

ORIGINAL

Decision No. 45654

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Chester H. Newell and Albert Landa, )

Complainants, )

vs. )

Case No. 5221

Camp Rose Water Company, )

Defendant. )

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Chester H. Newell and Albert Landa, complainants,  
in propria personae  
John A. Condit, for Camp Rose Water Company,  
defendant  
John D. Reader, for the Commission's staff

O P I N I O N

In this proceeding, the complainants Chester H. Newell and Albert Landa, charge that defendant Camp Rose Water Company has failed to maintain a service pipe through which water is supplied to them. Defendant disclaims any obligation to maintain this pipe line.

The complaint alleges, in substance, that during the preceding six years complainants have purchased water from defendant on an annual basis under rates similar to those exacted from other consumers; that no contract exists between them other than the terms indicated on the annual bill, to the effect that service would be discontinued if the charges were not paid annually in advance; that defendant insists that complainants should maintain the pipe line through which water is furnished them; and that complainants should not be bound by oral agreements, made assertedly between parties either deceased or no longer property holders, to maintain the line. An order is sought requiring defendant to maintain this service line, and to refrain from shutting off complainants' water supply.

By its answer, defendant admits that complainants have obtained water from defendant as consumers; asserts that the matter in controversy is not controlled by the water service regulations appearing on the annual bill sent to consumers; and denies the allegation that complainants should not be bound by agreements previously made respecting the maintenance of the line. As an affirmative defense, defendant alleges that defendant and its predecessors undertook to supply domestic water to lot owners within the Camp Rose Tract; that the water company had agreed to furnish water to complainants and their predecessors, who resided outside of that tract, subject to certain conditions, viz: that complainants and their predecessors would install, at their own expense, and would maintain and replace, the pipe line necessary to connect their property with defendant's mains; that they would pay the regular annual rate exacted from other consumers; and that their use of water would not interfere with the distribution of water to consumers located within the Camp Rose Tract. Allegedly, the pipe line so installed belongs to complainants, and never has been donated to, nor accepted by defendant. Occasionally, it is stated, defendant may have assisted complainants or their predecessors in maintaining the pipe but assertedly, this was done merely as an accommodation and without charge.

Essentially, the issue presented for our consideration pivots on defendant's obligation to maintain a service pipe line, situated outside the tract which it professes to serve, and through which water is supplied to consumers residing outside of that area.

Subsequent to the initiation of this proceeding, a change occurred in the identity of parties defendant. When the complaint was filed on July 24, 1950, and for some years previously, R. C. deLong

was engaged, as sole owner, in supplying a water service, which he carried on under the name of Camp Rose Water Company. <sup>(1)</sup> He signed the original answer, on behalf of the company. DeLong died on November 17, 1950. Thereafter an amended and supplemental answer was filed, alleging that prior to his death, deLong had conveyed all of his interest in the properties of the water company to his children, viz, William R. deLong, Elizabeth deLong Condit, Jeanne Ferroggiaro and Roscoe C. deLong, Jr. No probate proceedings would be filed upon deLong's estate, it was said. Accordingly, the children and grantees of R. C. deLong, named above, who now own and operate the company, will be substituted for him as defendants in this proceeding. For convenience, they will be referred to collectively as the defendant.

A public hearing was held before Examiners Austin and Emerson at San Francisco on March 12, 1951, when the matter was submitted. Both complainants, and two of the defendants, testified in support of their respective contentions. Defendant also called three consumers as witnesses.

Camp Rose Tract is situated some two miles east of Healdsburg, in Sonoma County, bordering upon the Russian River. Originally, it comprised 160 acres which were subdivided into 375 lots. Because of the steep terrain, part of the tract never was developed. At present, the water company serves about 80 consumers located within an area embracing 212 lots. At the outset, the cottages situated within this tract were occupied only during the summer months. Now, however, there are many permanent residents.

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(1) Formerly, the business had been conducted by a corporation, known as Camp Rose Company. This corporation, it was stated, has been inactive for several years.

Immediately west of Camp Rose Tract and adjoining it, is Fitch Mountain Tavern Tract, which also borders Russian River. (2) - On two contiguous lots within this tract, complainants have erected summer cottages. Riverside Drive, which parallels the river, traverses both the Camp Rose and the Fitch Tracts. (3) Complainants' lots front upon this highway.

Within that part of Camp Rose Tract which has been developed, defendant has established a water system. This comprises two tanks, and also a network of mains and service pipes, traversing the roads and connecting with the cottages scattered throughout the tract. There are two storage tanks, one of 8500 gallons capacity which serves some 36 consumers occupying the lower portion of the tract, and the other, of 4500 gallons capacity, accommodating 66 consumers located on the higher levels. Water is pumped directly from the river to the lower tank, and thence to the upper tank. A main, forming part of the distribution system, extends along Riverside Drive to the western boundary of the tract, where it connects with the pipe line in question. This line is supplied by the lower tank. Another line, supplied by the upper reservoir, extends along various roads and through private property to a connection with the line in question. (4)

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- (2) For convenience, this will be referred to as the Fitch Tract.
- (3) The county road, originally designated as Riverside Drive within Camp Rose Tract, and as Ewing Way within the Fitch Tract, is now generally known as Fitch Mountain Road. For convenience, it will be referred to, throughout its entire course, as Riverside Drive.
- (4) The line mentioned extends through the property of Mrs. Metha Vreeland, one of the witnesses produced by defendant. Through this line, water is supplied to Mrs. Vreeland's property, which is located in the Fitch Tract. For convenience, this will be referred to as the Vreeland pipe line. Its connection with the line in question is wholly independent of the connection at Riverside Drive, on the tract boundary.

This connection was installed primarily to provide standby fire protection; ordinarily, the water is shut off.

Through the instrumentality of this system, defendant provides a domestic water supply to those occupying cottages within Camp Rose Tract. This is operated as a public utility, subject to regulation by the Commission.

From the western limits of Camp Rose Tract, the line with which we are here concerned extends westerly along Riverside Drive to complainants' property, a distance of approximately 700 feet, lying wholly within the Fitch Tract. At the boundary between the two tracts, it connects with the main traversing Riverside Drive, described above. Its present western terminus was not clearly established.

Through this line, defendant supplies water to some seven consumers, including complainants, all of whom occupy cottages situated along Riverside Drive, within the Fitch Tract. Three other consumers, located outside Camp Rose Tract, are also supplied with water. Included among them is Mrs. Vreeland.

Because of the elapse of time, resulting inevitably in the death or disappearance of those familiar with the facts, the circumstances surrounding the establishment, use and upkeep of the pipe line involved, cannot be shown with that degree of precision which ordinarily would be deemed desirable. These arrangements were made, and the line was installed, many years ago. Both R. C. deLong, who managed the company since 1921, and his predecessor, C. E. Ray, who handled some of the original transactions, are dead. The present owners, though somewhat familiar with the company's operations during recent years, did not participate in these arrangements. Neither did complainants, who acquired their lots in 1944, some six years

after the cottages situated thereon had been built. Both parties, therefore, have been compelled to rely largely upon papers found among deLong's effects, upon correspondence between the parties themselves and also between them and the Commission, upon the conduct of the parties and those similarly situated, and upon admissions against their respective interests. ~~In the absence of any objection, some~~  
*R. J. M.* ~~has crept into the record.~~

The pipe line in question was constructed at various times, and in successive stages. At present, only part of the original line is still in use. The first section, which was laid in 1920, extended from the western boundary of Camp Rose Tract along Riverside Drive, a distance of approximately 150 feet. It was designed to serve two lot owners, viz, C. J. Woll and E. J. Evans, whose properties lay within the Fitch Tract. (5)

A written agreement, defining the terms under which this line would be constructed, was produced by Elizabeth deLong Condit, (6) one of the present owners. This instrument, which bore date April 15, 1920, was executed by Camp Rose Company, a corporation, and by both Woll and Evans. By this agreement, the company undertook to install a water main on Riverside Drive, in Camp Rose Tract, extending to Woll's property line, located at the western boundary of that tract. At this point, both Woll and Evans would be permitted to connect a one inch pipe for the purpose of conducting water to their cottages in the Fitch Tract. The dimensions of the pipes to be installed, the purposes for which water would be used, and the

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(5) Woll's lot immediately adjoined the Camp Rose Tract, on the west, Evans' lot is now owned by P. J. Feykert.

(6) Mrs. Condit, it was shown, has resided on Camp Rose Tract since 1930 and is familiar generally with the operations of the company during that period. She is the wife of John A. Condit, who appeared as defendant's attorney.

charges to be paid, were prescribed. Should there be any water shortage at Camp Rose, Woll and Evans would be entitled to no greater supply than that furnished to cottages within that tract. The agreement was silent with respect to the up-keep and maintenance of the pipe line.

In 1936, Mrs. Condit testified, this pipe line was extended to the property of L. D. Gilbert, situated about three quarters of a mile west of the Camp Rose Tract boundary. Upon these lots, Gilbert constructed four cottages, which were supplied with water through this extension. Subsequently, when leaks developed along the pipe line, deLong demanded that it be repaired, failing which the water service would be cut off. Inasmuch as these repairs were not made, the water supply was discontinued.

During the summer of 1949, a bad leak developed in the pipe line in question, about half way between complainants' properties and the Camp Rose Tract boundary. In January, 1950, the pipe was cut at this point and a new connection was installed with the Vreeland pipe line, leading down from the upper reservoir. This arrangement, however, proved unsatisfactory. Complainants' requirements, as well as those of others residing in the Fitch Tract, tended to diminish the pressure to such a degree that defendant's consumers, located on the higher levels of Camp Rose Tract, found difficulty in securing an adequate service. (7)

Because of this situation, defendant demanded the replacement of the pipe line along Riverside Drive, in the Fitch Tract, through which water formerly had been supplied. The parties were unable to

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(7) In the aggregate, some eight consumers, occupying cottages in the Fitch Tract, were receiving water through this connection with the upper reservoir.

agree as to who should bear the cost of replacing this line. Accordingly, on July 17, 1950, defendant's counsel directed a letter to the Commission, copies of which were sent to all interested parties, including complainants, reviewing the facts from defendant's standpoint, and advising that on July 31, 1950, the connection with the upper level pipe line would be severed. It was suggested that in the meantime these consumers take the necessary steps to re-establish a connection with the lower pipe line, or to obtain water from some other source.

Complainants having taken no steps to replace the line, as recommended, defendant shut off the connection with the upper level line on the date mentioned. In the meantime, complainants had filed their complaint in the instant proceeding. An understanding was reached between complainants and defendant that the former would restore the line along Riverside Drive to its connection with defendant's main at the tract boundary, and that defendant would supply water through this line. This arrangement was made without prejudice to the rights of the parties, it being understood that they would be determined in this proceeding.

Defendant asserts that it never has maintained or replaced any pipe line situated outside the boundaries of Camp Rose Tract. Mrs. Condit testified that, since 1930, this had not been done, to her knowledge. Roscoe deLong, Jr. stated that he never had performed any work in connection with the maintenance or repair of any pipe line located outside of the tract.

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(8) Although Mr. deLong, Jr., has resided on Camp Rose Tract since 1930, it appears that his familiarity with the company's operation does not extend throughout this entire period.



There is evidence in the record which tends to corroborate this testimony. Correspondence between deLong and the Commission was submitted relating to a dispute which arose in 1943 between defendant and two consumers served by the line in question, both of whom were located west of complainants' properties. When these consumers complained of inadequate pressure and other deficiencies in the service, defendant disclaimed any obligation to repair or maintain the line, contending rather that the consumers were required to do so. Defendant, however, expressed a willingness to furnish water if the line were repaired by the consumers. Following an investigation by the Commission's staff engineers, both consumers discontinued obtaining water from defendant and resorted to other means of supply.

Lot owners, produced by defendant, also dealt with this subject. Describing his efforts to obtain water, Theodore Vagin testified that when he approached deLong, the latter disavowed any interest in the supply line and referred him to both Newell and Landa, whom deLong named as the owners. Mrs. Metha Vreeland stated that when arrangements were made with deLong in 1928, to furnish water, it was understood that she and her husband (since deceased) would install the pipe line; she had no recollection regarding any arrangement for the maintenance of the line. <sup>(9)</sup> Another witness, Ernest Homelius, was not familiar with the terms under which water was supplied to the lot which he has occupied since 1928. He could

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(9) Mrs. Vreeland's lot is situated in the Fitch Tract, facing south on Riverside Drive, and lying east of complainants' property. Her lot is served by an individual pipe line connecting with one of defendant's mains serving the upper part of Camp Rose Tract.

not recall any understanding with deLong concerning the upkeep of  
(10)  
the line.

Complainants have been aware of defendant's position for about four years. This was brought to their attention during conversations had with deLong and also with neighboring lot owners. They admitted that deLong consistently had disclaimed any obligation to maintain the line; whenever the question arose, he asserted that this liability rested upon the consumers. During a conversation between complainants and J. A. Condit, defendant's attorney, which occurred about one year ago, the latter advised, so Newell testified, that the line never had been formally donated to the company. Since acquiring the property, Newell testified, no need to maintain the line had arisen until last year when the break, described above, occurred.

There was some evidence concerning an admission on complainants' part that they were the owners of this line. As to this, however, the testimony sharply conflicts. Witness Vagin asserted that during a conversation with Newell, to whom he had been referred by Landa, the latter stated he would permit Vagin to "connect on our pipe line" if Vagin would install, at his own expense, a new line some four hundred feet in length. This, Vagin refused to do, choosing rather to sink a well on his property. This occurred three to four years ago. Newell denied that he ever had made such a statement. Instead, so he testified, he advised Vagin that if the latter desired to

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(10) This lot, now owned by Feykert and occupied by Homelius, formerly belonged to E. J. Evans. It is one of the lots referred to in the contract of April 15, 1920, between Camp Rose Water Company, Evans and Woll, mentioned above.

put in the pipe line, "it was up to him." (11) On this occasion, Landa testified, he advised deLong he did not know he was responsible for the line or had any interest in it, and, accordingly, he would not consent to anyone else attaching a connecting line. Shortly afterward, he advised Vagin, so he stated, that he had no knowledge that complainants were the owners of the line and that, therefore Vagin would have to discuss the matter with deLong.

There were included in the present record, by reference, defendant's filed rules and regulations, which have been in force since 1928. The rules in effect, in 1928, were established January 1, 1922. They refer merely to the service provided at Camp Rose, near Healdsburg, the service area not being specifically defined. The tariff then in effect prescribed rates applicable "in and in the vicinity of the town of Camp Rose, located on the Russian River, near the City of Healdsburg, Sonoma County." The original rules do not appear to have been modified. In the tariff currently in effect, the reference to the area served remains unchanged.

There was also received, by reference, Decision No. 40926, rendered November 12, 1947, in Application No. 28277. Here, rates were prescribed covering defendant's operations. This decision describes in some detail the area which defendant serves. From this, it appears

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(11) When questioned concerning this conversation, Newell testified as follows: "This feud about the pipeline has been going on for many years and Mr. deLong has insisted that the entire sic be replaced at one time. It was not our intention to replace that line and we did not want to be bluffed into the fact that it was our line to replace. When this matter came up, we simply shrugged our shoulders and told Mr. Vagin that if he wanted to put the pipe line in, it was up to him. The pipeline was probably not in a good condition, and inasmuch as there is practically no pressure at all, if you have another consumer, none of us would have any water. So, if Mr. Vagin and Mr. deLong wanted to put another pipeline, it was all right with us. We had no knowledge that any pipeline belonged to us or we were responsible for it, or could let anybody come on or get off the pipeline." (Tr. p. 84)

that the service originally was supplied to a tract comprising 160 acres; subsequently, this was curtailed to an area embracing some 212 lots. The order prescribes rates to be observed for water delivered to consumers "In and in the vicinity of the Town of Camp Rose, located on the Russian River, near the City of Healdsburg, Sonoma County."

In our judgment, complainants have failed to show the existence of any obligation on the part of defendant to maintain and replace the service line in question. Defendant's system was designed primarily to provide a public utility water service limited to those residing within the confines of Camp Rose Tract. It was constructed originally, and throughout the years has been maintained, solely for that purpose.

The evidence, we believe, clearly shows that any service which defendant may have rendered to residents of the Fitch Tract, has been supplied merely as an accommodation. Uniformly, such consumers have been required to furnish the pipe, and lay it at their own expense, to a point where it connects with defendant's mains at the boundary of the Camp Rose Tract. This requirement never has been relaxed. In practice, it appears, these consumers were obligated to maintain and replace service pipe lines at their own cost. The record discloses several instances where this occurred.

On several occasions, it was shown, defendant has discontinued supplying water to residents of the Fitch Tract when it transpired that such a course would impair its ability to provide an adequate service within Camp Rose Tract. Whenever this occurred, those consumers were required to obtain water from other sources. Their acquiescence in such a course would indicate that they did not consider themselves entitled to demand service from defendant as a matter of right.

Q.2. m  
It is not necessary to resolve the conflict in the testimony of complainants and of witness Vagin, relating to the conversation between Newall and Vagin which took place some three or four years previously. The cross-examination indicates that, to some extent, Vagin's statements were predicated upon mere conclusions. When the conversation occurred, the controversy between complainants and defendant already had arisen. It seems unlikely that complainants knowingly would have made any statement inconsistent with the position they had assumed.

It is our conclusion, and we hereby find, that complainants have failed to show themselves entitled to the relief which they seek. Accordingly, the complaint will be dismissed.

O R D E R

A public hearing having been held in the above-entitled proceeding, the matter having been duly submitted and the Commission being now fully advised,

IT IS ORDERED:

(1) That William R. deLong, Elizabeth deLong Condit, Jeanne Ferroggiaro and Roscoe C. deLong, Jr. be and they hereby are substituted as defendants in the above-entitled proceeding, in the place and stead of R. C. deLong, now deceased, originally the sole defendant herein.

(2) That the complaint in Case No. 5221 be, and it hereby is, dismissed.

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

Dated at Los Angeles, California, this 8<sup>th</sup>  
day of May, 1951.

R. I. [Signature]  
Justus F. [Signature]  
Harold A. [Signature]  
Samuel [Signature]  
John E. [Signature]

COMMISSIONERS