Decision No. 32420

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J. A. Baker, Marshall Gill, Frank A. Carlson, George G. Tyler, and E. E. Thompson, directors and trustees, and members of and acting for and in behalf of Rainbow Lake Outing Club, a voluntary association, and all its members, Complainants, vs. Happy Valley Water Company, a corporation, Defendant.	Case No. 4419

Tillotson & Shadwell, by W. D. Tillotson, for complainants.

L. C. Smith and Alfred E. Frazier, for defendant.

BY THE COMMISSION:

OPINION AND ORDER

In 1928 Rainbow Lake Outing Club leased from defendant utility a building and premises near Rainbow Lake (Messelbeck Reservoir), Shasta County. Water, used for domestic and sanitary purposes only, was obtained by means of a pipe connected with another pipe which diverted water from Moon Creek to a house occupied by defendant's caretaker.(1) Defendant having removed the pipe leading to the clubhouse, the Club requests an order di-

(1) Defendant owns between 1500 and 1800 acres of land completely surrounding the reservoir, except two 8-acre parcels fronting thereon. Neither of the two private landowners receives or has requested water from defendant. There is no irrigation in the area, and the nearest domestic consumers (nine in 1938) are at Igo, some 12 or 15 miles distant. Defendant is primarily an irrigation utility, and the main area served is about 27 miles from the clubhouse. Moon Creek, from whence came the water used at the clubhouse, by-passes the reservoir, and joins the waters flowing therefrom below the premises leased.

recting that the pipe be reconnected, in order that it may receive "at said clubhouse waters from Moon Creek as it has received them during the entire term of said lease," which runs until 1955.

Defendant seeks dismissal for lack of jurisdiction, taking the position that it neither "served" the Club nor exacted any compensation for water used, which the Club obtained by connecting up and maintaining an unused pipe; that defendant's utility services are far removed from the clubhouse area and in no manner connected therewith; that Club members have no right to occupy the premises, and no right of access thereto by defendant's private road, except by virtue of the lease; and that any recourse which the Club may have is to a court of law or equity upon a claimed breach of the contract upon which the Club bases its very right to be upon the premises owned by defendant.

Complainants maintain that, because defendant is a public utility, the Commission has jurisdiction over any dispute that may arise between defendant and any person to whom it has supplied water. Arguing that defendant supplied water by allowing it to flow through the connecting pipe for some years, the Club urges that it is immaterial who made the connection, who bore the expense, or whether a charge was made for water, and contends that as water had been furnished "by custom and usage without expense" to defendant, the latter "had no right to cease the water service" without the Commission's consent.

It is well settled that the owner of a water supply has the right to make a partial or limited dedication, and may decline to furnish water to persons not within the area of dedication. One claiming a right to utility service must establish that he is a beneficiary of the public use which the owner of the water supply

is administering, and "is within the district and of the class, for which such dedication is made."(2)

In 1925 defendant was granted a certificate for the operation of the system theretofore operated by Happy Valley Irrigation District. Under defendant's schedule of rates, rules and regulations, filed in 1925, the area served by the utility is separated into three divisions. Rates for irrigation only are applicable in Division 1, which division includes all "headworks" of the utility. If the area where the clubhouse is located "could be included in the head works," it would be in this division.

The record shows that defendant has never collected anything from the Club or its members for water used, and has never requested any payment. The lease does not refer to water service, but grants to the Club the right to occupy or reconstruct the building and premises; the right to use defendant's private road; access to certain streams, and the right to go upon the banks of the reservoir and to use boats thereon for fishing and outing purposes. Defendant contends that water was used gratuitously, and that such use was in no way connected with the lease. The Club claims that the water used by it was a part of the property leased and that a portion of the rental paid was for water service. On the latter

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(2) Del Mar Water, Light & Power Co. v. Eshleman, 167 Cal. 666, 681, where the Supreme Court stated that there "can be no doubt * * * that the owner of a water supply may make a limited dedication of it to public use, confining the use to such territory as he sees fit. Nor can there be any doubt that one owning a water supply is not compelled to dedicate all of it to public use, or that he may dedicate a part of it, only, to such use, reserving the remainder for private purposes or for private sale or disposition as he sees fit. Accordingly, our decisions have recognized and have repeatedly declared the right of a water company to make such limited dedication and to decline to furnish its water to persons not within the area it has undertaken to serve." See, also, Allen v. Railroad Commission, 179 Cal. 68, 82; Newell v. Redondo Water Co., 55 Cal. App. 66; Hancock v. East Side Canal Co., 20 C.R.C. 205, 209.

question the record is silent, and the Club takes the position that it is immaterial in this proceeding which contention is correct.

The record herein will not sustain a finding that public utility service has been rendered to the Club, nor has it been shown that the clubhouse is within an area in which defendant has dedicated its water supply and facilities to public use. To the contrary, the evidence indicates that complainants' right to enter upon or occupy the premises exists solely by virtue of the lease. We find that defendant has not rendered public utility service to complainants and is under no obligation as a public utility to render them such service. Any right to full possession, use and enjoyment of the premises leased must be enforced in appropriate proceedings before the civil courts.

Evidence having been taken by Examiner M. R. MacKall at a public hearing held at Redding, and based upon the record and upon the factual findings set forth above, IT IS ORDERED that the complaint herein be and it is hereby dismissed for want of jurisdiction.

Dated, San Francisco, California, this 20th day of February, 1940.

COMMISSIONERS.