

ORIGINALDecision No. 60259

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MYRTLE DAKE CHESHIRE, KENNETH C.)
 CHESHIRE, LILLIAN E. BARNETT,)
 WARREN A. BARNETT, CHARLES E. FEE,)
 LYDA A. FEE, GEORGE A. FEE,)
 ELIZABETH CAPPS, ALTON CAPPS,)
 MAY A. SHERWOOD, WESLEY V. JARDSTROM)
 and TERESA JARDSTROM,)

Complainants.)

vs.)

KELLY B. MCGUIRE, IRENE C. MCGUIRE,)
 his wife; and JAMES I. MCGUIRE,)
 BARBARA MCGUIRE, his wife,)

Defendants.)

Case No. 6367

Morris B. Grupp, attorney for complainants.
Leo M. Cook, attorney for defendants.

O P I N I O N

Complainants herein filed their complaint on October 9, 1959. Defendants filed their answer on November 12, 1959. Hearing in the matter was held before Examiner F. Everett Emerson on March 30, 1960 and the matter was submitted on such date.

Basically, this proceeding involves the question as to whether the defendants are rendering a public utility water service subject to the jurisdiction of this Commission.

THE COMPLAINT

In substance, complainants allege as follows:

1. That they have for many years been water service customers of defendants for which they have made monthly payments;
2. That they have no water supply other than that obtained or obtainable from defendants;
3. That defendants have failed properly to protect the water supply and that as a result the Department of Public Health of

Mendocino County has threatened to close down the water system, thus leaving the complainants without water;

4. That defendants have refused to remedy such situation;
and

5. That complainants are willing to pay increased amounts for service as a matter of offsetting the added expenses to which defendants may be put to protect the source of water supply.

Complainants, in substance, seek a determination by this Commission:

1. That the water supply system and business of defendants are dedicated to public use;

2. That defendants be adjudged to be a public utility;

3. That defendants be ordered to comply with provisions of the Health and Safety Code; and

4. That such other orders be issued against defendants or against complainants insofar as rates are concerned as will do equity to all parties.

THE ANSWER

Defendants generally deny the allegations of defendants and as separate defenses state in substance:

1. That defendants neither own, control, operate nor manage a water system within the State of California for compensation or otherwise;

2. That defendants come within the provision of Section 2704 of the Public Utilities Code (delivery of surplus water as a matter of accommodation to neighbors); and

3. That the defendants offer to turn over the water system to the complainants if the complainants will accept the same and keep, maintain and repair the same, said conveyance to be without cost or expense to complainants.

COMPLAINANT WITHDRAWALS

After receipt of defendants' answer, three of the complainants asked that they be permitted to withdraw and each of them specifically declared their willingness to accept defendants' offer to turn over the system to the users. Accordingly, the Commission hereby recognizes the withdrawal of George A. Fee, Lyda A. Fee and Charles E. Fee as complainants herein.

NATURE OF EVIDENCE

Defendants purchased the 1,200-acre Fee Ranch at Westport in May 1955. None of the defendants have occupied the ranch property since its purchase. Within less than one month after purchase, the property was leased to Mr. Perry D. Short for a five-year period for the latter's livestock operations. At the time of purchase Mr. McGuire had no knowledge of the fact that water from the ranch was being used for any purposes other than ranch uses. About one month following Short's occupancy, a number of persons, including some of the complainants, made payments to him, at a rate of one dollar per month, for water usage. It thereupon became known to Short and McGuire that water from the ranch was conveyed by a pipeline to about six residences located along A Street and a Community Hall in Westport. Such payments continued to be received until about June or July 1959.

The only knowledge we have of the Fee Ranch or its operations begins about the year 1904 when the Fee family acquired the ranch. At the time of the Fee's first occupancy there was in existence a particular spring in an unnamed gulch from which a pipeline ran to a wooden storage tank not far from the main ranch house. From the tank one pipe relatively near the bottom of the tank, ran a distance of about 100 yards to the ranch house, a watering trough and

a dairy barn. A second pipe, from a higher level in the tank, ran generally westerly, crossed under the main road, thus leaving the ranch property, and extended part way along A Street where five residences of nonrelatives, and in later years the residences of some of the Fee children, took water from the line. This "A Street line" and the tank were replaced in kind about 25 years ago. Nonrelatives paid for the water at the rate of either fifty cents or one dollar per month which was commonly collected at the time payments for milk were collected by one of the Fees. Apparently family members made no payments for water until after the ranch was sold to the McGuires. No bills for water have ever been rendered to any water user.

The supply of water is limited and in the fall of the year, water users along A Street were on occasion advised to "go easy with the water". Because of the arrangement of piping at the tank, A Street users would be out of water before the ranch experienced any lesser supply. In fact, the ranch continued its normal water usage at times when non-ranch water users were instructed to curtail usage.

Apparently no additional residential parcels of land (beyond the original five) were permitted to take water from the A Street pipeline until after the Fees ceased their dairy operations in 1950. At such time the amount of water available became more than sufficient to meet the needs of the curtailed ranch usage plus the usage of those persons along A Street. Subsequently, Mr. Capps was given permission to extend the line to his property at his own expense and some time later the line was further extended to reach the Community Hall at its own expense. The line along A Street is only of 3/4-inch pipe and as of the date of hearing in this matter served approximately seven residences plus the Hall.

An engineer of the Commission measured the flow of water from the spring during December 1959, probably about the time of its

lowest rate of flow and following a longer-than-usual dry season. In his expert opinion the flow was sufficient to supply the normal needs of "four to five" residences only.

There are other springs and one stream on the ranch property, most of them being at considerable distances from the main ranch house and from A Street. One or more may have been or may now be used as sources of residential water supply in parts of Westport not involved in this proceeding. Mr. McGuire was unaware that such situation prevailed.

In May 1959, the Health Officer of Mendocino County sent a letter to each of the water users, including the complainants herein, stating that his department would take steps to close down the water system because of "serious questions regarding the purity of the water" in the area. The users were informed that Mr. McGuire would be asked to cease water distribution prior to September 1, 1959. Inquiry by certain of the water users disclosed that the water source was pure but that the Department of Health required covering of the tank and an enclosure at the spring in order to prevent possible contamination. The department subsequently indicated the manner in which sealing of the spring and covering of the tank might be done and a number of the complainants proceeded to supply the material and labor necessary to meet the requirements of the Department of Health. At no time have either Mr. McGuire or Mr. Short indicated that the supply of water would be cut off. Neither of them took any part in the improvements made at the spring or tank.

FINDINGS AND CONCLUSIONS

Upon consideration of the record in this proceeding, the salient features of which are hereinabove set forth, the Commission finds and concludes that "accommodation" or "surplus" water has been

supplied to neighbors and that dedication of this water supply to public use has not occurred. The evidence makes it clear that neither defendants herein nor their predecessor owners of the Fee Ranch have operated, nor are they now operating, as a public utility subject to this Commission's jurisdiction. Accordingly, the complaint will be dismissed.

O R D E R

A public hearing having been held in the above-entitled proceeding, the matter having been submitted and the Commission basing its decision hereon upon the evidence and foregoing conclusions with respect thereto,

IT IS ORDERED that the complaint in Case No. 6367 be, and it is hereby, dismissed.

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

Dated at San Francisco, California, this 14th day of June, 1960.

President

Commissioners