

Decision No. 26339

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

D. Rovai,

Complainant,

vs.

J.P. Massoni, Martino Goddi  
and N. Capanna,

Defendants.

Case No. 3551.

ORIGINAL

A.G. Bradford, for Complainant.

E.S. Mitchell, for Defendants.

BY THE COMMISSION:

O P I N I O N

In this complaint D. Rovai, who owns and operates a public utility water system in the unincorporated Town of Wildwood, in the County of Humboldt, alleges that J.P. Massoni, Martino Goddi and N. Capanna have installed a new water system in Wildwood for the purpose of furnishing water to premises owned by said defendants and leased to other parties and that the public generally is being furnished with water by Messrs. Massoni, Goddi and Capanna without having secured from the Railroad Commission a certificate of public convenience and necessity. Request is made that said defendants be enjoined and restrained from delivering water in Wildwood.

The answers of defendants, filed separately, allege that in March, 1933, they entered into a mutual agreement to in-

install a water system for the purpose of supplying parcels of land owned individually by them, certain of said parcels being occupied by the defendants and certain others being leased to and occupied by tenants. Defendants further allege that the water supplied to their respective premises is delivered solely to themselves and/or to their tenants at no charge whatsoever. Upon these grounds it is alleged that water supplied by defendants is not a public utility service and request is made that the proceeding be dismissed.

A public hearing in this matter was held at Wildwood before Examiner Johnson.

D. Rovai, complainant herein, owns and operates a public utility waterworks supplying approximately ninety-two consumers in Wildwood. The system originally was acquired by purchase from one Tony Abraham in 1924. The present rates were established by the Commission in 1925. As the result of orders issued by this Commission in 1930, complainant Rovai has expended some five thousand dollars (\$5,000), more or less, in improving his service through the installation of larger mains, the construction of additional storage facilities and providing a standby and auxiliary source of supply from the water plant owned and operated by the Pacific Lumber Company in the Town of Scotia situate across the Eel River from Wildwood. Complainant's total investment in this utility property is alleged to be at present approximately fifteen thousand dollars (\$15,000).

The record herein shows that after certain disputes had arisen among and between defendants and complainant over water service and charges the former jointly entered into an agreement to install a well and pipe lines to furnish water to their own premises. Accordingly, this plant was constructed and the three de-

defendants herein discontinued taking water from complainant and now supply water to several parcels of land in Wildwood occupied either individually by the respective defendants or by their tenants. It is conceded that no separate or specific charge is made for this water service by defendants, or any of them, to any of their properties and no claim is now advanced that water is now or ever has been sold by said defendants to any parties other than the above mentioned occupants of their own premises or their tenants.

While this entire controversy indicates a regrettable and unfortunate lack of civic cooperation for the mutual benefit of the community among certain of the town's most prominent citizens and business leaders, yet the evidence is clear and conclusive that defendants are supplying water privately to their own individual properties, as they are legally entitled so to do, and are not in any sense whatsoever supplying or holding themselves out to supply water to the public generally or any portion thereof. The service as now rendered is not therefore public utility in character and, consequently, not subject to the control and jurisdiction of this Commission. The complaint accordingly will be dismissed.

#### O R D E R

Complaint as above entitled having been filed, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the above entitled proceeding

be and it is hereby dismissed.

Dated at San Francisco, California, this 18<sup>th</sup> day  
of September, 1933.

Al Lewis  
Leon C. Kelly  
W. J. Lee  
W. B. Lewis  
Commissioners.