

Decision No. _____

ORIGINAL

Decision No. 4990

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Orrie Hensel,

Complainant,

-vs-

Case No. 1151.

W. B. Reiney and Mary Reiney,
his wife,

Defendants.

Newton Rutherford and Joseph B. Malloy,
for complainant.
Stuckenbruck and West for defendants.

BY THE COMMISSION:

O P I N I O N

Plaintiff alleges that defendants are engaged in distributing water for domestic use in Clements, San Joaquin County, at a flat rate of \$1.50 per month; that plaintiff is a consumer of water from defendants' system; that defendants formerly charged him the usual rate of \$1.50 per month, but after personal difficulty with defendant, W. B. Reiney, complainant's water was cut off and a rate of \$5.00 per month was demanded before it would be turned on again.

The answer alleges that the lot and well used by defendants are owned by defendant Mary Reiney, the 2½ h.p. engine and pump are owned by defendant W. B. Reiney, and the 10,000 gallon tank, and the lot on which it stands (located a few hundred feet away from the pump and well), are owned by Clements Estate; that these improvements were erected about 15

years ago under an oral agreement between said parties to the effect that defendants were to pump and furnish water with the aid of said engine and pump for the joint private use of said Clements Estate and of defendants in their hotel; that in addition to said parties some 8 or 9 other families have during the last three years been using water from said tank and well, with the consent of defendant W. B. Reiney, through pipes installed and owned by said water users; that the authorized use is for domestic purposes only; that said W. B. Reiney has been and is now collecting \$1.50 per month for water served to each of said consumers; that the water supply is very limited and not sufficient for irrigating vegetable gardens or watering stock except to a very limited extent; that complainant's water pipe connects with the private pipe owned by one Gaskell; that the point of said connection is upon the premises of said Gaskell, and that said Gaskell cut off complainant's supply because of his alleged excessive use. Defendants also allege that they are not operating a public utility within the meaning of the Public Utilities Act.

A public hearing was held by Examiner Westover at Clements, on November 13, 1917.

From the testimony it appears that the pipe supplying Mr. Gaskell connects with the pipe of defendant Reiney, at a point on the lot of Mrs. Reiney, about 5 feet from the street line. The Gaskell pipe was laid under the street pursuant to authority obtained from the supervisors of the county. Complainant's pipe is laid in a public street and alley, and connects with the Gaskell pipe in the street. This connection was made with the defendant Reiney's approval, given with the proviso that Gaskell would cut off complainant's water supply when so ordered by defendant Reiney. The supply was cut off by Gaskell

upon the order of defendant Reiney.

At the time of the hearing Gaskell testified that he would not again permit the service of water through his pipe under any consideration. The actions of defendant Reiney and of Gaskell have been influenced largely by personal considerations which it is not necessary to refer to here and which cannot be given weight in dealings between public utilities and their patrons. The questions of whether or not complainant did in fact waste water was not gone into at the hearing. The other facts are sufficiently shown by the pleadings.

The evidence shows that defendant W. B. Reiney has sold water to the public and collected regular rates for some time past. Defendants, therefore, operate a public utility within the meaning of Section 2 (bb) of the Public Utilities Act.

Defendants operate under exceptional conditions and have not assumed the obligation of delivering water to the property line of the premises served but only to the pipes owned and laid by their respective patrons. There is nothing to indicate that any of these pipes have been donated to the system or otherwise acquired by defendants. Complainant is entitled to service at the usual rate without discrimination. If, for any reason, personal or otherwise, he cannot procure service through the private pipes owned by Mr. Gaskell he may provide his own pipe and is entitled to a connection with defendant Reiney's pipes at the nearest point and to receive service on a parity with all others. Regulation of complainant's water use by defendants can be provided for by establishing suitable rules and regulations which must be regularly accepted by and filed with this Commission.

O R D E R

A public hearing having been held in the above entitled case, evidence having been submitted and the matter being now ready for decision.

IT IS HEREBY ORDERED that defendants serve water to complainant in a manner similar to that under which others receive service and accept payment at the regular rates established by defendants for such service without discrimination.

Such service to complainant is to be resumed immediately when complainant has provided means for carrying water to his premises.

Dated at San Francisco, California, this
26th day of December, 1917.

Max Shellen
attest
W. H. Gordon
Edwin O. Edgerton

Commissioners.