

ORIGINAL

Decision No. 774

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HUGH A. BOYLE,  
Complainant,  
vs.  
BELVEDERE LAND AND WATER  
COMPANY, et al,  
Defendants.

Case No. 373.

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M. I. Sullivan for Hugh A. Boyle,  
J. M. Burke for Burke, LeMay, Hunter and Brassill,  
Powell & Dow for Belvedere Land and Water Company.

EDGERTON, Commissioner.

O P I N I O N.

Plaintiff complains against the individual defendants herein, and alleges that said defendants between the 15th day of February, 1913, and the 3rd day of March, 1913, wrongfully disconnected the pipes through which said defendants were receiving water from the water system owned and operated by plaintiff, and thereafter received water, and are now receiving water from the defendant, the Belvedere Land and Water Company.

That said Belvedere Land and Water Company has wrongfully, without obtaining an order therefor from the Railroad Commission of the State of California, extended its system and service into the territory occupied and served by the system of the plaintiff, and that it served and is now serving said individual defendants with water from its system, and that said Belvedere Land and Water Company extended its system so as to interfere with the operation of the system of plaintiff.

There can be no doubt that consumers of a public utility service have a right at any time to discontinue receiving such service, and, therefore, the complaint against the individual

defendants herein that they disconnected themselves from the water system of plaintiff cannot be entertained.

No evidence was introduced to show that the Belvedere Land and Water Company was interfering, in constructing or extending its plant or system, with the operation of the plant or system of plaintiff.

It only remains to be determined, therefore, whether the Belvedere Land and Water Company has extended its system into the territory now served by the system of plaintiff without the authorization of this Commission, or whether the individual defendants constitute a public utility making a like invasion with a system into the field now occupied by plaintiff.

It appears that plaintiff owns and operates a water distributing system, furnishing water to certain residents in and about the town of Tiburon, county of Marin, state of California, and the Belvedere Land and Water Company owns and operates a water system furnishing water to certain residents in the county of Marin, state of California, outside of the territory furnished by the system of plaintiff.

That between the 15th day of February, 1913, and the 3rd day of March, 1913, a number of the customers of plaintiff disconnected themselves from the system of plaintiff, and, at their own expense, constructed a pipe line connecting with their property on the one hand and running to the main of the Belvedere Land and Water Company within the territory served by it, and thereafter purchased from the Belvedere Land and Water Company water measured at a meter placed at the point where the pipe put in by these consumers connects with the main of said Belvedere Land and Water Company.

The Belvedere Land and Water Company collects from one of these consumers, who acts for all of them, and he in turn collects from his fellow consumers the amount he pays the Belvedere Land and Water Company on the basis of the amount of water used by each of these consumers.

There is no evidence that the Belvedere Land and Water Company has laid any pipe in the territory occupied and served by plaintiff, nor is there any evidence to sustain the contention that the consumers constitute a public utility.

The consumers are a voluntary association made up of individuals who have contributed to the cost of laying these pipe lines, and who each bears a proportion of the cost of the water furnished, based on the amount of water each uses.

Clearly, the consumers are, if anything, a mutual concern, which, under the Public Utilities Act, may enter a field occupied by a public utility without the consent of the Railroad Commission.

The evidence establishes beyond a doubt, that the Belvedere Land and Water Company is only selling water at the meter on its pipe line within its own territory and that it has no interest whatever in the pipe line laid by these consumers, and as it has a right to sell water within its own territory and is not obligated to prevent such water being used in the territory of a rival, it is clear that the Belvedere Land and Water Company cannot be held to have in any way extended its system into the territory occupied by plaintiff.

Therefore, I recommend that no action be taken as prayed for by plaintiff, and that said complaint be dismissed.

I submit herewith the following form of order:

O R D E R.

Complaint having been made by Hugh A. Boyle vs. Belvedere Land and Water Company and Wm. J. Hunter, James K. Brassill, Jane LeMay and Charles A. Burke, and said defendants having answered, and a hearing having been had, and the Commission being fully advised in the premises,

IT IS HEREBY FOUND AS A FACT, that Belvedere Land and Water Company and Wm. J. Hunter, James K. Brassill, Jane LeMay and Charles A. Burke have not, nor has either of them as a public utility, begun the construction of a plant or system or any extension of such plant

or system into territory theretofore or now served by the water system of plaintiff, and

IT IS HEREBY FURTHER FOUND AS A FACT, that none of said defendants, or either of them, has constructed or extended a plant or system so as to interfere with the operation of the plant or system now operated by plaintiff.

ORDERED: That the complaint herein be dismissed.

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 2<sup>nd</sup> day of July, 1913.

H. H. [unclear]  
[unclear]  
Edwin O. Edgerton

Commissioners.