

Decision No. 8781

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PASTORINO and FERRARO,  
Complainants,

Vs.

CHARLES LANG,  
Defendant.

Case No. 1323.

ORIGINAL

Carr & Kennedy for Complainants.

W. D. Tillotson for Defendant.

BY THE COMMISSION.

OPINION ON PETITION FOR REHEARING

Defendant seasonably petitioned for a rehearing after decision, principally upon the ground that the Commission exceeded its jurisdiction in entering the original order herein, in that defendant is not engaged in conducting a public utility for service of the public.

As will be seen from the original opinion, defendant's reservoir supplies water for complainants only, and they lead the water from it in a small ditch maintained by them.

It is apparent that complainants relied upon the continued use of the water to develop their lands, orchards and vineyards and that these improvements were made with the knowledge of defendant. Whether or not any estoppel resulted, we conclude is a question to be determined only by the courts. The evidence is not sufficient, in our judgment, to show a dedication of the prop-

erty to public use. The order must, therefore, be set aside.

As appears from the answer, defendant does not object to the use of the water so long as such use is not made a permanent burden upon the land, which might interfere with its sale or fuller development. It is probable that the parties can reach a satisfactory agreement for continued service under private contract.

O R D E R

It appearing from the petition for rehearing that the Commission exceeded its jurisdiction in entering the original order herein, and that a public hearing upon the petition for rehearing is not necessary,

IT IS HEREBY ORDERED that the original order herein contained in Decision No. 6765 of October 22, 1919, be and it is hereby set aside and vacated and that the complaint be dismissed.

Dated at San Francisco, California, this 21<sup>st</sup> day of March, 1921.

Frank R. DeWitt  
H. J. Loveland  
Iving Matson

\_\_\_\_\_  
Commissioners.