

Decision No. 12436**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

O. H. HERMANN and H. O. SHELTON,	Complainants,
vs.	
C. H. MCGEE,	Defendant

Case No. 4973

Lowell & Lowell and John R. Couzens for complainant;
C. H. McGee, in propria persona, defendant.

O P I N I O N

By the complaint on file in this proceeding, O. H. Hermann and H. O. Shelton allege that they and various other persons own property near Colfax, Placer County, which is served by a water system owned and operated by C. H. McGee, the defendant herein; that said water system constitutes a public utility; and that defendant does not operate it in a manner which promotes the safety, health, comfort and convenience of the patrons of the system. The Commission is asked to investigate the water system and defendant's operation thereof and to direct defendant to make such changes in the system and its operation as will (1) prevent the supply of water being shut off and (2) render the system a sanitary means of supplying water for human consumption.

Defendant in his answer asserts, in substance, that the water system serving complainants and the other consumers is intended for irrigation purposes only, that due to the conduct of certain consumers he has been prevented from rendering the service which some of the users are entitled to, and that his water system is not a public utility.

A hearing was held before Examiner Bradshaw at Auburn.

According to the testimony, complainants own property which is served with water by a system owned and operated by defendant, the water being secured by defendant from a ditch of Pacific Gas and Electric Company and distributed through his facilities to 14 householders. It also appears that the properties of complainants and of the other consumers were originally owned by defendant.

The record indicates that defendant entered into a contract with O. H. Hermann to supply water. This instrument is dated November 1, 1946, and provides that for \$2.50 a month Hermann may take all the water he needs which is capable of running through a standard 3/4-inch pipe. The contract also contains a provision stating that the water is sold for irrigation purposes only and if Hermann uses any part of it for any other purpose "he does so at his own risk and responsibility."

On numerous dates since January 1, 1948, so Hermann testified, his water supply was shut off or flowing into his 120-gallon tank in insufficient quantities. He claims that to afford sufficient water pressure in his house he installed a pressure pump at defendant's suggestion. The record shows that defendant subsequently served notice of cancellation of the agreement, declaring that, among other reasons for his action, the continued use of the pump prevented a fair distribution of water. Service, however, has not been discontinued, notwithstanding the purported cancellation of the agreement. During the course of his testimony, Hermann also complained that defendant's storage tank, through which the water passes, is not covered and that considerable dirt and refuse have been observed therein.

Complainant H. O. Shelton identified a copy of an agreement under the terms of which he receives water from defendant. It is dated March 1, 1946, and contains substantially the same provisions as the Hermann agreement, but does not state that the water shall be

used for irrigation purposes only. Defendant claims, however, that there was an oral understanding that the water would only be used for that purpose. Shelton denies that he had any such understanding. He and two other consumers testified that they agreed with the testimony given by Hermann concerning instances in which water shortages occurred.

A witness, whose property is adjacent to that owned by Hermann, testified that he has never been supplied with water by defendant. He asserted that defendant at one time promised to furnish him with water, but later refused to do so, giving as his reason that sufficient water was not available.

A service supervisor of Pacific Gas and Electric Company testified that defendant purchases one-half miner's inch of water from that company, under a contract for water for irrigation purposes. This witness stated that defendant possesses a water right for an additional one-half miner's inch, under which he is also obtaining water, and can secure a further supply by paying the rates published in the utility's filed schedules.

A registered sanitarian employed by the County of Placer testified that he inspected defendant's storage tank and observed considerable mud in the bottom thereof, but no samples of the water therein were taken. In the opinion of this witness, an open tank is unsanitary for water used for human consumption.

Defendant, when called as a witness for complainants, declared that at one time he owned all of the lots upon which the present consumers reside; that he originally laid a pipe to one of the lots and subsequently extended it to the others; that he commenced selling water in 1945; and that 12 lots are now receiving water, for which a charge of \$2.50 a month is made to the different users.

In testifying in his own behalf, defendant referred to various disputes which have arisen in the past with certain consumers. He expressed a desire to serve the present water users, but claimed

that because of acts of violence displayed by some of them and the excessive amount of water used by complainant Hermann he has been prevented from doing so in a satisfactory manner. Defendant also testified that agreements have as a rule been made with the different persons desiring water, but none are in effect with four of them.

From the evidence it is found that in the distribution and sale of water for compensation, defendant has dedicated his water system to public use and by so doing has subjected himself to the jurisdiction and control of this Commission. While in some instances an attempt was made to limit the use of water for irrigation purposes, the record justifies the conclusion that its use by the several consumers for additional purposes was within defendant's knowledge and at least tacitly assented to. It is, therefore, found that defendant's status as a public utility embraces the distribution and sale of water for both irrigation and domestic purposes.

The evidence concerning the cause for complaints as to the inadequacy of defendant's water supply on certain occasions is not sufficiently definite to enable the Commission to prescribe measures designed to prevent the recurrence of unsatisfactory conditions in the future. In formulating the rules and regulations required to be filed by the order herein, defendant should give careful consideration to the establishment of provisions which will assure an equitable distribution of water among the various consumers. If, after such rules and regulations are established, there should be any dissatisfaction with the supply or quality of water furnished by defendant, the matter should be brought to the attention of the Commission.

In view of the finding that defendant's status as a public utility includes the furnishing of water for domestic purposes, steps should be taken to provide a suitable roof or cover upon any storage tanks comprising a part of defendant's water system.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and based upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED:

1. That C. H. McGee shall file with this Commission, in quadruplicate, within thirty (30) days from the effective date of this order, in conformity with the Commission's General Order No. 96, rates for water service rendered near Colfax in Placer County, which rates shall not be higher than those presently charged for the service.
2. That C. H. McGee shall file with this Commission, in quadruplicate, within thirty (30) days from the effective date of this order, rules and regulations governing service to his consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet 8½ 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 C. H. McGee shall file with this Commission, within sixty (60) days from the effective date of this order, two 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 shall 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 service area, or any portion thereof.
4. That C. H. McGee shall construct, within sixty (60) days from the effective date of this order, an adequate roof upon his storage tank or tanks used for the reception of water for delivery to consumers as a public utility water system and to notify the Commission of the completion thereof not later than ten (10) days thereafter.

The Secretary is directed to cause a certified copy of this decision to be served upon C. H. McGee.

The effective date of this order shall be twenty (20) days from and after the service hereof.

Dated at San Francisco, California, this 18th day of January, 1949.

R. J. [Signature]
Justice F. [Signature]
Joseph [Signature]
Harold [Signature]
Samuel [Signature]
Commissioners