

Decision No. 36325

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ELSIE UNRUH,

COMPLAINANT

VS

WOOD STONE,

DEFENDANT.

Case No. 4632

ORIGINAL

Dorris & Fleharty, for Complainant.

H. E. Schmidt, for Defendant.

BY THE COMMISSION:

O P I N I O N

Elsie Unruh, complainant, is the owner of a one-half acre parcel of land located approximately one mile west of Shafter, Kern County, and in this proceeding asks the Commission to direct Woods Stone to restore irrigation water service to her property and that he be further directed to continue such service until further order of the Commission.

It is alleged, among other things, by complainant that Woods Stone refused to continue water service to her property during the irrigation season of 1942 and has still refused water deliveries. The answer filed by Woods Stone denies generally the allegations set forth in the complaint regarding the rights of said complainant to water service and the discontinuance thereof, and in addition thereto alleges that the Railroad Commission has no jurisdiction over the water operations of defendant.

Public hearing in this matter was held before Examiner Wm. Stava at Bakersfield.

From the evidence, it appears that Woods Stone in the year 1936 acquired an 80-acre ranch from California Lands Inc., said ranch lying adjacent to and across the county road, known as Poplar Road, from complainant's home. Prior thereto one

Edelman, a predecessor in interest of defendant Stone, supplied water, commencing about the year 1928, to a Mrs. Rahn, predecessor in interest to complainant Elsie Unruh. A 10-inch pipeline was installed across the road by said Mrs. Rahn connecting with an irrigation pipeline on the then Edelman ranch. Water was furnished to the Rahn property for an 8-months' irrigation season at a charge of \$1.00 per month. This service was continued up to the acquisition of the 80-acre ranch by California Lands Inc., which acquired the property through foreclosure proceedings in 1934. During ownership of this ranch property, lessees of said ranch continued service to complainant until the property was purchased by defendant Stone in 1936. According to testimony, Woods Stone continued service of water to complainant under the same charges until the end of the irrigation season in the year 1941 at which time notice was given by him to Elsie Unruh that no further irrigation service would be furnished to her property. Although service was demanded by complainant for the season of 1942, defendant refused.

According to the evidence, in 1927 a 3-inch pipeline was installed across Poplar Road from the Edelman Ranch and water was supplied to a one-acre tract upon which was located a Church of the Seventh Day Adventists. This pipeline was installed by the church authorities at its own expense and for a period of approximately two years water service was received from the Edelman Ranch for which a charge of \$1.00 per month was made. Thereafter water was furnished to the Church free and this same service was continued by Mr. Stone without charge after his acquisition of the ranch properties in 1936 until in 1938 when it was discontinued after completion of a well drilled on the church grounds.

During the early part of the year 1942, water was furnished by defendant Stone to property across Poplar Road from his ranch to a small parcel of land owned by a man named Hall, an employee of Stone. This parcel adjoins the Unruh place and receives water free of charge. Said Hall is an employee of defendant and the service rendered is stated to be a part of the compensation received by Hall for his personal services rendered.

The record in this proceeding indicates that water service was discontinued as an unfortunate aftermath of former cordial neighborly relations,

involving matters not properly in issue before this Commission. It appears, however, that the sale and distribution of water not only by all predecessors in interest of Woods Stone but by said Stone himself have in each and every instance been upon the basis of accommodation only, delivery being made primarily for irrigation purposes to a neighbor or neighbors or an employee who had no other sources of supply. It is clear that at no time in the past has a dedication of any part of the ranch water supply been made to the public or to any portion thereof. The facts indicate conclusively that this service is specifically exempt from a public utility servitude as having been rendered under conditions defined by Section 1, Statutes of 1913, Chapter 80, Act for Regulation of Water Companies which in part reads as follows:

*****provided, however, that whenever the owner of a water supply not otherwise dedicated to public use and primarily used for domestic purposes by such owner or for the irrigation of such owner's lands, shall sell or deliver the surplus of such water for domestic purposes or for the irrigation of adjoining lands, or whenever such owner shall, in an emergency water shortage sell or deliver water from such supply to others for a limited period not to exceed one irrigation season, or whenever such owner shall sell or deliver a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available then such owner shall not be subject to the jurisdiction, control and regulation of the Railroad Commission of the State of California: *****

Under the circumstances it is apparent that this complaint should be dismissed.

O R D E R

Formal complaint having been filed as entitled above, 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 matter be, and it is hereby dismissed.

Dated at San Francisco, California, this 2th day of May

1943.

Francis D. Hooper
E. J. Baker
Justin F. Currier
Richard L. Lachse
Samuel C. Long

COMMISSIONERS.