

ORIGINAL

Decision No. 47360

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Hortense Trine,
Complainant,
vs.
Paul Leder,
Defendant.

Case No. 5350

Hortense Trine, complainant, in propria persona;
Paul Leder, defendant, in propria persona;
Clyde F. Norris, for the Commission staff.

O P I N I O N

In this proceeding Hortense Trine, complainant, charges that defendant Paul Leder, who supplies her with water service, has without warning interrupted the supply of water, thus increasing fire hazards and endangering sanitation facilities, has supplied dirty and unhealthful water and has charged rates which are raised unreasonably whenever and to whatever defendant wishes. Defendant denies all allegations of complainant. The basic question before the Commission is whether defendant is operating as a public utility.

A public hearing was held before Examiner Emerson on May 1, 1952, at Alderpoint, Humboldt County, on which date the matter was submitted. Four witnesses were heard on behalf of complainant and three on behalf of defendant.

About 10 years ago defendant purchased a 90-acre farm adjacent to the community of Alderpoint, a major portion of such farm then being brush land. With purchase of the land defendant obtained a right to water from springs located approximately 3 miles away. From the springs, water flows through an open creek to a

small diversion dam from which a 1½-inch pipe line carries the water to a 14,000-gallon concrete reservoir on the farm. Apparently such situation has prevailed for many years and through six or seven prior owners. Defendant has cleared his land to the point where about 60 acres are now being farmed and plans further to develop and improve the farm.

Except for a period of about two months during the dry summer period each year, the springs have in the past produced more water than could be used on the farm. Until such time as defendant, by clearing the land put greater acreage to productive use, a surplusage of water was available for other than farm purposes. Prior owners made water available to about 18 or 20 of the persons living in the community by installing a pipe line from the farm's reservoir to the community of Alderpoint. Although the record in the proceeding is not completely clear on the point, it seems that prior owners provided an accommodation service to their neighbors who tapped the line and individually owned their service connections. These prior owners collected \$2.50 per month from those persons who had connected to the line. Such situation existed at the time defendant purchased his farm.

At the time defendant purchased the farm and its water supply there was no agreement or other consideration relative to serving water to other persons. Defendant was aware that others received water through his facilities, however, and he continued the practice, established by a prior owner, of serving water and collecting a monthly payment from them. In this respect defendant testified, in response to a question of the examiner regarding any understanding that he would continue to serve: "Well, it wasn't understood. I assumed it would be more or less ---- it is the thing to do. I just couldn't cut the water off, and whatever I didn't use

myself it would be running away. I felt it would be the decent thing to do to have the people to use the water." Defendant also testified: "Well, I have been influenced by probably humanitarian considerations more or less and kept on selling the water, kept on using time and money on it. ...within time I hoped those needing the water would decrease in number so much that I could safely start building up my ranch." No additional connections to defendant's line have been made during the period of his ownership. In fact, one or more connections have been removed. About six months ago defendant placed a notice on the town bulletin board to the effect that he would no longer provide water after the close of school in the summer of 1952.

Because of defendant's farm expansion and the summer period during which the community's drain on the farm reservoir completely drains the system, defendant, in the fall of 1951, drilled a well and installed a pump thereon. The well supply is pumped into the farm reservoir. Such supplemental supply will not meet the full demands of defendant's farm needs, however, and has afforded little, if any, relief to the general problem of shortage of supply. Evidence in this proceeding clearly indicates that for the past 27 years each summer period has brought a problem of shortage of supply. At other times surplus water has been, and in the future may continue to be, available. However, to contend that defendant should curtail farming activities during the dry period, when a farm most needs its water, so that others may be further accommodated appears to us to be unreasonable. It cannot be assumed that defendant or prior owners of the farm ever intended that the full capabilities of the farm would not be realized. There is nothing in this record to support such a view. The conclusion is inescapable that farm needs have been primary and that accommodation by supplying "surplus" water has been secondary.

Upon consideration of the entire record in this proceeding and the circumstances under which this "accommodation" or "surplus" water has been supplied to neighbors, it is concluded that this record does not clearly establish that there has been a dedication of this water supply to public use. It would appear that water has been furnished over the years primarily as an accommodation to neighboring landowners, one of which is complainant's landlord. The Supreme Court has pointed out that to hold that property has been dedicated to a public use is "not a trivial thing", and such dedication is never presumed "without evidence of unequivocal intention" (Allen vs. R.R. Commission, 179 Cal. 68). We conclude, therefore, that defendant has not operated nor is he now operating as a public utility subject to this Commission's jurisdiction. 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 fully advised,

IT IS ORDERED that the complaint in Case No. 5350 be, and it is hereby, dismissed.

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

Dated at San Francisco, California, this 24th day of June, 1952.

[Signature]
President.

[Signature]

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Commissioners.