

Decision No. 40126

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harry Aslin, Colleen Aslin, Margaret B. Cole,  
Edith C. Demerritt, Stanwood Haley, Grace H.  
Jordan, Dagny Juell, T. F. McMullen, Louis  
Rubbattino, Anna B. Nicholls, Rose Schaarschmidt,  
A. R. Waters, Clara Waters, John Cabral and  
Mary Cabral,

Complainants,

vs.

Harriet O. Case and Dorothy H. Wolf,

Defendants.

ORIGINAL

Case No. 4827

In the Matter of the Application of Harriet O.  
Case and Dorothy H. Wolf to Discontinue Water  
Service.

Application  
No. 27463

GEARY and TAUZER by C. J. TAUZER and CARLTON SPRIDGEN  
for Complainants.

R. M. QUACKENBUSH for Defendants and Applicants.

INTERIM OPINION AND ORDER  
REOPENING FOR FURTHER HEARING

The complainants in Case 4827 are property owners in a residential subdivision at Wright's Beach, located along Highway No. 1 about six miles north of Bodega Bay, Sonoma County. They allege that the defendants, Harriet O. Case and Dorothy H. Wolf, also property owners at Wright's Beach, have been supplying water to residents within the subdivision for compensation and as a public utility service, and pray that these defendants be restrained from carrying out their declared intention to discontinue such water service.

In the application proceeding, Harriet O. Case and Dorothy H. Wolf admit that they have been supplying water to nine residents at Wright's Beach, but declare that service has been rendered as a courtesy or accommodation. They further declare that they are not now able during the summer months to deliver a sufficient

quantity of water to meet the needs of all consumers. They ask the Commission to authorize the discontinuance of the service.

A public hearing was held upon these two matters at Santa Rosa before Examiner Stava. Throughout this opinion covering both matters, Harriet O. Case and Dorothy H. Wolf will be referred to as the Defendants, and the other property owners as the Complainants.

In view of the conclusion herein reached that the submission of both the complaint and the application be set aside and the matters reopened for further hearing, this opinion need not contain a fuller recital of the facts than essential to explain the reasons prompting the Commission to take such action.

It appears that in the year 1933, William J. Robertson and his brother, Jesse J. Robertson, recorded a map for the subdivision and sale of about fifty residential lots located between the highway and the cliff bordering the ocean shore. This was designated the West Beach Subdivision. The Robertsons then began the sale of lots by reference to the subdivision map. By the year 1943 twenty deeds to purchasers had been recorded and about ten purchasers had erected summer cottages within the subdivision. The evidence is quite clear that the Robertsons represented that water would be made available to all lot purchasers. They laid a water pipe between two tiers of lots and, as residences were constructed, owners were permitted to connect this pipe with their homes. The source of this water supply was from springs located on other property belonging to the Robertsons, property which lies along the beach below the cliff and which was not included in the subdivided tract. They or their agents appear to have regularly collected \$1.00 per month from each water consumer.

In October 1942, defendants Harriet O. Case and Dorothy H. Wolf entered into an agreement with the Robertsons for the purchase of several lots lying at the southern end of the subdivision, together with other property of the Robertsons not incorporated in the subdivision, including the area below the cliff on which the springs were located. The evidence clearly indicates the defendants

were aware that the Robertsons had undertaken to supply water to those who had previously purchased lots in the tract. It was provided in their agreement of purchase that they would furnish water to all future purchasers of lots and receive reasonable compensation for such service. The record shows also that the defendants, after making their purchase of property from the Robertsons, continued to supply water to those residences previously erected within the tract, and continued to charge each at the rate of \$1.00 per month per lot until the autumn of 1945, after they had served notice that further water service would not be accorded.

The defendants testified that when they acquired their property and undertook to continue supplying water as theretofore undertaken by the Robertsons, they had supposed the quantity of water which could be developed from spring sources below the cliff would be adequate for their own use and for other residents within the subdivision. In the beginning they undertook the raising of chickens and the planting of a considerable garden. Both these enterprises have been abandoned because of the lack of water. The evidence shows that there has been insufficient water available during the summer months to adequately serve the existing residential water users. They declare that they have attempted to increase the water supply but without success, and that they have made many repairs to the water gathering reservoir and to the pumping system which lifts the water to the pipeline on the higher ground above the cliff.

From the evidence thus far presented in these proceedings, the Commission must conclude that a public utility water service was undertaken by the Robertsons in 1933 and that service continued until they sold a part of their property to defendants. It must be concluded also that the defendants themselves, both by virtue of their succession to the water bearing land and production system and by their subsequent operation thereof, have incurred some obligation to continue the supplying of water to the complainants. However, the record is insufficient to justify the Commission in finding that the defendants have assumed the

full obligation of a public utility to render water service throughout the West Beach Subdivision. Moreover, no evidence was presented to indicate that these defendants have succeeded to the ownership of the distribution water pipe extending beyond the boundaries of their property. Apparently this pipeline remains the property of the Robertsons. Accordingly, it is the Commission's conclusion that, in addition to the reopening of these proceedings for further hearing, it should also institute an investigation upon its own motion to determine whether William J. Robertson and Jesse J. Robertson should not be directed, either by themselves or jointly with the defendants, to fulfill whatever obligation they may have incurred to supply water as a public utility.

With respect to defendants' request that they be relieved of all obligation to furnish water to others, the record thus far made appears to sustain their claim that the amount of water available from the springs on their property is insufficient to supply their own and the other existing residences in the West Beach Subdivision. For this additional reason, the Commission could not equitably declare that the defendants are obligated to serve all residents within the subdivision until sufficient evidence is adduced to permit the establishment of appropriate service rules and regulations and the fixing of reasonable rates to be charged for the service afforded.

Therefore, the order to follow will provide for the reopening of these matters for the receipt of further evidence. By separate order the Commission is instituting an investigation to which the Robertsons are made respondents.

ORDER

-A hearing having been had in the above entitled proceedings, the matters considered by the Commission, and it appearing to the Commission for the reasons set forth in the foregoing opinion that a further hearing in said proceedings is required; therefore

IT IS ORDERED that the submission for decision of Case 4827 and Application 27463 be and hereby is set aside and that a further hearing in such proceedings be had before Comm. Rowell on the 27<sup>th</sup> day of April, 1947, at 10 A.M., in the Courthouse at Santa Rosa, California, at which time and place the parties interested in said proceedings may appear and be heard.

Dated at San Francisco, California, this 1<sup>st</sup> day of April, 1947.

Harold P. Hule  
Justice F. C. Green  
Comm. Rowell  
A. J. ...  
Therese ...

Commissioners.