

Decision No. 42194

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MR. RICHARD VAN HOOSEAR and  
MR. and MRS. WALTER B. TINDELL, )

Complainants )

vs )

MR. and MRS. W. W. NAYLOR,  
MR. and MRS. A. A. MERCOLA, and )  
MR. and MRS. D. A. HANSEN, )

Defendants. )

**ORIGINAL**

Case No. 4954

MARQUAM C. GEORGE, for complainants.  
W. F. OSTRANDER, for defendants.O P I N I O N

Richard Van Hoosear and Mr. and Mrs. Walter B. Tindell filed a formal complaint against Mr. and Mrs. W. W. Naylor, Mr. and Mrs. A. A. Mercola and Mr. and Mrs. D. A. Hansen, owners of Rainbow Tavern at Soda Springs in Placer County, alleging that the defendants have for several years furnished said complainants with water as a public utility but when payment was tendered by Complainant Van Hoosear in January of this year the check was returned to him. Complainants request that the Commission instruct the owners of Rainbow Tavern to make necessary repairs and installations to the system so complainants will not be deprived of water in the future. Defendants entered 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 was held before Examiner Gannon in San Francisco on September 30, 1948.

The record herein shows that the owners of Rainbow Tavern have furnished water service to home owners in this area since about 1938 upon an accommodation basis. Herstle Jones, the original owner and builder of the

tavern, sold the properties to John S. and Florence M. Flagg in 1944, who, in turn, sold to Louis and Juanita Navone and Lawrence and Frederick Curtola in 1946. The present owners and operators purchased the properties in January 1947.

Mr. Van Hoosear, one of the complainants, testified that he purchased his home at Glacier Gap on U. S. Highway 40 about five years ago, and at that time Herstle Jones, who then operated the tavern, promised him water service, and that he had received service from that time from Jones and from the subsequent owners of the tavern until December 1947, when the pipe line serving his place, and the places of three other residents, froze and broke, and that service was not resumed until May or June of this year. Van Hoosear testified that since he purchased his property the owners of the tavern theretofore had accepted his checks for the yearly charge for electricity and water, and that this year his check was returned to him. The witness stated he had not signed an agreement for water with any of the owners of Rainbow Tavern.

Mrs. Walter B. Tindell, another of the complainants, testified that she purchased her home near Rainbow Tavern about 1938 and that she was furnished water by Herstle Jones from that time under a verbal agreement with Jones until about 1942 when she signed an agreement for water service, a blank copy of which agreement is attached to the defendants' answer to the complaint.

Mrs. Tindell also testified that at one time water was supplied to her from another pipe line, but that the pressure was poor and a connection was made to the pipe line serving the Van Hoosear property then owned by one Milton Haas.

D. A. Hansen, one of the defendants, testified that when he and his associates took over Rainbow Tavern in January 1947, he was informed by the former owners that all water was sold on an accommodation basis and that there was a signed contract with each user. At the hearing the witness submitted a typewritten document containing the names and addresses of 28 alleged signers, with the caption "Signers of Herstle Jones Water & Power Agreements". (Ex 5)

He also submitted signed agreements for water between John S. Flagg and four water users, and one signed agreement between Navone and Curtola and one user. The witness Hanson also testified that the pipe line serving Van Hoosear and three other consumers is a two-inch galvanized pipe and was paid for by the consumers, which information had been given to him by Herstle Jones. He further stated that this is the line that froze and burst in December, 1947, and that he was unable to repair it until May or June of 1948. At that time it was welded and service was resumed at a cost of approximately \$300 of which amount Van Hoosear and George E. Howard agreed to pay a share. Hanson also expressed his willingness to continue to serve the 20 or more users now connected to the system on the same basis as he believed he was doing in the past, that is, on an accommodation basis.

It appears that the defendants' water system has been maintained primarily for the purpose of supplying water to their own property, and when available, surplus water only has been sold to others in the vicinity. The record herein fails to support a finding of dedication of this water service to the public generally or any portion thereof. It is obvious that such service as has been provided by defendants is merely surplus water delivered or permitted to be diverted by neighbors as a matter of accommodation only. The complaint will be dismissed.

#### 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 being fully advised 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.

The effective date of this order shall be 20 days from  
the date hereof.

Dated at San Francisco, California, this 3rd  
day of November, 1948.

R. Z. Dunning  
Justice J. G. Quinn  
Ernest F. Luce  
Harold P. Kula  
Kenneth W. Potter  
Commissioners