

Decision No. 48959**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARVEY J. RASSI and EDITH A. RASSI,)
Complainants,)

vs.)

Case No. 5434

NORENE STUBBS, STUBBS COMPANY,)
LIMITED, and CLEARLAKE OAKS WATER)
COMPANY,)
Defendants.)Adon V. Panattoni, for complainants.
Aaron Turner and Bruce B. Bruchler, for defendants.O P I N I O NNature of Proceeding

Complainants ask that the Commission declare defendant Clearlake Oaks Water Company to be a public utility, and that it be directed to include complainants' property in its service area.

Defendants assert that Clearlake Oaks Water Company is a mutual company, formed for the sole purpose of delivering water to its stockholders at cost; that complainants have an adequate supply of water of their own to serve their trailer court, located on an 11½-acre parcel of property; that the company does not have enough water available to supply both complainants and its stockholders without diminishing the supply for its stockholders. Defendants ask that the complaint be dismissed.

Public Hearing

Public hearing was held before Examiner Gillard on April 23, 1953, and before Examiner Gregory on May 20, 1953, at Clearlake Oaks, in Lake County. The case was submitted for decision on the latter date.

The Evidence

Clearlake Oaks Water Company was incorporated under the laws of the State of California on May 7, 1926, for the purpose of selling water to its stockholders at cost. Its capital stock, amounting to \$50,000, is divided into 100,000 shares of a par value of 50 cents per share. The Stubbs Trust, successor to Stubbs Company, Limited, subdividers of property at Clearlake Oaks, owns 23,800 shares of the stock. Nora E. Stubbs, one of the defendants, has been president of the water company since her election in 1947 following the death of her husband the previous year. She has also been one of the trustees of the Stubbs Trust since 1950, following dissolution of the Stubbs Company, Limited, in that year.

Lots in the various subdivisions developed by the Stubbs Company and its successor have been sold to purchasers under written contracts. If the contract provides that the seller will develop water, the purchaser is issued, or becomes entitled to receive one share of water company stock, the price of which is credited to the water company by the subdivider. If the provision for development of water by the seller is stricken from the contract when executed, the water company considers it is under no obligation to provide water.

At present, water is being supplied to approximately 300 customers about one half of whom are served under an annual flat rate of \$18 and the balance under either monthly meter rates or monthly flat rates. These customers are located in portions of Subdivisions Nos. 1, 2, 5 and Addition to Subdivision No. 1, generally along the State Highway which skirts Clear Lake in and in the vicinity of Clearlake Oaks. Water is supplied, without cost, to the Stubbs Ranch distant about 1 mile from Clearlake Oaks and has also been furnished, likewise without cost, to the Smager Ranch east

of the community through a separate pipeline not maintained by the company. In 1951, the company sold water for about 11 months to a Pacific Gas and Electric Company construction crew operating in the area, as an accommodation for camp and cooking purposes. In addition, the local school, firehouse and State Highway Maintenance Camp receive water as stockholders of the company, as do various business concerns and other organizations in the community.

Altogether, some 976 certificates for one share each of water company stock were issued, or executed but not delivered, between September, 1926 and August, 1951. Many of these certificates have been transferred to purchasers from the original lot owners, while others have been canceled following relinquishment by the purchasers of their contracts. The record shows that the shares of stock are appurtenant to the individual lots conveyed. As of the date of the final hearing, there were some 20 water users who, according to the company's records, did not have issued to them shares of stock, as well as a considerable number of lot owners to whom certificates, though executed by the company's officials, had not been delivered for one reason or another.

On January 10, 1949, pursuant to an agreement between Stubbs Company, Limited, and complainants Rassi and his wife, the former agreed to sell to the latter approximately 14.4 acres of land comprising what is known as Stubbs Island, adjacent to Clearlake Oaks, for the sum of \$28,000, payable in yearly installments. The printed portion of the agreement, reading in part "The Vendor agrees to develop water for domestic use ...", was deleted at the time the agreement was executed. On January 31, 1949, the seller executed a deed to the property and the parties contemporaneously entered into an agreement providing that Rassi would construct a bridge from the

mainland to the island and that he would be permitted to subdivide the property into lots prior to payment in full of the purchase price.

For some years prior to these events, the island had been used as a recreation area and on it were also located the homes of Ann Stubbs and Mae Stubbs, members of the family who developed the community. A pipeline from the company's pump house beside the lake originally provided water to the two Stubbses' properties and, through one or more faucets, for recreational activities on the island. Ann Stubbs' property is located close to the island terminus of the bridge across the canal separating it from the mainland, while the Mae Stubbs' property is about 200 feet farther east. No water had been furnished to the Mae Stubbs' property, however, for about 10 years prior to the acquisition of the island by Rassi in 1949, at which time the pipeline was broken by Rassi's ground-leveling operations and then capped. No charge for water has ever been made to the Stubbses or to other locations on the island.

After purchasing the island Rassi sold a 7-acre parcel on the southern portion to a subdivider and construction of homes is now under way. He testified that the company's superintendent told him, prior to the sale to him of the island, that the company would furnish water service to the area and on the strength of that assurance he sold off the 7-acre parcel for subdivision purposes. The company's superintendent, on the contrary, testified that he told Rassi his request for water service would first have to be approved by the company. Mrs. Stubbs, president of the company, testified that the company's attorney advised Rassi that the company would not supply him with water. The contract for sale of the island, with the provision respecting development of water by the seller deleted therefrom, corroborates the company's testimony on this point.

We therefore find from the evidence that defendant did not agree to furnish water service to Rassi at the time he purchased the 14.4-acre parcel of land on Stubbs Island. Consequently, unless it can be found that the company has otherwise dedicated its facilities to the general public on Stubbs Island so as to constitute it a public utility water company, Rassi is not in a position to demand water service as a legal right.

Conclusions

The company, with respect to its water service on the mainland in and in the vicinity of Clearlake Oaks, appears to have confined its obligation to supply water only to those persons or entities owning or purchasing property whose purchase agreements called for development of water by the seller and who also possessed, or were entitled to possess, a certificate for a share of water company stock. With respect to about 20 lots receiving water service, however, the company's records, which appear to have been kept in a rather loose fashion, do not reveal whether certificates were ever issued. Water supplied in the past to the various locations on the island was furnished as an accommodation to members of the Stubbs family and for recreational purposes, without charge.

Complainants have failed to establish that they are entitled to receive water service from defendants under their contract for purchase of the 14.4-acre parcel of land known as Stubbs Island. Nor has the company, in our opinion, conducted its water service business so as to make it clear that, though organized as a mutual water company, it has in fact dedicated its service to the general public. It follows, therefore, that complainants have no legal right to demand water service from the company and that, accordingly, their complaint must be dismissed.

O R D E R

Public hearing having been held in the above-entitled and numbered proceeding, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that the complaint herein be and it hereby is dismissed.

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

Dated at Los Angeles, California, this 10th day of August, 1953.

A. Z. Friedman
President

Justus F. Casper

Harold P. Kula

Lawrence Pottel
John E. Mitchell
Commissioners