

Decision No. 41900

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARCUS B. HERRING,
Complainant,

-vs-

HAZEL A. DOLPHIN, JAMES G. YOUNG,
WM. G. YOUNG and GEORGE YOUNG,
Defendants.

Case No. 4912

O P I N I O N

Marcus B. Herring filed a formal complaint against Hazel A. Dolphin, James G. Young, Wm. G. Young and George Young, alleging that for thirty years complainant has been a customer of a water system owned by defendants, and that this service was discontinued on June 9, 1947. The complainant asks that the Commission declare the water system owned by defendants to be a public utility; that the defendants be required to improve the service and furnish reasonable water service at all times; and that said defendants be required to restore water service to complainant's premises.

Defendants enter a general denial of the allegations of the complaint and allege that they are not subject to the jurisdiction of the California Public Utilities Commission.

A public hearing in this matter was held before Examiner T. M. Gannon in Taylorsville.

According to the testimony in this proceeding, Plumas Young formerly owned the water system in question and diverted water from Montgomery Creek. From the creek the water is conveyed through a ditch three miles long to a point above the town, from which it is distributed by pipe lines.

Although witnesses could not definitely fix the date when the ditch was built, one water user stated that water service had been furnished to her premises for 33 years last past. The charge for water service, according to the complainant's testimony, was \$5 per season until about 1932 when the defendants inherited the system. Thereafter the seasonal rate was increased to \$7.50 per customer. During the current season, a total of eleven premises are being served.

Mr. James G. Young, one of the defendants, testified that the water diverted from Montgomery Creek has been used primarily on two lots and a 40-acre tract, which were inherited from Plumas Young. Further, he stated that several neighbors and friends have been supplied with water as a matter of accommodation, subject to prior requirements of defendants. He estimated the cost of maintaining the present system to be \$600 per season and the average seasonal revenue to be \$90.

No water service from this system has been furnished during the winter months, the water being used only for irrigation purposes. Mr. Herring and other witnesses testified that their domestic water requirements all are obtained from individually owned wells.

A review of the evidence herein shows that the defendants' water system has been maintained for the primary purpose of supplying water to their own properties, and when available, surplus water only has been sold to others in the vicinity. Although charges were collected to pay part of the expense of maintaining the ditch and pipe lines, the expense has been and still is much in excess of the revenue. The record herein fails to support a finding of dedication of this water service to the public generally or any portion thereof. It is clear that such service as has been provided by defendants is merely surplus water delivered or permitted to be diverted from the ditch by neighbors as a matter of accommodation only.

O R D E R

Complaint having been filed with the Public Utilities Commission as entitled above, a public hearing having been held thereon and the Commission now being fully informed in the premises, and basing its Order upon the foregoing findings of fact,

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

Dated at New Francisco, California, this 27th day of July, 1948.

R. T. [Signature]
Justus F. Craven
Walter H. [Signature]
Harold H. [Signature]

Commissioners.

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