

Decision No. 6765

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF  
THE STATE OF CALIFORNIA

-----

PASTORINO and FERRARO :  
Complainants :  
-vs- :  
CHARLES LANCE :  
Defendant :

Case No. 1323

Carr & Kennedy, by Francis Carr for complainants.  
W. D. Tillotson, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainants allege that defendant during the last four years has been engaged in the sale, rental and distribution of water from a reservoir on his land which is a public utility subject to the jurisdiction of the Commission; that during the years 1915, 1916 and 1917 defendant furnished water for irrigation of complainants' lands at a yearly rental of \$30; that in 1918 and subsequently defendant refused to furnish any water, although

defendant was not using said water for any other purpose and that the supply for complainants was ample.

Complainants pray an order directing the defendant to furnish water at \$30 per year and for general relief.

The answer denies that defendant has been engaged in the sale, rental, distribution or either, of water and alleges that during 1914 he permitted plaintiffs to take water from said reservoir without consideration and during the years 1915, 1916 and 1917 he leased to them the right to take water from the reservoir, but with the understanding that the privilege was only from year to year and might be withdrawn at any time and was granted as an accommodation to plaintiffs; alleges that plaintiffs took water from the reservoir during 1918 but have not paid for it and denies that the reservoir is a public utility or that he or it are subject to the jurisdiction of the Railroad Commission; that if plaintiffs are given the right to use water they will deprive him of water necessary to irrigate his land; that he has no objection to plaintiffs obtaining water from said reservoir during the present season upon payment of a reasonable price, so long as it does not interfere with his use thereof but he does object to having the reservoir declared a public utility; that after refusing plaintiffs water in 1918 the Railroad Commission informally directed defendant to furnish water and since then he permitted plaintiffs to take water.

He also alleges that plaintiffs can construct a reservoir upon their lands and obtain water in the same manner that defendant obtains water.

A public hearing was held by Examiner Westover at Redding.

The land now owned by defendant lies about three miles west of Redding, Shasta County. There is upon it a reservoir flooding at times some six or eight acres, formed by an earthen dam impounding rain water near the head of a broad shallow ravine. The reservoir is usually filled by the first of January or before by natural rainfall. A small ditch leads from it through the lands of complainants. The reservoir and ditch was originally constructed principally for mining uses, probably prior to 1880, but has not been used for irrigation purposes for the last eleven years except by complainants.

In 1908 complainants purchased and moved upon their lands across which runs the shallow ravine in which is the reservoir in question. At that time there was on the land a vineyard of about twelve acres and about one acre set to fruit trees. Complainants put in a garden of about half an acre and began using water from the reservoir for irrigating it and the trees. These improvements are about half a mile below the reservoir. At that time defendant's land and reservoir were owned by Mrs. William Falk and in possession of one Mike Albo under a lease or contract to purchase. Complainants arranged with Albo to use the water whenever they

wanted it, without compensation.

Defendant acquired the Falk property with the reservoir about 1913 and has lived upon the land since January 1914.

For the season of 1913 defendant authorized complainants to use the water in consideration of their repairing and cleaning the ditch. For the following season he fixed the compensation for the use of the reservoir and ditch by complainants at \$30 which rate of compensation continued for three years. About October 1916 defendant notified the complainants that he must have \$60 per year for the use of the water, ditch and reservoir thereafter. For the following season complainants sent their check for \$30 which defendant received and credited on account and still claims a balance of \$30 due for that season. The following season defendant refused to permit the use of water until the Commission upon being appealed to informally directed that its use be continued during the war emergency. Last June complainants paid in compromise the sum of \$60 for the season of 1918-1919 with the understanding that the amount would be doubled if it be determined by the Commission that the property is not of a public utility character. At no time was there any express agreement as to the length of time during which complainants might use the water nor was there any express agreement that the use was to be only temporary. The only work of maintenance or repair of the ditch or reservoir has been done by complainants, and began about 1913.

After arranging with defendant for water in 1913 complainants began making further improvements upon their ranch and in 1914 planted  $1\frac{1}{2}$  acres of additional deciduous fruits and in 1915 planted  $3\frac{1}{2}$  acres more fruit trees. During 1914, 1915 and 1916 they cleared and irrigated additional land until in 1916 they were irrigating 4 acres more. They also increased their garden operations very considerably. The trees and garden crops required water for irrigation but the vineyard (increased to 14 acres in recent years) has never been irrigated except that some vines were interset in the orchards and received water incidentally when the trees were irrigated. The largest area irrigated was  $8\frac{1}{2}$  acres in 1916 but irrigation continued for longer periods in other seasons. Most of the land is irrigated by gravity but water has to be pumped for a considerable portion lying above the level of the ditch.

About 1913 or 1914 complainants built a dam across the shallow ravine above referred to along the easterly line of their land, thus creating a sump which receives water spilled from the reservoir, natural drainage below the reservoir, water from small springs on complainants lands and also water led to it from the reservoir through the main ditch. In 1914 complainants installed a pumping plant consisting of a 6 H.P. gas engine and 2" centrifugal pump. Since then they have pumped water from the sump to higher levels than can be reached by gravity flow and for that purpose have laid about 420 feet of  $3\frac{3}{4}$ " casing and nearly as much 3" standard screw-pipe, all laid on the surface.

Defendant's ranch is practically uncultivated, his business being in Redding, and he has no plans for the use of water for irrigation upon his own ranch. He objects to having the reservoir declared of public utility character because he fears it will injure the sale of his land and permit the diversion of water which may at some future time be needed on his ranch by some future owner. His concern on these grounds has arisen during and because of the recent controversy with complainants. Until that time he had no hesitancy about selling water, the only question in his mind being the adequacy of his compensation.

Apparently the capacity of the reservoir can be easily increased so that complainants may have as much water as they have heretofore been using, leaving the defendant about as much as there has been in the

reservoir in recent years. There are two spillways through the dam which have become eroded and apparently greatly enlarged. The bottoms of these spillways can be raised at least three feet at small expense and means provided for opening them easily in case of need resulting from sudden heavy storms or cloudbursts which sometimes occur in that vicinity.

Sufficient data was not presented from which a fair rate can be calculated nor was the amount of water used by complainants shown other than by the extent of the area irrigated. The defendant may wish to sell water to other persons.- If so he may apply to the Commission for authority to establish suitable rates or to establish suitable rates to be applied to the complainants after the next two irrigating seasons.

#### O R D E R

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

IT IS HEREBY ORDERED that within 60 days from date hereof complainants, at their own expense, line the present two spillways in defendant's dam, sides and bottom, with concrete not less than three inches thick or with stone paving grouted with cement, said paving to be not less than five inches thick and said spillways to be lined to the top of the dam; complainants also to provide suitable gates or flash boards extending to within three feet of the top of the dam with suitable means for opening said spillways to

relieve the pressure on the dam in case of floods; also with means for conducting the water from said spillways to a point below the toe of the dam so that erosion of said dam will be prevented; and that complainants thereafter maintain said dam, spillways and ditches until the end of the irrigating season of 1921; and as consideration for the use of said reservoir and water in the past and until the end of the irrigating season of 1921, in addition to the above described improvements and maintenance, that they pay to defendant the further sum of \$30 per year, annually, on the first day of March, 1920 and 1921; and that in return for such consideration they be permitted to irrigate from said reservoir not exceeding nine acres of their land described in the complaint.

This order is made without prejudice to the right of defendant to apply for an increase in the rate to be charged to complainants for the irrigating season of 1922, and subsequent years; or to apply for an order authorizing rates to be charged to other patrons he may wish to serve at any time.

This order shall become effective November 15, 1919.

Dated at San Francisco, California, this 22<sup>d</sup> day of October, 1919.

Edwin O. Edgert  
H. S. Leonard  
Wm. R. Wilson  
H. N. Brundage  
Jessie Martin  
Commissioners.