

Decision No. 39949

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

E. D. Davis, Clara A. Emerson, Warren W. Gayman,  
Mrs. J. J. Greer, Azel C. Horen, John H. Lance,  
E. M. McGuire, Victoria J. Newell, Mrs. Florence  
Oard, John L. Russell, et ux., J. C. White,  
Mrs. Fred De LaVergne, Nellie J. Flanagan,  
Walter Gerig, Marvel A. Harris, Roy E. Johnston,  
Guido F. Marsili, J. R. O'Neal, W. Q. O'Neill,  
Nellie F. Rausch, Catherine E. Transue,  
Elmer L. Winnie,

Complainants,

vs.

C. T. Oeste, E. O. Anderson,  
Defendants.

ORIGINAL

Case No. 4726

Warren W. Gayman, W. Q. O'Neill, for Complainants.  
Downey, Brand and Seymour, by H. B. Seymour,  
for Executors of Estate of C. T. Oeste,  
Deceased Defendant.

Irvin C. Ford, for Estate of C. T. Oeste,  
In the County of Yolo, Defendant.

O P I N I O N

This complaint is signed by twenty-two water users who live in a sub-  
divided tract known as Outingdale, a summer resort located along the Middle Fork of  
the Consumnes River, in portions of Sections 23, 24 and 26, T. 9 N., R. 11 E.,  
M.D.B. & M., about twelve miles from Placerville, in Eldorado County.

Complainants allege that C. T. Oeste is the owner of the Outingdale Tract  
and E. O. Anderson is the manager thereof; that the tract was put on the market in  
1927; and, that the lots were sold with the promise of water for domestic purposes  
to all lot purchasers. It is further alleged that while free water was supplied  
during the first few years, a charge was made for water service up to the year 1943  
when defendants refused to provide water for the subdivision and the property owners  
were forced to operate the water system themselves. The Commission, therefore, is

asked to order defendants to furnish water for domestic purposes to the various cabins throughout the tract during the entire twelve months of each year, for which service complainants are ready and willing to pay a reasonable charge.

The answer filed by C. T. Oeste and E. O. Anderson alleges that the subdivision known as Outingdale was opened originally in 1928 by F. C. Peters who sold therein approximately twelve lots; that in the year 1931 C. T. Oeste succeeded to the ownership of the unsold acreage in Outingdale by virtue of a conveyance from said Peters delivered in lieu of a foreclosure of a deed of trust for money loaned; and, that since acquisition of said tract Oeste has sold eight lots in Outingdale and from 1935 to 1943 supplied water to lot owners therein as a matter of private agreement and accommodation. It is denied that since 1943 Oeste has refused to deliver water to complainants and it is alleged that at no time has defendant, or his predecessor in interest, ever dedicated or caused the water system to be dedicated to the public use. Wherefore defendants aver that they are not engaged in the public utility business and that the Public Utilities Commission of the State of California is without jurisdiction in this proceeding. The Commission, therefore, is asked to dismiss the complaint.

Public hearings in this proceeding were held in Outingdale and in the City of Sacramento before Examiner M. R. MacKall.

The evidence presented in this proceeding shows that heretofore Fred C. Peters was the owner of a parcel of land containing 500 acres, more or less, lying along the Middle Fork of the Consumnes River about twelve miles southeasterly from Placerville and two miles from the community of Youngs on the Diamond Springs and Aukum Road. In 1928, said Peters subdivided fifty-five acres of his holdings into 300 lots, constructed a nine-hole golf course on an adjoining twenty-acre parcel and named the development Outingdale. A water system was installed and mains were laid to deliver water to the lots in the tract. A gasoline engine operated a pump taking water from the Middle Fork. A small tank of about a 1,000-gallon capacity furnished the only storage for the system.

Fred C. Peters sold lots in Outingdale mainly through his resident agent and manager, W. Q. O'Neill, until the year 1931 when Peters lost his property through failure to meet a loan to C. T. Oeste. During the time Mr. O'Neill was in charge of operations at Outingdale, he supplied water to persons living in the tract through the water system at the rate of \$6.00 per year on the basis of 50¢ per month. A distinction existed apparently in billing for water service. Some lot purchasers who had not fully paid for their property were not pressed to pay for water the first year or two the subdivision was opened for the sale of lots, while those who had paid in full, or who had paid cash for their lots, were charged for water service. While the exact number of lots sold during the ownership of the project by Peters is not clear, the record shows that at least twelve lots were sold prior to acquisition of the subdivision by C. T. Oeste, and that as of the date of the adjourned hearing in this matter in Sacramento, a total of fifty-four lots had been sold in Outingdale.

In 1931, when C. T. Oeste took possession of this project he appointed E. O. Anderson as his resident agent and general manager in charge of all operations, including the sale of lots and the delivery of water to the lot purchasers and residents. Mr. Oeste took no active part in this project. Mr. Anderson replaced the original pump with a 4-stage centrifugal pump operated by a Studebaker automobile engine. In 1936 a concrete diversion dam was constructed on the Middle Fork of the Consumnes River, a very large hydraulic ram was installed, operated by water delivered through a 20-inch pipe line. From the ram water was discharged through a 6-inch line to a new 45,000-gallon storage reservoir from which service was rendered by gravity to consumers and to the golf course.

Notices were posted by Oeste on the Middle Fork of the Consumnes River claiming the right to appropriate 100 miner's inches of water for irrigation, domestic and power purposes. Apparently, according to the testimony of E. O. Anderson, two permits were perfected through the Division of Water Resources entitling Oeste to divert and appropriate 1/4 of a miner's inch of water for

domestic service and  $2\frac{1}{2}$  miner's inches for power purposes; the latter to operate a ram or water turbine.

In a report submitted by R. W. Hawley, one of the Commission's engineers, the water system was appraised at \$10,175 as of June 1, 1945, with an annual depreciation allowance of \$98, calculated by the sinking fund method at 5%. Mr. Joseph W. Gross, a consulting engineer, in behalf of the Estate of C. T. Oeste, testified that he appraised the same properties as of said date at \$23,800. Both appraisements were upon the bases of estimated original cost, except lands at present fair market value.

During the winter of 1941-1942, the water froze in the hydraulic ram. It was so badly cracked and damaged that all attempts to repair the ram failed to make it operate. It has since been abandoned. After the consumers complained about the discontinuance of water and demanded that service be resumed, Anderson furnished a Meyer Bulldozer Pump and an old, second-hand Model A, Ford V8 automobile engine which the consumers were forced to install and thereafter operate at their own expense. Since this time various residents have operated the engine and pump, the latest being W. Q. O'Neill who has collected charges ranging from \$6.00 to \$10.00 per year from those who would pay, which includes all but six of the present forty residents.

After furnishing the pump and engine, Oeste and Anderson refused to have anything further to do with the supplying of water in Outingdale. They did not object to the use and operation of the system by the consumers but, nevertheless, Oeste still retained full title to the waterworks.

C. T. Oeste died in December of 1944 and the agency of E. O. Anderson thereby was terminated. Anderson at no time had a proprietary interest in any of the properties or rights of C. T. Oeste and by stipulation of all interested parties herein, it was agreed that said E. O. Anderson was not a proper party or defendant in this case. It is to determine the responsibility of the owner of this water system, now the Estate of C. T. Oeste, that complainants have brought this case before the Commission.

The record shows that during the regime of E. O. Anderson, charges were made to the residents of Outingdale for water service. Consumers were charged and they paid for water service from \$6.00 to \$9.00 per year, the majority paying \$6.00, evidently based on a rate of 50¢ per month and billed annually. Receipts in many instances were given signed by E. O. Anderson, or by his wife, for these payments for water service and so designated thereon. Exhibit No. 1, filed in this proceeding, shows three such receipts signed by E. O. Anderson and one signed by Mrs. E. O. Anderson, his wife. Exhibit No. 1 shows also a cancelled check for \$9.00 made out to E. O. Anderson by Warren W. Gayman, a resident property owner and consumer, marked thereon for water service in Outingdale. These receipts and the check were all identified by the witnesses, to whom the respective receipts were issued, as being receipts and a check for water service. The dates of these receipts run as follows: May 31, 1934; June 20, 1934; July 26, 1938; and May 6, 1939. The Gayman check is dated May 6, 1939, and bears the following notation in the handwriting of Warren W. Gayman: "Water Service to Lot No. 23, Outingdale, to September, 1939."

The blank forms of sales contracts and deeds used by both Fred C. Peters and C. T. Oeste in the sale of lots in Outingdale contained no reference whatsoever to water or water service. No executed contracts or deeds were presented in evidence; however, the testimony is clear that such executed instruments likewise contained no clauses or provisions relating to water or water service.

The testimony further shows that no written private contracts or any other types of agreement were made by either Peters or Oeste with lot purchasers or owners in Outingdale relating to water or water service.

The evidence and testimony in this proceeding have been reviewed at considerable length. The record conclusively shows that water has been sold to the general public residing in Outingdale for compensation by both Fred C. Peters and by the late C. T. Oeste through his duly appointed and authorized resident agent and general manager, E. O. Anderson; that water was sold continuously until the hydraulic ram was damaged beyond repair in the winter of 1941-1942. By so doing,

the water and water system thereby have been dedicated to the public use and the operations of said water system therefore are under the control and jurisdiction of the Public Utilities Commission of the State of California.

The Estate of C. T. Oeste, therefore, will be required to file with this Commission rates, rules and regulations governing water service to the residents of the subdivision known as Outingdale in the County of Eldorado, and will be required, furthermore, to take whatever steps are necessary to resume water service to the consumers in said tract on or before the first day of April, 1947.

O R D E R

Complaint as above entitled having been filed with this Commission, public hearings having been held thereon, the matter having been duly submitted and the Commission now being fully informed in the premises, and based upon the conclusions and findings set forth in the foregoing Opinion,

IT IS HEREBY FOUND AS A FACT that the water works owned by the Estate of C. T. Oeste, deceased, used for serving water for domestic and other purposes in the subdivision of Outingdale, located in portions of Section 23, 24 and 26, T. 9 N., R. 11 E., M.D.B. & M., in the County of Eldorado, State of California, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California, and now, therefore,

IT IS HEREBY ORDERED that the Estate of C. T. Oeste, deceased, shall file with this Commission, within thirty (30) days from and after the date of this Order, in quadruplicate and in conformity with the Commission's General Order No. 96, rates for water service in the subdivision known as Outingdale, in the County of Eldorado, which rates shall not be higher than the rates heretofore charged for water service in said subdivision.

IT IS HEREBY FURTHER ORDERED as follows:

1. That the Estate of C. T. Oeste, deceased, shall resume, on or before the first day of April, 1947, the delivery of water for domestic and other purposes to all residents in said subdivision known as Outingdale in Eldorado County who request water service.
2. That the Estate of C. T. Oeste, deceased, within thirty (30) days from the date of this Order, shall submit to this Commission for its approval four sets of rules and regulations governing relations with its consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet 8 1/2 x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the present service area, and the location thereof with reference to the immediate 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.
3. That the Estate of C. T. Oeste, deceased, within sixty (60) days from the date of this Order, shall file with this Commission four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated by appropriate markings the territory presently served. 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 property 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.

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, Calif. <sup>the 14th day of February</sup> 1947. Harold P. Heals

1947.

Justus J. Galena  
Dean Powell  
R. B. Anderson

Commissioners.