

ORIGINAL

Decision No. 50716

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mendell Schneider,
Complainant,

vs.

Case No. 6444

Apple Valley Ranchos Water Co.,
Defendant.

Mendell Schneider, in propria persona, complainant.
Joseph A. Ball, vice president and attorney, for defendant.
Robert M. Mann, engineer, for the Commission staff.

O P I N I O N

Mendell Schneider, an individual, filed the above-entitled complaint against Apple Valley Ranchos Water Co., a public utility water corporation, on March 28, 1960. Defendant filed a Statement of Defects, Request for Dismissal of Complaint, and Points and Authorities in Support Thereof, on April 6, 1960, and answered the complaint on April 13, 1960.

A public hearing was held before Examiner Stewart C. Warner on August 1, 1960, at Los Angeles. The matter was submitted for decision on said date.

Allegations of Complainant.

Complainant alleged that the defendant had refused a number of requests to supply water to his house located in the

W $\frac{1}{2}$ SW $\frac{1}{2}$ SE $\frac{1}{2}$ NE $\frac{1}{2}$ Sec. 6, T5N, R3W, S.B.B.&M., in unincorporated territory of San Bernardino County in Apple Valley about 8 miles east and 2 miles north of Victorville. Said house is located on a 5-acre parcel of land and is part of a total of 45 acres of land purchased from the United States Government by the complainant. The location of complainant's property is shown on the map, Exhibit No. 5, filed at the hearing. Of complainant's said total of 45 acres of land, the record shows that 13 $\frac{1}{2}$ acres are usable, the balance being granite rock, and that complainant intends to develop said 13 $\frac{1}{2}$ acres by the construction of 2 additional houses thereon.

Complainant alleged that on March 18, 1960, he had installed 1,450 feet of 4-inch line direct to defendant's main line at a cost of \$2,500, and had sent defendant a signed application for water service which had been refused.

Complainant alleged that defendant had personally discriminated against him by refusing water service inasmuch as defendant was supplying water in the said Section 6 to 4 other customers outside of complainant's certificated area. Complainant alleged that defendant was wilfully obstructing needed development in the area, and that no known hardship upon defendant to supply the complainant with water service appeared. Complainant further alleged that defendant was furnishing water service to other customers in a new area adjacent to Section 6 which is at the same level in part as the complainant's premises.

Complainant further alleged that his limited stored water delivery at a monthly cost of \$34 was subject to sudden stoppage, leaving the property unusable to the detriment of complainant.

Relief Sought.

Complainant seeks an order of the Commission requiring defendant to supply water service to him.

Answer of Defendant.

As its first affirmative defense defendant alleged that the property owned by the complainant was outside of the certificated area of the defendant and that the defendant had not intended to and does not intend to extend its service so as to include the land owned by the complainant.

As a second affirmative defense the defendant alleged that it could not, with its present equipment, lines, and other facilities, furnish water to complainant's land for the reason that said land was located at a higher level than the level of land being served by defendant; that water service could only be extended to complainant's property at great expense to the defendant; that there was no need for the water service requested by the complainant; and that if the defendant were required to expend money to extend its water service to complainant's land it would not secure a return of said money through the sale of water.

Evidence of Record.

Exhibit No. 1 is a sketch submitted by complainant showing the location of complainant's house and water tank as they are related to the presently installed water main of the defendant. Said sketch shows that said house and tank are about one-quarter of a mile from the defendant's nearest water main, outside of defendant's present service area. Said Exhibit also shows the location of the 4-inch asbestos-cement pipeline installed by complainant in Lodema

Road from complainant's house to within 6 inches of defendant's water main at the intersection of Lodema and Ponca Roads.

Exhibit No. 2 is a Kodacolor enlargement of complainant's house, purporting to show the character and value of his property.

Exhibit No. 3 is a copy of a letter dated March 14, 1960, from complainant to defendant's president, informing the defendant that the complainant had expended about \$2,500 for the construction of a 4-inch line; that complainant was allowing defendant a period of 10 days to comply with his request for water service; and that, in the event defendant refused, complainant would take legal action. Said Exhibit also contains the defendant's reply dated March 17, 1960, stating that the defendant was not in a position to supply water as requested by the complainant.

Exhibit No. 4 is a United States Department of the Interior Geological Survey Map of the Apple Valley Quadrangle, setting forth the contours in the area.

Exhibit No. 5 is the map of the northwestern portion of defendant's service area heretofore referred to.

Exhibit No. 6 is a map of Tract No. 4763, Rimrock Estates, which shows the location of defendant's present water service customers in the northeast portion of the SW $\frac{1}{4}$ of Section 6. Said Exhibit also shows the location of the so-called McKenzie, Wilson Apartments, and Sawyer properties to which defendant is furnishing water service. Said properties are located approximately 150 feet north of the north line of the SW $\frac{1}{4}$ of Section 6. Said Exhibit also shows that defendant is furnishing water service to the so-called Wilson property located about 150 feet east of the east line

of the SW $\frac{1}{2}$ of Section 6. All of said 4 customers' properties are located outside of the defendant's service area, but all of said properties are adjacent thereto.

Exhibit No. 7 is a schedule of pressure tests taken by defendant on June 2, 1960. Said tests showed that the maximum pressure at the northeast corner of Lot 155, Tract No. 4763, which is at an elevation of 3,065 feet and is in the extreme northeast corner of the SW $\frac{1}{2}$ of Section 6 as shown by the red letter "X" on Exhibit No. 6, at 8:35 a.m. was 27 psi; and at 10:35 p.m. was 25 psi.

Exhibit No. 8 is a letter from a surveyor, dated June 10, 1960, to defendant's consulting engineer, stating that a field crew measurement taken on June 3, 1960, found that the elevation of the floor of complainant's house was 3,138.6 feet; that the intersection of the southerly line of Corwin Road and the north and south central line of Section 6, which is approximately the northeast corner of Lot 155, Tract No. 4763, is at an elevation of 3,065 feet; that the floor of defendant's house is 73.6 feet above this location; and that the elevation of the bottom of defendant's tank, located southeasterly of Apple Valley Inn, is 3,120.4 feet.

Complainant testified that water service to his house had consisted of tank truck delivery service to his storage tank by a private hauler.

The record shows that at no time had defendant offered to furnish water service to complainant's properties, and that said properties had been purchased and developed by complainant with the knowledge that defendant declined to supply water thereto.

Defendant's consulting engineer testified that it would be impossible for the defendant to provide minimum-standard operating pressures at complainant's house with the defendant's presently installed facilities due to the fact that the elevation of the bottom of defendant's main storage tank was 18.2 feet lower than the floor of complainant's house, and that the water levels in said tank were not of sufficiently greater elevation to increase operating pressures at complainant's house to said minimum standards.

Findings and Conclusions.

From a review of the record, the Commission finds as a fact that the defendant has not dedicated its water supply to complainant's properties, which lie outside defendant's certificated and service areas; nor has defendant held itself out or offered to furnish water service thereto. The Commission further finds as a fact that no personal discrimination against the complainant, as alleged, exists. In view of such facts this Commission may not lawfully require defendant to furnish water service to complainant's property. Such furnishing of service is at the discretion of defendant's management. It is not mandatory under the statutes.

The Commission concludes that no cause of action has been shown and that the complaint should be dismissed. The order which follows will so provide.

O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that the complaint of Mendell Schneider, an individual, vs. Apple Valley Ranchos Water Co., a public utility water corporation, be and it is dismissed.

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

Dated at San Francisco, California, this 13th day of September, 1960.

Ernest W. Payne

President

John E. Mitchell

F. L. Fox

Commissioners

Matthew J. Deoley
Commissioner ~~Theodora E. Jenner~~, being necessarily absent, did not participate in the disposition of this proceeding.