

Decision No. 40852

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eugene C. Kaufman, F. A. Pullara, and
Clyde O. Walker,

Complainants,

-vs-

J. Orrin Gould and P. L. G. W. Gould,

Defendants.

Case No. 4889

ORIGINAL

Floyd H. Bowers, for Complainants.

Busick and Busick, by Charles L. Busick,
for Defendants.

O P I N I O N

In this proceeding Eugene C. Kaufman, F. A. Pullara and Clyde O. Walker complain that the charges for water supplied from a well and distribution system, alleged to be owned and operated by J. Orrin Gould and P. L. G. W. Gould, in South Roseville Tract, near the City of Roseville, have been increased from \$2.00 per month to \$3.50 per month without the approval of this Commission, and that the defendants now threaten to cut off their water supply unless this unauthorized increased rate is paid. Complainants ask that the Public Utilities Commission find the defendants to be a public utility and fix the reasonable water rates to be paid by complainants.

A public hearing in this matter was held before Examiner MacKall in Roseville.

From the evidence presented, it appears that a portion of the old Christian Zeh homestead, lying near the southerly corporate boundary of the City of Roseville in Placer County, was subdivided by Mr. Zeh and placed on the market about

1925. This subdivision contained 443 residential lots and was officially recorded as South Roseville Tract. No water system was installed by the tract owners.

Mrs. Lucy V. Wink and her late husband, John H. Wink, in 1926 purchased certain lots in the South Roseville Tract, including Lot 365 and Lot 366. On Lot 366 was located the old ranch house, now locally called the Big House, together with a dug well. This well caved in and a new well was drilled in 1929 by Mrs. Lucy V. Wink on Lot 365 to supply the Big House and its tenants. This well is 240-feet deep, 6 or 8 inches in diameter, and equipped with a windmill pumpjack operated by a 5-horsepower motor. There is also a 1,200-gallon pressure tank connected to the discharge line. The evidence indicates that this pumping equipment is the original installation and now is in a poor state of repair, needing complete replacement.

According to her testimony, Mrs. Wink has been a non-resident of this community for many years last past. She did not return to see her property until 1929 at which time she authorized her tenant, Mr. A. C. Lyon, to supply water to one neighbor to help defray the cost of running the pump. Mrs. Wink further testified that she had never authorized anyone to sell or furnish water to neighbors or tract residences other than as above stated and never at any time had she installed or authorized the installation of any pipe line or main from the well or tank to supply other homes in the neighborhood. She testified further that she had no knowledge of water being supplied to various other houses in the tract from her well until informed of this proceeding, at which time she was requested to appear as a witness.

Mrs. Wink is still holder of the record title to Lot 365 upon which the well in dispute is located, and, also, Lot 366. During the month of September, 1946, Mrs. Wink entered into an agreement to sell her property in South Roseville Tract, including Lots 365 and 366, to Mr. Doxstader, who, sometime thereafter, transferred his interests therein to defendants J. Orrin Gould and Pershing Lloyd George Wilson Gould, his son, who are now in possession thereof. It now appears

that the papers involved in this transaction are held in escrow, apparently not to be released by reason of the cloud cast upon the title to the property as a result of the filing of this proceeding.

Some time prior to 1940, a 2-inch pipe line was installed by parties unknown from the well on Lot 365, running a total distance of 600 feet, more or less, eventually supplying water to five or six homes in the subdivision. There are now only seven residences in the entire South Roseville Tract. No evidence was presented shedding any light on the party or parties who installed or paid for this line. None of the consumers or residents present at the hearing who testified had paid for all or any part thereof nor had any knowledge of its history. Mrs. Wink stated that she was unaware of its existence and that if such line had been installed during her ownership of the lots, it had been done without her knowledge or consent.

Mr. J. Orrin Gould, one of the defendant parties herein, purchased a lot in the South Roseville Tract and in October, 1941, established a residence thereon. According to his testimony he received water for this residence from the well on Lot 365 and for which he paid \$2.00 per month until July, 1946. The last well operator he paid was Mr. A. C. Lyon. After entering into the agreement to acquire the interests of Mr. G. E. Doxstader, Mr. Gould and his son, P. L. G. W. Gould, took possession of Lots 365, 366 and 374. Mr. Gould then drilled a new well to supply his own home and thereupon discontinued the use of water to his home from the well on Lot 365 in July, 1946.

Eugene C. Kaufman, one of the complainants herein, acquired his residence in South Roseville Tract in October, 1945, subsequent to which date he had paid Mr. Clyde Walker \$2.00 per month for water from the well on Lot 365 to October 1, 1946. Thereafter he paid Mr. J. Orrin Gould for the water, and since January 1, 1947, has paid the increased charge of \$3.50. He is still receiving water service at this rate. The record shows that Mr. Kaufman is the only consumer now being supplied water by defendants from the well on Lot 365.

Mr. Clyde O. Walker, a complainant in this proceeding, has owned a lot in South Roseville Tract since May, 1940. His residence in said tract was supplied with water from the well on Lot 365 and for which he paid \$2.00 per month to A. C. Lyon until the first day of January, 1946, at which time Mr. Lyon turned over the operation of the pumping plant to him, but upon what authority he testified that he did not know. According to his testimony, Mr. Walker operated this pumping plant until October 1, 1946, at which time J. Orrin Gould notified him that he and his son had purchased the property and that he, complainant Walker, thereupon turned over the operation to Mr. Gould. During Mr. Walker's regime, he sold water for \$2.00 per month to Eugene C. Kaufman, J. Orrin Gould, a Mr. Jones, a Mr. Chaffin and himself. Mr. Gould stated that he kept all money collected to pay costs of operating the pumping plant and made no accounting therefor to anyone.

Under date of April 16, 1947, Mr. Walker received a letter from defendants informing him that his water supply would be discontinued from the well on Lot 365, on and after May 16, 1947. For this reason Mr. Walker drilled a well upon his own premises in August, 1947, and now uses his own supply; in addition, he also serves water to his neighbor Felice A. Pullara, one of the complainants herein. Mr. Pullara had purchased his home in South Roseville Tract in October, 1946, and had his service from the well on Lot 365 cut off by defendants in July, 1947.

According to the testimony, soon after defendants took possession of the well on Lot 365, subsequent to entering into the purchase agreement with G. E. Doxstader, a meeting was held by the water users at which a proposal was made by J. Orrin Gould that all the consumers pay into a common fund sufficient money to cover operating expenses and to replace the pumping equipment, which at that time apparently was claimed to be practically worn out and beyond repair. No agreement was reached and thereafter, according to the testimony of J. Orrin Gould, he decided to increase the monthly charge to \$3.50 per month to defray, in part, costs of repairs and power bills. The increased charge, not meeting with favorable response by the consumers, was not paid and all were cut off from the pipe line with

the exception of complainant, J. H. Kaufman, who paid the sum demanded since January 1st of this year and is still receiving water and is the only one being served.

Review of the record in this proceeding leads to no other conclusion than that such service as has been rendered from the well and pumping plant on Lot 365 has been furnished to neighbors as an accommodation and not as a dedication to the public generally or to any portion thereof. The plant originally was installed by Mrs. Wink to supply the tenant occupying her property. The only other person authorized to be served by Mrs. Wink through her tenant was unquestionably supplied to accommodate a neighbor to whom no other supply then was available. The various local residents who ran the pumping plant, at least until or about the first day of October, 1946, did so primarily to provide service for their own premises and, as incidental thereto, also continued supplying those residences which from time to time had been connected to the pipe line. No accounting for funds collected was made by any such operators.

Mr. Doxstader entered into the agreement with Mrs. Wink in September, 1946, to purchase certain of her property, including Lot 365. Thereafter Mr. Clyde O. Walker took over operation of the pumping plant on the first day of January, 1947, with no instructions or authority from either Mrs. Wink or the pumping plant operator, A. C. Lyon, and, according to Mr. Walker's testimony, with no agreement, written or otherwise, or instructions from Mr. Doxstader.

One disturbing element remains, however, and that is the ownership and installation of the 500 or 600 feet of distribution pipe line running from the well to serve the consumers. The strong probability points to its installation by the owners or agents of a large block of the unsold lots in the subdivision, but nothing in the record however would justify such a finding. The only evidence available fixes the date of the pipe line installation at least before 1940 and undoubtedly after Mrs. Wink drilled the well and installed the pumping plant and also subsequent to the time she moved away. There can be no dispute over the fact that the line was put in without her permission or knowledge. The one remaining

possibility of dedication arises during the regime of J. Orrin Gould. There cannot reasonably be charged a dedication, or even an intent to dedicate by Mr. Gould, especially in light of the fact that he drilled a new well to supply his own home in July, 1946, and discontinued the use of water from the well on Lot 365 as early as July, 1946, because, as he testified, he could not depend on the old well and that the quality of the water was unsatisfactory.

All homes heretofore served from the well on Lot 365 are receiving water at present from their own or a neighbor's well, except complainant Kaufman who still receives water from the defendants by paying the increased charge of \$3.50 per month. No rates for this pumping plant have ever been established by this Commission now have any of the owners or operators of this pumping plant ever made any requests for the fixing of rates or for any other similar requests. No certificate of public convenience and necessity has ever been applied for or granted for the operation of this pumping plant as a public utility. It is clear therefore that this complaint must be dismissed for lack of jurisdiction.

O R D E R

Complaint as entitled above having been filed with this Commission, a public hearing having been held thereon, the matter having been duly submitted and the Commission having been fully advised in the premises, and,

Basing its Order upon the foregoing findings of fact,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

Dated at Los Angeles, California, this 28th day of October, 1947.

Harold A. Kulo
Justice F. Calver
R. B. Drexler
Donnell Potter
Commissioners.