

ORIGINAL

Decision No. 45760

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

OTHA P. ERVIN, EDA L. PETERS,
CLARK E. CHEFF, SAMUEL ERVIN,
ROY A. POOLE, JAMES D. ASHBY,
Complainants.

vs.

Case No. 5321

JOHN C. ECKERMANN and NORTH
FORK DITCH COMPANY, a cor-
poration,
Defendants.

Thomas E. Srednick, for complainants;
Charles O. Busick, for defendant
John C. Eckermann; Harry B. Seymour,
for defendant North Fork Ditch Company.

O P I N I O N

Five residents of Ave Maria subdivision, located approx-
imately 5 miles east of Roseville, Placer County, have filed a
complaint against John C. Eckermam, a subdivider, and North Fork
Ditch Company, a public utility water corporation. Complainants
allege that during 1949 and 1950 Eckermam sold each complainant a
residence property and agreed to furnish domestic and irrigation
water thereon; and that for more than one year Eckermam has been
receiving water rent from each complainant, but now refuses to
accept payment for water furnished to complainants, and has advised
complainants that they must pay the North Fork Ditch Company.

Complainants further allege that the latter company
refuses to accept payment for such water from complainants, on the
basis that its contract to furnish water for the whole tract is a
personal contract with Eckermann, and has advised complainants that

it will not furnish water to them. The Commission is asked to determine the rights and duties of defendants with respect to the rights of each complainant to water for domestic and irrigation use.

By answer Eckermann denies that he agreed to furnish domestic and irrigation water to complainants, or that he has been receiving water rent from complainants. He alleges that, as an accommodation to complainants, he did take their water money for a short time and remit it to the North Fork Ditch Company in payment of water complainants received from that company, but notified complainants that he was not furnishing water to them and refused to accept any money from them in payment for water. His answer also alleges that, when he sold property to complainants, he represented that water would be supplied by the North Fork Ditch Company, that no lots would be sold until water service was extended thereto, and that maintenance of mains would be at the purchasers' expense.

North Fork Ditch Company, in its answer, alleges that during 1949 and 1950 it furnished water to Eckermann at a point of delivery adjacent to the Ave Maria subdivision at the head of a 3-inch outside dimension, privately owned line leading into the subdivision. It alleges further that no application was made for water service at such point of delivery for the year 1951 and no payment received by the company therefor; and that, as a result of nonpayment of the company's service charges, service was discontinued, but was voluntarily resumed, without payment, pending settlement of the differences between complainants and Eckermann. The answer also alleges that one of the complainants offered to pay charges for service at the delivery point, but withdrew such offer when informed that he might thereby obligate himself to distribute

throughout the subdivision; and that the company has refused service except at the point of delivery because it cannot provide service to each individual complainant since it does not own or control the existing pipe leading from the point of delivery to the various outlets in the subdivision. Such pipe is alleged to be of inadequate size and quality and not in compliance with the company's specifications respecting subdivision service. The company states its willingness to provide individual service throughout the tract upon compliance, by those interested in the service, with its filed tariffs and applicable rules covering subdivision installation.

Public hearing on the present complaint was held before Examiner M. J. Kimball at Sacramento on November 13, 1951. ,

The record discloses that in August of 1948, Mr. Eckermann, the subdivider of Ave Maria subdivision, called on the manager of the North Fork Ditch Company, drew a small sketch, and indicated that he would expect the owners (purchasers of lots) to purchase water from the company. At that time he was receiving water service from the company at his residence in the future subdivision. On August 7, 1948, the company advised the subdivider that it would not be interested in the latter's proposed pipe line.^{1/} In

1/ The company's letter read as follows:

"We have information now on the request which you left at this office for a proposed private extension through your property.

"As I told you before, North Fork Ditch Company would not be interested in a pipe line along the location which you have indicated. If you care to put in a line as suggested, it would be proper that you put it in yourself at your own expense and under the rules of the Placer County Planning Commission for future subdivisions.

"We are not interested in any line that does not run in existing county roads and certainly will not take over any line, even to be deeded to us gratis, unless it conforms to full specifications satisfactory to us."

December of 1948, Eckermann advised the company that he intended to put in his own line. A company representative had suggested previously that 6-inch pipe be installed. Eckermann purchased and installed approximately 2,300 feet of 3-inch, outside dimension, steel pipe and approximately 300 feet of 2-inch, outside dimension, steel pipe to serve the lots in the subdivision. The pipe purchased and installed consisted of secondhand boiler tubing. In March of 1949 the manager of the water company observed the 3-inch pipe, then in an open trench, and thereafter advised the subdivider that the company would never take over such a line, being of the opinion that the line was inadequate both as to size and quality.

In October of 1949, Eckermann inquired if he could secure water for his subdivision and was advised that the company had a 4-inch lateral adjacent to one side of the subdivision, and would undertake to deliver water to Eckermann at a specified point of delivery. The company informed the subdivider that it would not serve within the subdivision unless the money for a pipe line was furnished, or a pipe line furnished that met the company's specifications, and the line conveyed to the company. A connection between the subdivider's line and the company's lateral was made in the latter part of 1949. The company does not own any portion of the distribution system within the tract.

The subdivision consists of approximately 120 acres, divided into twenty 5- and 10-acre parcels. One of the complainants testified that he purchased a 5-acre lot from Eckermann on October 15, 1949, and an additional 5 acres later. At the time of purchase the witness understood that water would be available for domestic and agricultural use, was advised by the subdivider that the North Fork Ditch Company was supplying water to the line which came off the main pipe line into the tract, that the witness

would have to put on a meter, and that the subdivider would take the money and pay the bill for water. The witness installed and paid for a meter. He made payment for water to the subdivider in the amount of \$8 on April 25, 1950, and \$12 on September 30, 1950. On April 1, 1951, payment of \$12 was offered to the subdivider, but was refused. Thereafter, the subdivider declined to do anything until the users signed a statement which he dictated, reading as follows:

"We, the undersigned water users of the Ave Maria Subdivision, agree to pay our respective water bills on or before five (5) days before the water bills due date. Failure of any water user to do so will result in having his water shut off.

"The pipe line is to be maintained, and any expense thereof, by the water users. Loss of water thru a break in the line, between the main meter and the water users meters, will be paid for equally by all of the water users. Meter reading 4/4/51 --31025 cubic feet. Meter reading Apr. 12 to apply from Apr. 1-1951

C. E. Cheff	-	173670
S. J. Ervin	-	054040
O. P. Ervin	-	313430
J. D. Ashby	-	442930
Roy A. Poole	-	274030

John C. Eckermann".

In April, the complainant witness offered to make payment to the North Fork Ditch Company for all of the complainants. Payment was not accepted. By letter of April 14, 1951, complainants sent to the subdivider a money order for \$60 in payment of water service for the 1951 season. They were advised by counsel for the subdivider that such counsel had been instructed to notify complainants that the money order was being held subject to their order, the subdivider having stated that he neither owned nor had any interest in the North Fork Ditch Company, furnished water to no one, and did not understand why the money order had been made payable to him. The subdivider's counsel also advised complainants that it was up to them to apply to the North Fork Ditch Company for water.

In July of 1951, one of the complainants tendered a payment to the company, but the check was returned with the advice that the company had nothing to do with service within the subdivision, but sold water to the subdivider.

Under date of November 6, 1951, North Fork Ditch Company notified the subdivider that his account was in arrears, and that, if the account was not paid within 10 days, further service would be refused.

The North Fork Ditch Company has not been paid for service during 1951, and at one time discontinued service for nonpayment. However, the company resumed service voluntarily pending the outcome of this proceeding.

Defendant Eckermann testified that he did not agree to furnish water to complainants and referred to the Subdivision Public Report on Ave Maria subdivision, issued by the Division of Real Estate on August 16, 1950. This report, reflecting information presented by the subdivider, reads in part as follows:

"Water will be supplied from the North Fork Ditch. No lots will be sold until water service is extended to them. Maintenance of mains will be at the purchasers expense."

He testified further that he told buyers of lots that the water supply would be adequate and of good quality; that he made no agreement with them for the payment of water bills; that in 1949 and during 1950 he accepted money for water from them, in order to accommodate them, and delivered their money to North Fork Ditch Company, but did not make any charge to the users or keep any account with them for water. He later refused to accommodate them because "more people came in, so I thought somebody else can do the same thing." Discontinuance of this accommodation occurred after the subdivision had been sold out, and the subdivider then decided

that continued administration was burdensome and should be passed on to some one else. He testified further that the pipe line he installed is now owned by the water users, although he has not executed any document to the users.

Defendant North Fork Ditch Company's filed Rule No. 17 governs extensions to serve tracts or subdivisions, and no one having attempted to comply with that rule as to service in the particular subdivision, it is the company's position that it is serving a single customer, the subdivider, at the head of that customer's pipe line connecting with the company's lateral. The company is able and willing to provide individual service throughout the tract upon compliance, by those interested in such service, with the company's applicable rules governing subdivision installation, the making of reasonable application for service, and payment of the company's schedule of rates. The company is willing to furnish water at the head of the subdivision pipe line to any proper person representing the subdivision who will pay for all the water, but is not in a position to deliver water to the individual users, as it does not own or control the pipe line going to them. In order to serve within the tract, the company would require at least a 4-inch line from Hazel Avenue one-quarter mile into the subdivision. If such a line, of proper quality and location, were deeded to the company with appropriate easements, the company would be willing to take over the entire service and assume the obligation of the balance of the present 3-inch line. The subdivision extension rule would apply and the subdivider would be entitled to the normal 35% refund of gross water bill payments for 10 years.

The record indicates that the existing pipe in the subdivision is in poor condition and is rusting through in spots. One of the complainants testified that 90% of the pipe is exposed,

the balance having a little dirt over it. The subdivider testified that approximately 80% of the pipe is underground.

The record reveals a situation where the subdivider decided not to apply to the North Fork Ditch Company for an extension of service to his subdivision under the company's applicable rules, but chose to install his own pipe within the subdivision, and to become a customer of the company, purchasing water at the company's lateral for his own use and for the use of those who purchased lots from him within his subdivision. The presence of water, if not indeed essential to the sale of lots, at least enabled their sale at a better price. The subdivider required purchasers of lots to install individual meters. He accepted payments for water from them until such time as the lots were sold and he decided that continued administration was burdensome and should be passed on to some one else. The record clearly shows and we hereby find a holding out to furnish water, for compensation, to that portion of the public purchasing lots within the subdivision. We further find that such actions constituted a dedication to public use, and that the subdivider assumed utility status. Defendant Eckermann will be ordered to file rates and rules with the Commission and submit to regulation as a public utility. He will also be directed to file plans for improvement of service.

O R D E R

Public hearing having been held in the above proceeding, and based upon the record and the findings of fact contained in the opinion,

IT IS FOUND that John C. Eckermann has been operating as a public utility water corporation, within the meaning of the Public Utilities Code, in furnishing water to users within the Ave Maria Subdivision, Placer County, California.

IT IS ORDERED that John C. Eckermann is directed as follows:

1. To file in quadruplicate with this Commission within five (5) days after the effective date of this order in conformity with the Commission's General Order No. 96, a schedule of rates for water service which schedule shall contain no rates higher than those heretofore charged.
2. To file with this Commission within forty (40) days from the effective date of this order four sets of rules and regulations governing customer relations, 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 by distinctive marking the boundary of applicant's present service area and the location thereof with reference to the immediate surrounding territory provided, however, that such filing shall not be construed as a final or conclusive determination or establishment of the dedicated area of service or portion thereof.
3. To file within forty (40) days after the effective date of this order four copies of a comprehensive map drawn to an indicated scale of not less than 400 feet to the inch delineating by appropriate markings the various tracts of land and territory served and the location of various properties of applicant.
4. To file, within forty-five (45) days after the effective date of this order, a statement showing detailed plans for improvement of water service, and indicating the time within which such improvements will be effected.

IT IS FURTHER ORDERED that this proceeding is hereby dismissed as to defendant North Fork Ditch Company.

The Secretary is directed to cause a certified copy of this decision to be served upon John C. Eckermann, and the effective date of this order shall be twenty (20) days after such service.

Dated at San Francisco, California, this 13th day of February, 1952.

R. J. [Signature]
President.
James J. [Signature]
Harold A. [Signature]
[Signature]
[Signature]
Commissioners.