

Decision No. 53190

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDEN FOUNDATION, LTD.,

Complainant,

vs.

Case No. 5699

SPARLING WATER COMPANY,
a corporation,

Defendant.

Willedd Andrews for complainant.
Belcher, Kearney and Fargo, by George M. Henzie
for defendant.
Charles Drake for the Commission staff.

O P I N I O N

Public hearing was held in connection with the above-entitled complaint in Los Angeles before Examiner Syphers on March 16 and April 2, 1956. It was submitted on the latter date and now is ready for decision.

Complainant is a nonprofit trust dedicated to philosophical and educational teachings, maintaining its principal place of business in the town of Topanga, County of Los Angeles, State of California. The defendant is a public utility water corporation, the principal owner of which is R. W. Sparling.

On May 28, 1954, the Eden Foundation, Ltd., purchased about twenty acres of land from one Marguerite A. Barton, together with certain dwellings and buildings thereon. At the time of this purchase there was on this property a flowing spring which supplied water to the property both for domestic and agricultural purposes. This spring had been furnishing water to this property since 1932.

Adjoining this twenty acres of property is another piece of land consisting of approximately one acre, on which is situated a cottage. This piece of land formerly was owned by one Max Moldenhauer. On or about July 11, 1954, Max Moldenhauer and Raymond W. Sparling entered into an agreement whereby Moldenhauer agreed to sell a portion of his property to Sparling and to grant him permission to drill a water well upon that property.

During the latter part of July and the first part of August, 1954, Sparling drilled a well upon the property he had purchased from Moldenhauer, which well was located approximately 300 feet from the spring on the property purchased by Eden Foundation. Subsequently, Sparling assigned this well to the Sparling Water Company, which company put the well in operation. Within two hours after the well had been placed in operation the spring went dry and since that time has furnished no water whatsoever. For a period of approximately thirteen months the Eden Foundation obtained water from the Sparling Water Company through the meter serving the property of Moldenhauer. Since that time, except for a short period during which service was discontinued for non-payment of the water utility bill, Eden Foundation has used water delivered through the meter serving F. W. Morales who now owns and occupies the remainder of the one acre referred to hereinbefore as the Moldenhauer property.

There are sixteen people now living on the Eden Foundation property, and the testimony in this proceeding discloses that they do not receive sufficient water to conduct the gardening and farming operations which they desire to carry on.

The testimony also discloses that the Sparling Water Company has laid approximately 500 feet of pipe across the property of the Eden Foundation without permission of that organization.

It was also testified that when the Sparling well was placed in operation the electricity to operate the pumps was furnished by the Eden Foundation for approximately six months or until Sparling succeeded in securing an electric line of his own. The Eden Foundation has not been compensated for this electricity.

The foregoing facts were not disputed on this record.

There was considerable testimony presented as to various oral conversations between members of the Eden Foundation and Mr. Sparling relative to an alleged contract between the parties concerning the furnishing of water to the Eden Foundation. The original complaint mentioned only the conversations between Betty Lee Morales, Trustee and Secretary of the Eden Foundation, relative to the alleged oral agreement with R. W. Sparling concerning provision of water service without charge to the Eden Foundation. The defendant's answer denies that R. W. Sparling, President of the Sparling Water Company, informed Betty Lee Morales that he would furnish complainant with water service free of charge.

Three members of the Eden Foundation presented testimony at the hearing to the effect that R. W. Sparling had agreed verbally to furnish water to the Eden Foundation free of charge. No denial of these allegations could be made by the Sparling Water Company representative due to the death of R. W. Sparling prior to hearing.

A consideration of the testimony in this record, therefore, leads us to conclude, and we now make, the following findings of fact: (1) there was a spring on the twenty acres purchased by the Eden Foundation on May 28, 1954, which spring furnished ample water for both the domestic and agricultural needs of the property; (2) this spring went dry within two hours after the well drilled by Sparling was placed in operation; (3) Sparling verbally agreed to furnish water to the Eden Foundation free of charge, until the

respective rights of the parties are resolved.

The complaint herein requests that this Commission restrain Sparling Water Company from refusing to furnish the Eden Foundation with water service for domestic and irrigation purposes free of charge pending the settlement of litigation now pending in the Superior Court in Los Angeles County (No. 640484), and for such other and further relief as to this Commission may seem meet and just.

The problem which this record presents as to the rights of the complainant and the Sparling Water Company to water, should be and is in process of being resolved in a court of law. Accordingly, this Commission will not attempt in these proceedings to determine the rights of the parties as to damages or water to be furnished under the contract. The record does show that the Eden Foundation is in need of water, and the defendant water company will be directed to furnish water to this foundation in accordance with its filed tariff schedules.

O R D E R

A complaint and answer thereto, as above entitled, having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and hereby finding it to be in the public interest,

IT IS ORDERED that the Sparling Water Company is hereby directed to furnish water, in accordance with its filed tariff schedules, to the Eden Foundation, Ltd.

In all other respects the complaint of the Eden Foundation, Ltd., is hereby dismissed without prejudice.

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

Dated at San Francisco, California, this 4th day of June, 1956.

[Signature]
President
James J. Cooney
Raymond L. Williams
B. Hardy

Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.