

Decision No. 56241

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WEST ALMANOR HOMESITE WATER)
ASSOCIATION,)
Complainant,)
))
vs.)
))
DR. ALLAN R. MARSAN, owner of)
Almanor Inn,)
Defendant.)

Case No. 5956

Hjalmar W. Jorgenson, for complainant.
W. Del Richards, for respondent.
John D. Reader, for the Commission staff.

O P I N I O N

Complainant commenced this proceeding on July 18, 1957.
Dr. Marsan later answered. A public hearing was held before Examiner John Power in Chester on October 8, 1957. A late-filed exhibit was later received and the matter is ready for decision.

The complaint alleged in substance that defendant was and is a public utility water system and that quality of water and system pressures are inadequate. The answer denies these allegations. The Commission's jurisdiction, if any, would be based on a finding that defendant or his predecessors have assumed public utility status by their conduct.

Dr. Marsan is the operator of Lake Almanor Inn. This consists of a service station, store, dining room, hotel and cabins. It operates for varying periods of the year, but usually from April or May until late October. Defendant does not own the land upon which

this property is situated. The land belongs to the Forest Service of the United States Department of Agriculture. That service has issued to defendant a "term special use permit", a copy of which is in evidence. This permit is for a term of twenty years ending in January 1971.

It appears from the evidence that this water system started more than forty years ago. At that time water was derived from a spring. Subsequently the construction of a tunnel caused the spring to fail. Later a well was drilled in the same spot. This now serves three people.

In 1924 the witness Graph and one Hutchison constructed the system which is used by the Inn and by the cabin owners. The water was low in the lake and the two men tapped into a spring. This spring is submerged at times. In 1926 a tank was constructed on ground then in possession of the Inn's owners. This lot was later "sold" (the holders of these lots do not have a true ownership, but only the right to the use of their lots). The present holder of this lot receives free water in return for allowing this use. The evidence shows that this tank is in such a dilapidated condition that it is a nuisance.

It is clear that the appropriation and storage of water by respondent and his predecessors has been primarily for Lake Almanor Inn. The operation of the system has been restricted to those times when the Inn has been open. Opening and closing dates have, therefore, varied at the whim of the various operators of the resort. Anyone who desired service while the Inn happened to be closed has had to make special arrangements. One witness drilled his own well. Reference was made to another person who agreed to pay the power bill

and check the pump and with that understanding was allowed to use system water.

Conduct of previous owners has been ambiguous. However, there is nothing in the record to show that they ever acted as though other users had vested rights of any kind.

In view of the condition of the record before us, the Commission cannot make the necessary finding that respondent has assumed the obligation of a public utility. Such a finding would be necessary to a decision in favor of complainant.

The relief sought by the complaint will, accordingly, be denied.

O R D E R

Complaint having been filed and answered, public hearings having been held and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that the complaint in Case No. 5956 be, and it is, dismissed.

Dated at San Francisco, California, this 18th day of February, 1958.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners