

Decision No. 8230

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CROCKETT LAND AND CATTLE COMPANY,)
Complainant,)
vs.)
AMERICAN SMELTERS SECURITIES COMPANY,)
Defendant.)

CASE NO. 1429.

ORIGINAL

William C. Crittenden and Jos. J. Webb,
by Joseph Webb for Complainant.
Chickering and Gregory, by Warren Gregory
for Defendant.

BY THE COMMISSION.

O P I N I O N

Complaint was made in the above entitled proceeding that the defendant, American Smelters Securities Company, which owns and operates a water supply system supplying water for domestic purposes in the town of Selby and the adjoining village of Tormey, Contra Costa County, refuses to extend its pipe mains some 100 feet to provide water service to a water trough for cattle, located on complainant's 1400-acre tract of grazing land.

The complaint alleges in effect that defendant is a public utility company operating the aforementioned water supply system, although it has never filed its schedule of rates with the Railroad Commission; that defendant has refused to give complainant, Crockett Land and Cattle Company, service of water at

aforementioned water trough for the watering of about 200 head of cattle, and that complainant has offered to pay the cost of the necessary pipe main extension. Wherefore, complainant asks that said defendant be compelled to furnish the service of water as requested.

Defendant's answer is a general denial of the allegations in the complaint; it being stated that defendant company owns and operates a smelting works at Selby, Contra Costa County; that in connection therewith it operates the water system in question for the needs of its industrial plant and its employees; that a large proportion of the water it so utilizes is purchased from the Port Costa Water Company, and that it does not and never has operated said water system as a public utility.

Public hearings in this proceeding were held at Tormey and San Francisco before Examiner Westover.

The water system operated by defendant consists of 18 shallow wells and one deep well located in a ravine southeast of Tormey. The water is pumped into an 80,000-gallon storage reservoir and thence delivered into the distribution mains. This supply is inadequate and is supplemented by water purchased from the Port Costa Water Company. The records of water use during the period January 2d to July 16th, 1920, shows a total consumption of 3,875,000 gallons, of which about 79 per cent was so purchased.

There are at present about 82 domestic services on the system besides the services to the school house, and to the two hotels and stores which are owned and operated by the company for the accommodation of its employees.

The evidence shows that said unincorporated towns were established and constructed by defendant company on its own land

to provide necessary housing accommodations for its employees in its smelter.

Of said domestic services, 75 supply houses rented by employees, but owned by defendant on its own land, with the exception of six houses which defendant permitted employees to erect on lots leased from it.

Besides the above mentioned services located on defendant's own property, water service is supplied 7 houses on adjoining lots privately owned. Four of the latter were constructed in 1904 by the National Lead Company for its employees in its plant.

National Lead Company was closely allied with defendant company, and utilized its by-products. It obtained the water for its plant and said company cottages from defendant at a fixed monthly charge. Recently this company moved its plant to Melrose and sold the four houses and lots to an employee of defendant who occupies one of them.

Defendant testified in effect that employees living in company houses are charged fixed rentals per month for these houses, including water service; that practically all the water users are employees, and that meters are read to prevent waste, not for rendering bills.

Further, that defendant had never intended to sell water as a business, and the company as a corporation had taken no action to form a water company separate from its smelter business with the intent to dedicate any of its water to public use.

The evidence shows that defendant had collected rates from the aforementioned seven houses in which it had no interest in the houses or lots until about February, 1920, when it notified these consumers that it would not thereafter charge for water.

Complainant's 1400 acre tract is at present provided with water from springs which in the past have supported as many as 400

head of cattle. During the past abnormally dry seasons these springs have diminished in flow and will now support only about 20 head of cattle. Wherefore complainant desires a stand-by service from defendant's water system in order to water a larger number of cattle.

Complainant has made no effort to further develop the springs on said tract of land or to bore wells to provide an additional water supply, not withstanding the fact, as brought out in the evidence, that there is a probability that water could be thus obtained, since well sources of supply have been developed on several adjoining tracts including those of defendant.

It appears from a consideration of the testimony that said water system was installed by defendant solely to insure and provide an adequate supply for its industrial purposes and the domestic use of its employees resident upon its own land; and that there has been no intention by any of its subsequent acts or deeds to dedicate any part of its water to public use. The fact that it did supply service to the aforementioned National Lead Company and its four employees' cottages, as an accommodation, might be construed technically as a dedication to public use, but from the circumstances this would be limited to the particular area served and not to the said 1400-acre tract of complainant or any part thereof.

It is therefore recommended that the case be dismissed.

O R D E R

Public hearings having been held in the above entitled proceeding, the Commission being fully advised, the matter having been submitted; and basing its order on the statements of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that the complaint herein be and it

is hereby dismissed.

Dated at San Francisco, California, this 3^d
day of May 1921.

H. H. Loveland

H. B. Roundigo

Irving Mattson

Commissioners.