

ORIGINAL

Decision No. 48423

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOSEPH BARNES, RUTH E. M. BARNES,)
FREEMAN L. DORRANCE, MILDRED I.)
DORRANCE, JOHN W. MILLER, LAUREL)
GLENN MILLER, JOHN SELDAN, OLGA)
SELDAN, MANUEL SELDEN, CLARA)
SELDEN, LYLE B. SMITH, MARJEAN)
SMITH, PALMER SMITH, LA VERNE)
SMITH, GRACE E. WESLO, JOHN)
WUNDERLICK and MARTHA WUNDERLICK,)

Case No. 5379

Complainants,)

vs.)

W. A. DUFFIELD and BERTHA L.)
DUFFIELD,)

Defendants.)

Anthony J. Franich, for complainants.
Harry M. Parker of Wyckoff, Gardner,
Parker & Boyle, for defendants.
Clyde F. Norris, for the Commission staff.

O P I N I O N

On May 14, 1952, complainants filed their complaint alleging that the deeds under which certain parcels of land were acquired by the complainants and others from defendants contain the following provision: "Grantors agree to pipe water to the parcel." The complainants further allege that since 1946 and continuously thereafter defendants have owned and operated a water system through which water has been sold and delivered to complainants and others who have purchased land from defendants. The complaint also contains allegations relating to defendants' refusal to furnish water for irrigation purposes and to other service matters and rates.

The prayer of the complaint requests that the Commission declare defendants to be a public utility and require them to submit to regulation by the Commission.

Defendants' Answer

Defendants deny that they have been selling and delivering water to complainants as alleged in the complaint and allege (1) that defendants in the conveyance of the respective parcels owned by complainants agreed to "pipe water" to said parcels, (2) that at the time of the conveyance defendants had piped or thereafter did pipe water to such parcels and permitted complainants to make connections with the water main for the purpose of supplying water to their respective properties, (3) that at such times it was understood and agreed between defendants and each of the complainants and other water users that the cost of pumping and delivering water to the storage tanks used in storing water for distribution should be borne in equal shares by the consumers of such water, (4) that thereafter for a long period of time the power bills incurred in pumping water to said tanks had been so divided and paid by the users of said water, including complainants other than Weslo whose land is unimproved and who has made no connection to the water main, (5) that certain of complainants for periods of one to two years have refused and now refuse to pay any part of the pumping charges, and (6) that all other users of said water, numbering about 20, have paid their share of all such charges.

Defendants further allege that at no time did they offer to furnish water for irrigation purposes upon any of the land owned by them and sold to complainants. Defendants deny complainants' allegations relating to other service matters and rates.

Public Hearing

After due notice the matter was set for public hearing which was held before Examiner Cline at Watsonville on December 4, 1952. At the conclusion thereof the matter was to be submitted for Commission decision upon receipt of briefs. As no briefs were filed within the specified time the Commission took the matter under submission January 27, 1953.

Description of Operations

In the fall of 1946 defendants owned approximately 370 acres of land which they proceeded to subdivide into tracts of five or more acres as shown on Exhibit No. 1. The subdivision is known as Duffield Acres and is located in Santa Cruz County. In conveying these parcels defendants agreed to pipe water to the parcels. In compliance with such agreements defendants have installed a system of mains leading from an existing well and storage tank to the various parcels of land which were sold by defendants to complainants herein, or their predecessors in interest, and others. Subsequently a new well was developed and a pump and storage tank were installed on Lot 44 to supply water for the distribution system, and the old well and storage tank were disconnected.

No charge has been made for water delivered to the landowners through the system but, pursuant to an understanding with the landowners, defendants each six months have billed those with connections to the mains for their prorata share of the power bills for the pump and the expenses incurred in maintaining the distribution mains. The Division of Real Estate Inspection Report on Duffield Acres, Exhibit No. 13, states "Water must be obtained from wells at the expense of the purchaser." The power and maintenance costs for the period March to September, 1952, were divided among 23 owners of parcels in Duffield Acres.

Defendants have delivered water only to persons to whom they or their successors in interest have sold parcels of land and then only pursuant to the provisions in the deeds and agreements and understandings which were made at the time such parcels were sold.

In 1951 defendants filed Application No. 32252 for a certificate of public convenience and necessity to operate a public utility water system. Upon ascertaining that rates which would allow defendants a reasonable return might be high and unduly burdensome to the users, the defendants requested that the application be dismissed without prejudice. Pursuant to such request the application was dismissed by Decision No. 46371, dated November 6, 1951.

The defendants have proceeded with the formation of the San Andreas Mutual Water Company, a corporation. Shares of this corporation have been mailed to all users of the water system. Some of the users have accepted the shares but others have declined to do so. Officers of the corporation have been elected. Defendants have transferred to said San Andreas Mutual Water Company, without consideration, the property and facilities of the water system.

Conclusion

Through the formation of a mutual water company, defendants will more nearly be enabled to carry out their original intentions and meet their obligations pursuant to the provisions in their deeds and agreements and understandings with the users of the water system here under consideration.

Complainants have not shown an unequivocal intention on the part of defendants to devote their property to public use. Upon consideration of all of the evidence we find that defendants have not operated as a public utility. Such being the case, this

Commission cannot consider the other matters respecting service and rates and must dismiss the complaint herein.

O R D E R

Public hearing having been held in the above-entitled case, the matter having been submitted, the Commission being fully advised and finding that complainant has failed to show that defendants should be declared to be a public utility subject to the jurisdiction of this Commission,

IT IS ORDERED that the complaint herein is hereby dismissed.

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

Dated at San Francisco California, this 30th day of March, 1953.

R. B. Johnson
President.

Justice J. Calles

Harold Hule

John E. Mitchell

Commissioners.

Commissioner Kenneth Rattar being necessarily absent, did not participate in the disposition of this proceeding.