Decision No. 12505.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BENJAMIN A. McBURNEY, Complainant, vs. CLAREMONT DOMESTIC WATER COMPANY, Defendant.	)	Case No. 1898.

Nichols, Cooper and Hickson, by B. L. Cooper, for complainant.

William B. Himrod, for defendant.

BY THE COMMISSION:

O P I N I O N

This is a proceeding brought by Benjamin A. McBurney, who seeks to compel Claremont Domestic Water Company, a public service corporation, to supply water for irrigation use, at the utility's regular rates, on a ten-acre tract of land in the vicinity of Claremont. The Commission is also asked to compel defendant to refund the amount paid by complainant for the installation of a check valve, and to direct defendant to make such necessary changes in its pumping equipment as will enable the delivery to complainant of a head of at least fifty inches of water.

Defendant denies that complainant is entitled to public utility water service upon the lands described in the complaint, and avers that such service as has been supplied was upon the express understanding that it was of a temporary nature and given

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only until such time as complainant could procure a water supply from other sources.

A public hearing in this matter was held before Examiner Satterwhite at Los Angeles, briefs have been filed, and the matter is now ready for decision.

The evidence shows that one C. T. Naftel was the owner of 120 acres of land, described as the Northwest Quarter of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter of Section 33, Township 1 North, Range 8 West, S.B.B.& M., in the vicinity of Claremont, Los Angeles County.

The Citizens Light and Water Company, a public service corporation, and the predecessor in interest of Claremont Domestic Water Company, the defendant herein, in 1892 or thereabouts purchased a forty-acre tract near Claremont, described as the Southwest Quarter of the Southeast Quarter of Section 33, Township 1 North, Range 8 West, S.B.B.& M., and drilled a well thereon for the purpose of developing a supply of water for use by consumers in and in the vicinity of Claremont. Later, being desirous of securing an additional source of water supply, the company on October 10, 1908, entered into an agreement with C. T. Naftel whereby it was permitted to drill wells, to erect the necessary pump houses, and to lay pipes on the Northeast Quarter of the Southeast Quarter of Section 33. Naftel reserved the right to develop and use, on this forty-acre tract, such water as might be necessary to properly irrigate the tract and for domestic use thereon.

Citizens Light and Water Company in turn agreed to furnish at actual cost water for irrigation and domestic use on the Northeast Quarter of the Southeast Quarter of Section 33. Citizens Light and Water Company also agreed:

> "to furnish water, if procurable, from said well, or other wells hereafter bored on said land, at the same price and cost and under the same conditions, and in such quantities as may be neces-

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> sary to properly irrigate the Northwest quarter of the Southeast quarter, and the Southeast quarter of the Southeast quarter of said Section Thirty-three, Township One North, Range Eight West, S.B.M., as long as water is not developed on said pieces of land for other than domestic uses thereon; and for the purposes of this obligation, each square ten-acre portion of said two forty-acre tracts shall be deemed to be a separate tract and any of said tracts on which water is not so actually developed for other than domestic use shall be entitled to receive water from said Northeast quarter of the Southeast quarter; Provided that if water is developed thereon and is sold or used on lands other than said two forty-acre tracts the obligation to furnish water to said two forty-acre tracts shall forthwith cease."

Shortly after entering into this agreement Citizens Light and Water Company drilled a 14 inch well in the Northeast Quarter of the Southeast Quarter of Section 33 and near the Southwest corner thereof. Pumping machinery was installed and the company supplied water from this well to irrigators located on the three forty-acre tracts owned by Naftel, to domestic consumers in Claremont and vicinity, and also for the irrigation of about 30 acres in the Southwest Quarter of the Southeast Quarter of Section 33.

In 1919 owners of land in the 120 acres mentioned in the Naftel agreement incorporated for the purpose of forming a mutual company to develop a water supply and irrigate their lands therewith. This concern was named the Naftel Water Company and in the same year drilled a well on the Southeast Quarter of the Southeast Quarter of Section 33, distant from 75 to 100 feet from the well owned and used by defendant, and thereafter furnished water for irrigation use on lands situated in each of the three forty-acre tracts specifically mentioned in the Naftel agreement. The use of this well materially lowered the water plane in defendant's well. The lands supplied by the Naftel Water Company comprised all of those formerly served by defendant and its predecessor in interest under the Naftel agreement with the exception of a

10-acre tract owned by Mrs. A. E. Mullen, and described as the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 33. Five acres of this tract had been planted to oranges in 1914.

Holding that the development of water on the Southeast Quarter of the Southeast Quarter of Section 33 and its use on the Northeast Quarter of the Southeast Quarter of the same section was a violation of the Naftel agreement, defendant on February 28, 1921, notified Mrs. Mullen that it was no longer obligated to supply water for use on her land and advised her to take steps to secure another source of supply. Mrs. Mullen, a non-resident, decided to dispose of her property and in August, 1922, transferred the same to Benjamin A. McBurney, the complainant herein, together with a one twelfth interest in the right of C. T. Naftel to secure water from defendant.

Under a temporary agreement complainant was furnished a supply of water for the irrigation of his five-acre orchard during 1921, and in 1922 an agreement was entered into for the irrigation of the five acres in orchard with the provision that such service was to be given when defendant had surplus water; that the service could be terminated on sixty days notice; and that no continuing right would be acquired thereby. Complainant in 1922 planted the remaining five acres of his land to lemon trees, and in 1923 was furnished with water for irrigation purposes, under protest and in compliance with a request by this Commission that such service be rendered pending the final disposition of the present proceeding.

In 1921 complainant was compelled to pay defendant for the installation of a check valve on the pipe line leading to his land, it being claimed by defendant that such installation was necessary to relieve excessive strain upon its pumping machinery.

A careful consideration of the evidence clearly indicates that Citizens Light and Water Company, the predecessor in interest of defendant Claremont Domestic Water Company, was a public service corporation, and such contractual relations as were entered into by that company are subject to regulation by competent authority. A study of the Naftel agreement indicates that a strict interpretation of its provisions might deprive certain land owners, through no fault of their own, of the water supply necessary for the irrigation of their lands and cause them to expend a considerable amount of money in securing a substitute source of supply. Manifestly this Commission cannot uphold defendant's contention that the obligation to furnish water to the land of complainant has ceased by reason of the acts of Naftel and his associates.

Attention is here called to the fact that on September 18, 1918, defendant Claremont Domestic Water Company filed application asking this Commission to fix "a fair and just charge to the seven irrigators supplied under the C. T. Naftel contract," and that this Commission proceeded to investigate the matter, held a public hearing thereon, and by Decision No. 6798 did fix rates for this service.

The Commission will therefore find that the supply of water to complainant's land is a public utility service and will order that the same be continued.

This Commission's Decision No. 2879, in Case No. 683, lays down the general principle that the utility itself should own the instrumentalities by means of which it renders service, and in accordance with this principle such moneys as have been paid by complainant McBurney to defendant for the installation of a check valve should be refunded by defendant.

The allegation of complainant to the effect that defendant's pumping equipment is delivering water at a rate of flow of less than 50 miner's inches and that its equipment should be placed in such condition as will enable the delivery of at least that amount of water, has had careful consideration. It appears however that pumping from the well of the Naftel Water Company has materially lowered the water plane in defendant's well and that, by reason of necessary changes in pumping equipment, the rate of delivery was reduced to approximately 35 miner's inches. It is evident that this is a condition not at all times within defendant's control and cannot be changed except at an expense in excess of the possible benefits which might be gained.

O R D E R

Benjamin A. McBurney having made complaint against Claremont Domestic Water Company, a corporation, as entitled above, a public hearing having been held thereon, briefs having been filed, the matter having been submitted, and the Commission being now fully advised in the matter,

It Is Hereby Found as a Fact that the service of water by Claremont Domestic Water Company, a corporation, for irrigation use upon the lands of Benjamin A. McBurney, more particularly described as the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 33, Township 1 North, Range 8 West, S.B.B.& M., is a public utility service and should be continued; and that such amounts as have been paid to defendant by complainant for the installation of a check valve should be returned.

And basing the order upon the foregoing finding of fact and upon the statements of fact contained in the preceding opinion,

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IT IS HEREBY ORDERED that Claremont Domestic Water Company, a corporation, be and the same is hereby directed to furnish such water as is required for irrigation use upon the land owned by Benjamin A. McBurney, and more particularly described as the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 33, Township 1 North, Range 8 West, S.B.B.& M., at the regularly established rates for such service, and under reasonable regulations as to time, duration of "run", and rate of delivery, and

IT IS HEREBY FURTHER ORDERED that Claremont Domestic Water Company, a corporation, be and the same is hereby directed to return to Benjamin A. McBurney the sum of one hundred nine dollars ($109.00) by him paid to said company for the installation of a check valve upon the pipe leading from the said company's well to his land, and

IT IS HEREBY FURTHER ORDERED that in all other respects the above entitled complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 18th day of August, 1923.

C. L. Seavey

Irving Martin

Egerton Shore

[signature]

Commissioners.

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