

Decision No. 35759

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of

E. R. KENNEDY, doing business
as E. R. KENNEDY PUMPING PLANT

For Certificate of Public Convenience
and Necessity.

Application No. 24834

Bohnett, Hill, Cottrell & Boccardo,
by L. D. Bohnett, for Applicant.

Leib & Leib, by C. E. Leib,
for San Jose Water Works, Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding E. R. Kennedy, doing business under the fictitious firm name and style of E. R. Kennedy Pumping Plant, asks the Railroad Commission for a certificate of public convenience and necessity to supply water for domestic use in a certain area and to furnish water for irrigation purposes in the said domestic area and certain additional territory adjacent thereto and near the unincorporated community of Campbell in the County of Santa Clara. The Commission is also requested to establish a schedule of rates for both classes of water service.

A public hearing in this matter was held before Examiner K. R. MacKall in Campbell.

For many years Applicant has been conducting a public utility business, supplying water from a pumping plant located on Lot 6 of the E. R. Kennedy Subdivision No. 2, on the north side of Budd Avenue, about 850 feet west of the Santa Clara and Los Gatos Road. The water system has heretofore been used

primarily to furnish water for irrigation purposes and incidentally for domestic use to a limited number of consumers. The irrigation rate filed with the Commission by Applicant, May 31, 1921, is as follows:

"Price of water to be Three (\$3.00) Dollars per hour for normal stream of water, the full capacity of present well and pump.

"A discount of ten (10%) per cent will be allowed for all water, used by any consumer, in any one year, in excess of one hundred (100) hours."

Applicant testified that his present well is 16 inches in diameter by 300 feet deep, equipped with a 12-stage Peerless pump, driven by a 55-horsepower electric motor, producing between 650 and 1,000 gallons of water per minute depending upon the level at which water stands in the well, which varies from 250 feet to less than 100 feet below the surface. The irrigation distribution system consists of approximately 16,000 feet of 12-inch concrete pipe, serving about 37 irrigation customers.

The territory which Applicant desires to serve with water for irrigation comprises 460 acres, more or less. There was no objection made to Applicant's request for a certificate of public convenience and necessity to serve irrigation water in the said area.

Mr. Kennedy also asked for a certificate of public convenience and necessity to serve water for domestic uses to an area comprising 105 acres, more or less, which area is included in the boundaries of the 460 acres of the irrigation territory. This area includes the E. R. Kennedy Subdivision No. 2 lying west of the Santa Clara and Los Gatos Road and north of Budd Avenue; a 30-acre tract lying west of the Santa Clara and Los Gatos Road and south of Budd Avenue; and three tracts containing 15 acres, 10.012 acres and 9.801 acres, respectively, lying across Budd Avenue from and northwesterly of the 30-acre tract. Applicant is now serving water for domestic use to all homes within this area who do not have wells of their own, there being 11 such customers receiving domestic water service, all on a metered basis.

For the benefit of his domestic consumers, Applicant uses his irrigation plant to pump water into a 15,000-gallon wood-stave tank on a wooden frame with elevation of 50 feet, from which water is taken by a booster pump driven by a 5-horsepower electric motor and delivered into two steel tanks of 800-gallon and 1100-gallon capacity, respectively, where the pressure is automatically maintained between 30 and 50 pounds per square inch. Water is distributed to the domestic consumers by means of about 1,600 feet of 3½-inch pipe, extending from the pumping plant on Lot 6 of the E. R. Kennedy Subdivision No. 2 easterly along the southerly boundary of Budd Avenue to the Santa Clara and Los Gatos Road and branching northerly to and along a portion of West Kennedy Avenue, and about 900 feet of 2-inch pipe extending from opposite the pumping plant westerly along the southerly boundary of Budd Avenue to the first turn in said avenue. The Applicant states that the distribution mains will be enlarged and extended and new lines laid as the needs of consumers require, and that the only water at present available for domestic use to householders within this area is the water so furnished by Applicant.

The San Jose Water Works protested the granting of any certificate which would exclude that utility from serving this area with water for domestic use, claiming to be able to furnish water at least as adequately as Applicant. The map filed at the hearing as Exhibit No. 1, shows the portions of the mains of San Jose Water Works now existing in contiguous territory. A 6-inch main extends northerly along San Tomas Aquino Road to its junction with the Santa Clara and Los Gatos Road just north of the Southern Pacific Railroad tracks, which point is 1,300 or 1,400 feet south of the intersection of Budd Avenue with the Santa Clara and Los Gatos Road. A 4-inch main extends easterly along Hazel Avenue to its intersection with Virginia Avenue, from which point 2-inch mains are laid southerly and northerly along Virginia Avenue, with a 2-inch branch extending easterly along Budd Avenue about 850 feet, from which domestic water service is rendered to a few residents along Budd Avenue, west of the 30-acre tract, through privately owned water pipes. The static pressure in the water

mains belonging to San Jose Water Works is about 90 pounds per square inch in this vicinity; this fact, together with that of larger mains, was stressed to point out the better fire protection which could be obtained for this area if it were to be served by the San Jose Water Works.

However, to avoid costly competition and unnecessary duplication of water works facilities, both Applicant and San Jose Water Works agreed to abide by a stipulation as to the southerly boundary of the area to be served with domestic water by Applicant. The stipulation, signed by attorneys for both parties under date of July 2, 1942, and filed with the Commission July 6, 1942, is as follows:

"IT IS HEREBY STIPULATED that the southerly boundary of the territory referred to in Paragraph III of the Application of E. R. Kennedy herein, and as outlined in 'Exhibit A' attached to said application be changed to the red line marked 'Southerly Limits' as indicated on the map hereto attached and marked 'Exhibit A,' which last-mentioned line is 150 feet southerly from and parallel to the southerly line of Budd Avenue and the westerly prolongation thereof as shown upon said 'Exhibit A.'

"IT IS FURTHER STIPULATED as to the tract of land marked '30.00 Ac.' on said 'Exhibit A,' that should said '30.00 Ac.' tract be hereafter subdivided, the said southerly boundary shall automatically be moved north or south so as to coincide with the southerly line of the first tier of lots fronting on the southerly line of Budd Avenue, provided that said southerly line of said first tier of lots shall not be more than 200 feet southerly from said southerly line of Budd Avenue."

Domestic water service is rendered to other portions of the community of Campbell by The Campbell Water Company, of which Mr. Ralph H. Hyde is Vice-President and Manager, and which utility was not represented at the hearing in this proceeding, although it had been given due notice thereof. There is a tacit understanding that The Campbell Water Company shall serve water for domestic and irrigation purposes to the property fronting on both sides of Rincon Avenue west of the Santa Clara and Los Gatos Road and on the east side of the Santa Clara and Los Gatos Road as far south as Kennedy Avenue; and that the territory southerly and westerly thereof shall be considered to be the service area of the E. R. Kennedy Pumping Plant. Thus there appears to be no overlapping of the service areas nor duplication of facilities in this direction.

Applicant has heretofore furnished water on a limited basis for domestic use at the following monthly quantity rates:

- For the first 1,500 cubic feet, at 22 cents per 100 cubic feet.
- For the next 1,500 cubic feet, at 20 cents per 100 cubic feet.
- For all over 3,000 cubic feet, at 15 cents per 100 cubic feet.

Applicant now asks that the Commission establish the following schedule of rates, which are somewhat more favorable to the consumers:

DOMESTIC RATES

Meter Rates:

Monthly Minimum Charges:

- For 5/8 inch meter \$1.25
- For 3/4 inch meter 1.50

Each monthly minimum charge will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the following monthly quantity rates:

Monthly Quantity Rates:

- First 1,000 cubic feet, 22¢ per 100 cubic feet
- 1,000 to 2,000 cubic feet, 20¢ per 100 cubic feet
- 2,000 to 3,000 cubic feet, 15¢ per 100 cubic feet
- Over 3,000 cubic feet, 12¢ per 100 cubic feet

Street sprinkling or water for spraying 15¢ per 100 cubic feet.

The foregoing rates proposed by Applicant are comparable to those of the other utilities supplying water for domestic uses in the immediate vicinity and are considered reasonable for the service rendered. Therefore the Order following this Opinion will authorize the establishment of the proposed rates.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require and will require the operation

of a water system by E. R. Kennedy, doing business under the fictitious firm name and style of E. R. Kennedy Pumping Plant, to furnish water for irrigation purposes within that certain territory comprising 460 acres, more or less, outlined in red on the map marked "Exhibit D" attached to the application and by reference made a part hereof; and also to supply water for domestic use within that area consisting of 80 acres, more or less, which area lies within the boundaries of the aforesaid 460-acre territory and is outlined in red on the map marked "Exhibit A" attached to the application and by reference made a part hereof, subject to the stipulation dated July 2, 1942, filed in this proceeding on behalf of Applicant E. R. Kennedy and Protestant San Jose Water Works as set forth in the Opinion preceding this Order; all said areas being adjacent to the unincorporated community of Campbell, Santa Clara County, California.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to E. R. Kennedy, doing business under the fictitious firm name and style of E. R. Kennedy Pumping Plant, to operate a public utility for the sale and distribution of water for irrigation purposes within the 460-acre territory and of water for domestic use within the 80-acre area hereinbefore described.

IT IS HEREBY FURTHER ORDERED that E. R. Kennedy, operating under the fictitious firm name and style of E. R. Kennedy Pumping Plant, be and he is hereby authorized and directed to file in quadruplicate with this Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged for all water service rendered to his consumers subsequent to the first day of October, 1942, which schedule of rates is hereby found to be just and reasonable for the service to be rendered:

SCHEDULE OF RATESIRRIGATION SERVICE

For normal stream of water, being the full capacity of present well and pumping plant and not less than 650 gallons per minute, rate per hour \$3.00

A discount of ten (10%) per cent will be allowed for all water used in excess of one hundred (100) hours by any consumer in any one calendar year.

DOMESTIC SERVICEMinimum Monthly Charges:

For 5/8 x 3/4 inch meter	\$1.25
For 3/4 inch meter	1.50
For 1 inch meter	2.00
For 1-1/2 inch meter	3.00
For 2 inch meter	5.00

Each of the foregoing "Minimum Monthly Charges" will entitle the consumer to the quantity of water which that minimum monthly charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates:

First 1,000 cubic feet, per 100 cubic feet	\$0.22
Next 1,000 cubic feet, per 100 cubic feet	0.20
Next 6,000 cubic feet, per 100 cubic feet	0.15
All over 8,000 cubic feet, per 100 cubic feet	0.12

All water for spraying trees or sprinkling streets, per 100 cubic feet \$0.15

IT IS HEREBY FURTHER ORDERED that E. R. Kennedy, operating under the fictitious firm name and style of E. R. Kennedy Pumping Plant, be and he is hereby directed as follows:

- (1) Within thirty (30) days from the date of this Order, to submit to this Commission for its approval quadruplicate sets of rules and regulations governing relations with his consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet approximately 8 1/2 x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the authorized service area for each type of service and the location thereof with reference to the surrounding territory; provided, however, that such map or sketch shall

not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.

- (2) Within sixty (60) days from the date of this Order, to file with this Commission four copies of a comprehensive map drawn to an indicated scale of not less than 400 feet to the inch, upon which shall be delineated correctly by appropriate markings the various tracts of land in the territory for which the certificate is granted herein. This map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire utility area of service; provided, however, that such map shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.
- (3) Within thirty (30) days from the date of this Order to file with this Commission an affidavit to the effect that he will never claim before this Commission or any other public body an amount for the certificate of public convenience and necessity granted herein in excess of the actual cost of acquiring it.

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 15th day of September, 1942.

Justus F. Craven
J. P. Baker
Francis L. Havens
Hubert Kachise
 Commissioners.