

Decision No. 28527

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

GRAPE GROWERS ASSEMBLY OF MUSCAT  
DISTRICT OF FONTANA, CALIFORNIA,  
Complainant,

vs.

JOHN G. BULLOCK and ARROWHEAD  
REALTY CORPORATION, C.J. HALL,  
President,

Defendants.

Case No. 3645.

Andrae B. Nordskog, for complainants.

Edward Judson Brown and Roscoe R. Hess,  
for defendant John G. Bullock.

Edwin Heizman, for defendant Arrowhead  
Realty Corporation.

BY THE COMMISSION:

O P I N I O N

In its complaint, Grape Growers Assembly of Muscat District of Fontana, an association of grape-growers, alleges that Arrowhead Realty Corporation, a corporation engaged in farming and real estate business, and John G. Bullock, a landowner, have operated a public utility water system serving complainants and other residents of a large acreage of land near Fontana, San Bernardino County, generally known in part as The Etiwanda Vineyard and also in part as the Arrowhead Tract, and that on May 18, 1933, service was arbitrarily and illegally discontinued, causing great inconvenience and financial loss to the consumers. The Railroad Commission is asked to declare the

water works a public utility and order both defendants to restore water service immediately.

In their separate and respective answers, defendants admit the discontinuance of water service as alleged but deny that a public utility service was being rendered and ask that the complaint be dismissed for lack of jurisdiction.

Public hearings in this proceeding were held before Examiner Kennedy at Fontana and Los Angeles.

The evidence shows that Arrowhead Realty Corporation was incorporated in 1906 for the purpose, among others, of developing, subdividing, conveying and selling real estate, constructing dams, reservoirs, water distribution systems, and for the selling of water to farmers and others. During its early operations, said corporation acquired ownership of large tracts of land near the present town of Fontana. The corporation developed the tract now served comprising approximately 2,300 acres, subdividing it into small farms which were sold to the general public under a plan whereby the company planted the parcels and took care of the crops until they reached production stage. A ranch comprising some 800 acres and known as the Banbury Ranch was also acquired about the same time. This property was situate about two miles from the 2,300-acre tract. Water was developed in several of the canyons on and adjacent to the Banbury Ranch and a portion of such water was conveyed to the 2,300-acre tract through a four-inch pipe line. The water was used by the corporation and purchasers for domestic purposes and occasionally, when available, also for irrigation.

Sales of land were made within the 2,300-acre tract a

short time prior to 1910 and until 1921 under a form of sales contract which, among other things, provided for the planting by the Realty Corporation of grape vines and the maturing thereof into a three-year-old vineyard. Provisions in said contracts were included for the sale by the corporation of water for domestic use. Specific reservations of rights of way or easements for the installation of facilities for public utility service of water, gas, electricity and other purposes were set forth in the said contracts. These provisions are as follows:

"Water for Domestic Purposes--When the purchaser shall erect a home upon the premises hereby conveyed, the Corporation agrees to supply him with water for domestic purposes, from mains to be laid in the streets opposite said premises, at a monthly rate of One Dollar (\$1.00) for the first nine thousand gallons or less, and for all water over nine thousand gallons used in any month, two-thirds of a cent per hundred gallons. Said water to be furnished subject to the rules and regulations generally in force in Southern California, and which shall be made from time to time by the Corporation. It is clearly understood that no rights in said water are hereby conveyed, other than to be supplied in perpetuity at the rates above set forth, to the extent of the Corporation's ability so to supply, nor are any irrigating rights to be conveyed with said land, and if at any time the corporation shall elect to run water upon said premises, to hasten the growth of young trees or vines, or for any other purpose, either gratuitously or for compensation, the purchaser hereby waives any claim by reason thereof, to a continuation of the same, acknowledging such act if done, to be voluntary and temporary, and to be discontinued at any time, at the option of the Corporation."

"Public Utilities--The Corporation reserves the right for itself or its assigns, to set and maintain poles, and to string wires upon the same for telephones, telegraph, electric light or power purposes, along the boundary lines of, or upon the streets abutting upon, the plot hereby conveyed, and to build and maintain upon said streets, ditches, flumes and pipe lines for the conveyance of water, gas or for other purposes."

During the year 1920 an effort was made to revise and modify the provisions of the sales contract relating to the delivery of water. The contract was modified in this respect as follows:

"The Grantor herein owns certain water and water rights. It is proposed to form a mutual water company composed of owners of property in the Section of which the above described property is a part, comprising not to exceed Twenty-three Hundred (2300) acres. It is understood that when said mutual water company is formed, the Grantee herein shall be entitled to and agrees to take stock in said company in proportion as his holdings bear to the total number of acreage in said Section or territory and until such time as said mutual water company is formed, the Grantor agrees to furnish to said Grantee, from the mains in the streets adjacent to the above described property, water for domestic purposes to be used on said herein conveyed property. That said Grantee agrees to pay therefor, One Dollar (\$1.00) per acre per annum, payment to be made the first day of November of each year, provided that not more than five thousand gallons shall be used during any one month.

It being especially understood that the Grantor in furnishing this water prior to formation of said mutual water company conveys to said Grantee no rights in said water or water rights, nor shall said Grantee acquire any right to have the water furnished to him in perpetuity, but that the water so furnished said Grantee is merely a license which the Grantor may revoke at any time and the rates herein charged is the estimated proportion of the cost of said water to said Grantor."

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It was not possible to obtain from the available witnesses definite information as to the deliveries of water under these two types of agreements. This much, however, is indicated by the record, namely, that, although in the neighborhood thirty sales of land were made under the first form of sales contract, yet not over four consumers were actually served water thereunder. Apparently the balance of the consumers had purchased their parcels of land under the second form of sales contract. The testimony shows that the formation of a mutual water company was given up by reason of the

general opposition of the land purchasers.

The identical provisions as set out in the sales contracts were carried over into the deeds for the lands purchased. Apparently no deliveries of water for compensation were made by the corporation to any consumers except land purchasers under contract. Although water was furnished by the Arrowhead Realty Corporation to practically all of the lands purchased, yet no charges were made for such water until the year 1923. During this year and thereafter, all land purchasers who built houses on the tract were billed for water service upon the basis of one dollar (\$1.00) per acre per year. No meters were ever installed upon the consumers' service connections. At the present time there are thirty-five water users on this system.

The evidence clearly indicates that Arrowhead Realty Corporation, through its original form of sales contracts and deeds of conveyance and by its subsequent acts in furnishing water for compensation to the public generally throughout its twenty-three-hundred-acre tract, has undertaken to render and has in fact performed a public utility service subject to the regulation of the State of California. Under such circumstances this corporation must be charged with the duty and obligation of providing a proper and adequate supply of water for domestic purposes to its consumers. As far as irrigation water is concerned, it is conceded by all interested parties that such water was supplied only as a matter of accommodation when a surplus of water was available over and above the requirements for domestic uses. No dedication of water strictly for agricultural irrigation service therefore can be supported by the evidence.

The waters which the Arrowhead Realty Corporation had developed and used upon its properties emanated from the Banbury Ranch and possibly from certain of the canyons lying adjacent to and above said ranch. In 1910 the Banbury Ranch was sold by the corporation to two brothers, Howard Seebree and Ralph V. Seebree. Although the deed of conveyance was not produced for this record, it appears that all waters arising on the ranch were included in the transfer as indicated in that certain contract by and between the corporation and the Seebree brothers entered into on the 24th day of March, 1910. This agreement, among other things, provided that the Realty Corporation was entitled to "a perpetual flow of nine miner's inches of water" and further provided for additional water upon demand to the extent of nine miner's inches of water, subject in both instances, however, to the express condition that the above quantities were to be available when thirty-six miner's inches of water were flowing from said canyons and, when less than thirty-six miner's inches were flowing, the Realty Corporation was entitled only to one-half of the flow of said waters. The Realty Corporation was obligated to pay seventy-five dollars (\$75.00) per miner's inch per year for the water used. This agreement specifically provided that the payment for the water used was to be made annually on April first of each year and that any failure to pay therefor within thirty (30) days from said date would terminate the right to further water from the above sources and that all such water immediately would revert to and become the sole property of the Seebree brothers or their assigns.

In 1917, defendant John G. Bullock purchased and acquired the Banbury Ranch and succeeded to all rights, privileges and obli-

gations arising under the above mentioned Seebree Contract. He delivered water in accordance therewith until May 18, 1933, when all water service was discontinued. The evidence shows that defendant Arrowhead Realty Corporation defaulted in its payments on April 1, 1933, and failed to pay therefor within the thirty-day period of grace ensuing immediately thereafter. On May 6, 1933, said Bullock served notice upon the Realty Corporation that it had not complied with the conditions of the Seebree Contract and therefore the corporation's rights to further water service thereunder had reverted to Bullock and demand for a reconveyance of all rights to the said waters was made. However, as a matter of accommodation and in order to permit the Realty Corporation to obtain or develop another source of supply, said Bullock furnished water to the corporation until May 18, 1933. Although the Realty Corporation had a well which had been used in previous years to supplement the water supply when the surface stream flow had been insufficient by reason of the general shortage of rainfall and runoff and in spite of the fact that defendant Bullock had offered to supply the sum of one hundred dollars (\$100.00) toward the rehabilitation of the pumping equipment of said well, nothing was done by the Realty Corporation to place this well in production, upon the plea of a lack of sufficient funds. The result has been that the consumers have been entirely without water service since the eighteenth day of May, 1933. It is also claimed that, because of the purported impoverished financial condition of the Realty Corporation, it was forced to default in its payment for water to defendant Bullock.

The evidence shows that no water was ever at any time

sold by either the Seebree brothers or defendant Bullock for compensation or otherwise to any consumers residing on the 2,300-acre Arrowhead Realty Corporation tract. Apparently, no water was ever sold by the Seebrees or by Bullock to any one other than the said Realty Corporation under the terms of the so-called Seebree Contract of 1910. All water sold to the public generally in the 2,300-acre tract was delivered and distributed solely by the Realty Corporation. As a matter of fact, no sales of water for compensation were made by defendant Realty Corporation until the year 1923, many years after the acquisition by Bullock of the Banbury Ranch and certain other adjacent properties also purchased by him embracing some 320 acres, more or less, of watershed lands lying above the Banbury Ranch acquired for the purpose of protecting his water rights. Although complainants contend that all waters emanating on the Banbury Ranch and/or the other properties acquired by Bullock in the general vicinity thereof had been dedicated to the public use and that said Bullock was in fact operating as a public utility, yet, in view of the above facts, it is evident that this Commission would not be justified in holding that defendant Bullock is operating a public utility nor would it be warranted in making a finding upon this record that the waters which he had been supplying to Arrowhead Realty Corporation had been dedicated to the public use prior to or at the time of entering into the Seebree Contract or at any time thereafter to and including the eighteenth day of May, 1933. Whatever rights, if any, the Arrowhead Realty Corporation and its consumers may have under the Seebree Contract must be determined by the civil courts. This Commission is without authority or jurisdiction



to determine the rights, powers and privileges arising thereunder. In view of such circumstances, it is evident that the duty and obligation of providing a proper and adequate water supply for and to complainants lies solely upon the shoulders of Arrowhead Realty Corporation. As a public utility, it is obligated to take whatever steps that may be reasonably necessary to obtain and provide a proper water supply and service for its consumers. This corporation therefore will be directed to adopt, without unnecessary delay, whatever measures may be required to obtain sufficient water to properly supply its consumers in the amounts and quantities to which they are entitled. As to the public utility obligations and liabilities of defendant Bullock, the complaint obviously must be dismissed.

It should be pointed out at this time that the rate of one dollar (\$1.00) per acre per year for domestic water service in this widely-scattered rural community not only is based upon an impracticable standard but unquestionably will not provide proper and adequate recompense to the utility under the circumstances and conditions of operation. Nevertheless, it is the duty of the utility to provide the necessary water service and, in the event the existing schedule of charges is insufficient to fairly reimburse the said corporation for its reasonable expenditures in providing its consumers with domestic water, it may at any time avail itself of its legal privileges and right of applying to this Railroad Commission for the establishment of a fair rate which will insure it against an out-of-pocket loss in its future public utility operations.

O R D E R

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

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed in so far as it affects defendant John G. Bullock.

IT IS HEREBY FURTHER ORDERED as follows:

1. Arrowhead Realty Corporation shall file with this Commission, within thirty (30) days from the date of this Order, the schedule of rates charged for water service heretofore furnished to its consumers in and/or in the vicinity of the 2,300-acre Arrowhead Realty Corporation tract referred to in the Opinion which precedes this Order, said tract being also known in part as The Etiwanda Vineyard and in part as Arrowhead Tract.
2. Arrowhead Realty Corporation shall file with this Commission, within thirty (30) days from the date of this Order, rules and regulations governing relations with its consumers residing in and/or in the vicinity of the said 2,300-acre Arrowhead Realty Corporation tract, said rules and regulations to become effective upon their acceptance for filing by this Commission.
3. Within thirty (30) days from and after the date of this Order Arrowhead Realty Corporation shall provide and distribute to its consumers residing in and/or in the vicinity of the said 2,300-acre Arrowhead Realty Corporation tract water in adequate amounts and at proper pressures for domestic use and purposes.

4. Within thirty (30) days from and after the date of this Order, Arrowhead Realty Corporation shall notify this Commission in writing of the date upon which it has complied with the terms of Paragraph 3 of this Order.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 20th day of November, 1933.

C. Deaver  
Leon Arrowhead  
W. J. Lane  
M. B. Lewis  
Matthew Merritt  
Commissioners.