

Decision No. 57494

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM H. KNEALE and VELNA A. KNEALE, )

Complainants, )

vs.

Case No. 6121

PAUL RHOADS and VIRGINIA RHOADS, )

Defendants. )

William H. and Velna A. Kneale, in propria  
persona.

Kenneth Bates, for defendants.

Clyde F. Norris, for the Commission staff.

O P I N I O N

This case was submitted on defendants' oral motion to dismiss the complaint for lack of jurisdiction, made at the hearing held August 22, 1958, at Weldon, Kern County, before Examiner John M. Gregory.

The sole issue concerns the public utility status of the waterworks owned and operated by defendant Rhoads, who purchased, for \$1,250, certain water production and distribution facilities from complainant Kneale in 1952 and who since, in addition to using the water for his own domestic and commercial purposes, has been supplying water, for compensation, to some four or five residents, including complainants' home and rental units, in the small community of Weldon, situated along State Highway 178 about ten miles east of Isabella Dam.

The underlying facts, in the main, are undisputed. On April 1, 1958, defendants presented to complainants a statement for water, showing total charges of \$504, an agreed offset of \$300 (in satisfaction of a note given by Rhoads to Kneale on March 1, 1954, for money used to purchase some pipe replacements), and a balance due of \$204, for the period July 1, 1954 to April 1, 1958.

After some dispute between the parties concerning the charges, the Kneales, apprehensive lest their water supply be interrupted and having none of their own, filed this action seeking to subject defendants and the water system to regulation as a public utility. Defendants, on their part, contend that they are not engaged in rendering a public utility service, but have been furnishing surplus water, over and above requirements for their store and other private uses, on a temporary basis to neighbors who have no other source of water for domestic or irrigation purposes.

The record shows that defendants, early in 1948, purchased a store at Weldon, near which are located the wells, pumps and booster facilities for supplying water. Before opening this store, Rhoads drilled a well on the premises. Thereafter, defendants furnished water from that well to a Mrs. Andress, who had purchased a lot from the Rhoads in 1949, near the store, and who had no other available source of water supply.

In the latter part of 1950 or early in 1951, the Rhoads sold certain real property south of their store to William and Mattie Kneale (Kneale's first wife, now deceased), with the asserted understanding that if the Kneales could not develop water on the property the Rhoads would sell them a well site near the store for a nominal consideration. Thereafter, the Rhoads sold a 24' x 10' well site to the Kneales for \$10, on condition that the Kneales would supply water to Mrs. Andress and to Ruth Potter, now Mrs. Vernon Blount, who owns a motel near Rhoads' store.

Kneale drilled a well on the site in 1951 and installed a pump, pumphouse, pressure tank and 1100 feet of 2-inch iron pipe to his property, at a cost of approximately \$1,500. On March 1, 1951, Kneale entered into a written agreement with Mrs. Andress to furnish

water to her property from his pipeline at a flat rate of \$3.50 per month. The agreement is subject to cancellation by either party on thirty days' notice. He also charged Mrs. Blount \$3.50 per month for water for her domestic use until he sold the system to Rhoads, who connected his original well to the well drilled by Kneale.

Rhoads has continued to charge Mrs. Address \$3.50 per month and has increased the charge to Mrs. Blount for her home and rental units to \$15.50 per month since September, 1957. He also increased the rate charged the Kneales from \$7.00 per month, as of the time of the transfer of the system, to \$10.50 per month between July 1, 1954 and July 1, 1955, and is presently charging the Kneales at the rate of \$16.50 per month, as the result of construction of additional rental units on the Kneale property which, presumably, would entail greater usage of water through the Kneales' connection. Rhoads also supplies water to a house near his store owned by one Robinson, at the rate of \$3.50 per month. The circumstances under which this service originated were not disclosed.

In 1954 and 1955 a stockman, Glenn Alexander, with permission from Rhoads and Kneale, connected a pipeline from Kneale's property to a stock-watering trough on leased land southwest of the Kneales' premises. Alexander removed the trough and dismantled the connection at the end of 1955. The record indicates, somewhat inconclusively, that a Mrs. Peoples may now be using water through that line, although Rhoads disclaimed any knowledge of such use or of Mrs. Peoples herself. There is also some evidence to the effect that a man named Nolan may be using water supplied by Rhoads, without charge, through a connection on the Kneales' premises.

The foregoing constitutes substantially the evidence upon which we are asked by complainants to declare that defendants are engaged in the ownership and operation of a public utility water company and that their water supply and distribution facilities, consequently, have become impressed with a servitude on behalf of the general public.

Section 2704 of the Public Utilities Code provides, in part, as follows with respect to sales of nondedicated domestic water:

"Any owner of a water supply not otherwise dedicated to public use and primarily used for domestic purposes by him . . . , who (a) sells or delivers the surplus of such water for domestic purposes . . . , or (c) sells or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic . . . purposes is equally available, is not subject to the jurisdiction, control, and regulation of the commission."

We are not persuaded from this record, and, therefore, cannot find that either defendants or complainants, by drilling their respective wells and supplying water in the manner related above, thereby evidenced an unequivocal intention to dedicate their water supply to the use of the general public. Rather, it seems that their activities were designed primarily to secure water for their own premises, and that their respective activities later, in making the water available to others in the vicinity, constituted no more than neighborly accommodation for those to whom a supply of water was not then equally available.

We conclude, therefore, that defendants' motion to dismiss the complaint for lack of jurisdiction should be granted, and that the parties, accordingly, must be left to pursue their remedy in the courts with respect to the controversy relating to the water bill presented by defendants to complainants.

O R D E R

Public hearing having been held herein, defendants have moved to dismiss the complaint for lack of jurisdiction, the matter having been submitted and the Commission now being fully advised,

IT IS HEREBY ORDERED that defendants' motion to dismiss the complaint herein be and it hereby is granted, and that said complaint be and it hereby is dismissed.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of October, 1958.

E. L. Fox  
President  
W. E. Mitchell  
Paul W. Linterman  
Walter J. ...  
Therese Deener  
Commissioners