place the lots on the market. A crudely equipped water system was constructed by the owners of the land company to take water from Clear Creek, which water was delivered free to the early settlers or purchasers of land. The early purchasers of lots were by their deeds granted perpetual use of the water system at that time in operation. The first system established consisted of a small diverting dam in Clear Creek, and a small quantity of pipe which conducted the water to a tank of about two thousand gallons capacity. The language of the deeds to six of the first purchasers, in so far as it refers to water is as follows:

"It is also hereby granted to said second party, the right to take and use free of charge, such of the water of Clear Creek as may be necessary for household or stable purposes and for irrigating ground and lawn on such premises only, and for that purpose may tap any reservoir or tank of said party or the first part at their own expense and take water therefrom for said purposes."

The next twenty conveyances are identical with the first six excepting that in addition the right to tap mains is granted.

These conveyances and the water privileges thereunder clearly were applicable to the system as it then existed. That

system, which is hereinafter referred to as the "old system", is now practically obsolete, and has never become a part of applicant's public utility property, and the contracts for the free water under the terms of the deeds are not involved nor accepted as an obligation on the present system for which the fixing of rates is requested, as the present system, hereinafter designated the "utility system", is obligated to make delivery of water to the consumers.

In 1900, the old system being found inadequate, a new system was constructed and a charge of \$3.00 per year established. This was the initiation of the present utility system.

The applicant, Brookdale Land Company, was incorporated on or about June 1, 1908, and soon thereafter proceeded to construct the present system herein referred to as the utility system, which has since been enlarged and improved, the applicant taking water to supply its present system from the waters of Clear Creek, diverting same into two small concrete reservoirs, from the lower of which it enters the distribution system.

An examination of the various deeds from said Sarah A. Grover, Catherine F. Logan, J. H. Logan and the Brookdale Land Company, shows a great variety of language concerning the right to use water. In some of the deeds perpetual right to the use of water was conveyed; in others a use for a fixed period at a certain rate was granted; and in all, eleven different methods of conveying such privileges are employed by the different grantors to the purchasers of said lots.

The following table sets out the rates of the various purchasers as acquired under their deeds with regard to the use of water:

Contractual terms	Contractual period	Date of Expiration of contract	Annual Rate	No. Users paying rate
Right to take water from old system	Not fixed	-----	Free	6
Right to tap reservoir or main, old system.....	"	-----	"	20
Right to take and use from the mains of the utility system for domestic use and irrigation.....	"	-----	5.00	4
Right to take and use from the mains of the utility system for domestic use.....	"	-----	5.00	18
Right to take and use from the mains of the utility system.....	Perpetually	-----	5.00	2
Right to take and use from the mains of the utility system.....	5-years	1916	5.00	24
Right to take and use from the mains of the utility system.....	5-years	1917	5.00	21
Right to take and use water from mains of the utility system.....	not fixed	-----	Free	6
Water not mentioned in deeds, or contracts have expired.....				72
		Total- - - - -		173

In addition to the above, Mrs. Rosa Meyers takes free water from Myers Creek under contract, but as this consumer is not supplied from the utility system, her rates are not involved herein.

All the consumers, with the exception of four, are summer residents whose stay in Brookdale is generally between two and four months continuously, but many of whom spend occasional week ends throughout the year.

A public hearing was held in this application at San Francisco on March 22, 1915, at which time some fifteen consumers appeared to protest against the proposed increase, the principal objection being that should the proposed rates go into effect the contracts entered into in good faith between the Brookdale Land Company and its consumers will be invalidated.

That this Commission has the right to fix rates which may be charged by public utility water companies, contracts to the contrary notwithstanding, need not be here again stated, as the Commission has, in Decision No. 536 (Vol. 2, p. 464, Opinions and Orders of the Railroad Commission of California), and in many other decisions, declared and exercised that right.

To countenance the free use of water from the utility perpetually, or to approve a rate greatly disproportionate to a reasonable rate by any considerable number of consumers, would necessarily result in improper discrimination, and would render it necessary for non-contract holding consumers to pay excessive rates to insure the continuance of the utility.

In determining a reasonable rate herein, it is upon the assumption that all consumers are to pay the established rates without discrimination.

It is not necessary for this Commission to pass upon the rights existing between the early settlers who acquired certain rights to take water from Clear Creek under the terms of their deeds, as those rights are separate and distinct from the right of consumers to demand service from the present utility system. It appeared at the hearing, however, that many of the so-called early settlers, who enjoyed the right under their deeds to take water from Clear Creek under the old system, have assumed the right to take water from the utility system without paying rates therefor. While the right of these consumers to take water from Clear Creek or from the old system, has not been denied by the applicant, applicant does insist, and I think correctly, that when they claim the right of enjoyment of the present system, that is the utility system, they should pay rates as do other consumers, regardless of the existing contracts.

At the hearing of this application the Commission's hydraulic engineers submitted a valuation evidencing estimated cost of property depreciated to be \$18,997.00 exclusive of water rights, in which applicant submitted that the cost had been \$1,184.00, and an annual depreciation of \$542.00. The same engineers estimated \$860.00 as the annual maintenance and operating expenses. The gross operating revenue for 1914 as shown by the

books of the company, is \$728.00. It is apparent, therefore, that the present rates are insufficient to pay the operating expenses of the system.

At the hearing it was urged, in effect, by some of the consumers, that inasmuch as they occupied their cottages for a very limited period during the year, that a water rate which would be fair and reasonable to permanent consumers, would be excessive under existing conditions. This fact has been borne in mind in this case; but on the other hand, it should also be remembered that the investment is continuous the year around, and the maintenance expense is as great in the winter months when there are practically no consumers, as in the summer, if indeed, they are not greater in the winter months, due to floods and other difficulties attending a water system in the mountains. It should also be remembered that while demand is made of the water system for but a comparatively short period during the year, that the obligation to be ready to serve is continuing upon the utility during the entire year.

Applicant requests a rate of two dollars per year for fire protection, but at the hearing some of the consumers declared that the fire protection afforded by the utility was inadequate and did not justify a rate being charged therefor. In my opinion no rate should be charged for fire protection unless such protection is requested by the consumer.

I find as a fact that the rates, rules and regulations of the Brookdale Land Company, in so far as they differ from the rates, rules and regulations herein found reasonable, are unjust and unremunerative, and the rates, rules and regulations as set out in Exhibit A, attached hereto and made a part hereof, are hereby found to be just and reasonable.

I submit herewith the following form of order:

O R D E R

Brookdale Land Company, a corporation, having applied to the Railroad Commission for permission to increase rates charged its consumers for water and for the establishment of rules and regulations, and a public hearing having been held and the Commission being fully advised in the premises;

IT IS HEREBY FOUND AS A FACT by the Railroad Commission of the State of California that the rates and rules and regulations of the Brookdale Land Company, in so far as they differ from the rates, rules and regulations herein found reasonable, are unjust and unremunerative, and the rates, rules and regulations set out in Exhibit A attached hereto and made a part hereof are hereby found to be just and reasonable; and basing its order upon such finding of fact, and upon the other findings of fact set forth in the opinion preceding this order;

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that Brookdale Land Company, a corporation, put into effect the rates, rules and regulations set out in Exhibit A, attached hereto and made a part of this order, within thirty (30) days from the date of this order.

IT IS FURTHER ORDERED that in establishing the rates herein provided that all contracts, grants and agreements for privileges to take water, which were acquired by deed or otherwise from Brookdale Land Company, Sarah A. Grover, Catherine F. Logan or J. E. Logan, be disregarded.

Nothing in this order contained shall prohibit or interfere with the contractual right of any purchaser or purchasers to take water from Clear Creek or the equipment of what is, in the opinion heretofore set out, referred to and

described as the "old system", provided Brookdale Land Company shall not be obligated in any manner to perform any service in connection with said right, and if said persons entitled to said privilege of taking water from said old system, do take water through said Brookdale Land Company or its equipment, the rates herein established shall be applicable to such person or persons.

IT IS FURTHER ORDERED that the rates herein fixed for fire protection shall be charged only to such consumers as make application to said Brookdale Land Company for such fire protection.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16<sup>th</sup> day of July, 1915.

          
          
          
          
          
        

Commissioners.



EXHIBIT AF

Rule 1. Before water is supplied to or turned off from any premises written application therefor must be made to the company.

Rule 2. Meter (if any) and service pipe shall be installed at the company's expense.

Rule 3. No allowance shall be made in water rates by reason of non-occupation of the premises where the water is supplied unless the company has been notified to discontinue such service.

Rule 4. The company shall have the right in an emergency to turn off or on the water from the pipes without notice. The company will make all possible effort to notify its consumers in advance when it is necessary to turn off the water from its mains or laterals.

Rule 5. No consumer shall provide water to any person, company or corporation other than the occupant of the premises of said consumer except upon written permission of the company.

Rule 6. In all cases of the non payment of the water rates notice may be given that the supply will be shut off, and ten days after such notice is given, if the bill has not been paid, the supply may be shut off and the water need not again be let on, except on the payment of the amount due together with the sum of \$1.00.

Rule 7. The following are hereby declared to be the effective rates:

- (1) \$6.00 annually per connection to be paid in advance.
- (2) \$2.00 annually for each consumer who desires fire protection.

(5) In addition to the annual charge the payment for each month during which water is used is as follows:

(a) Metered Service.

\$0.75 for 5,000 gallons or less.

\$0.15 for each 1,000 gallons or fraction thereof for next 10,000 gallons.

\$0.12 for each 1,000 gallons or fraction thereof used in excess of 15,000 gallons.

(b) Flat Rates.

\$0.75 per month per connection.