

Decision No. 24037

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Erwin S. Decker,
Mrs. Tilda A. Becker,
Mrs. Freda VanderKamp,
(representing others)

Complainants,

vs.

Roy McGain,
Mrs. Carmelita B. Kendall,
Byron A. Bearce,
Mrs. Myrtle Simmie,
Thomas A. Simmie,

Defendants.

ORIGINAL

Case No. 3076.

James Davis, by P.R. Lund,
for Complainants.

Roy McGain, in propria persona.

Sullivan, Roche, Johnson & Barry,
by George A. Stockfeth, for
Thomas A. Simmie and
Mrs. Carmelita B. Kendall.

STEVENOT, COMMISSIONER:

O P I N I O N

The complainants herein are residents in a subdivision known as San Carlos Manor located in the city limits of San Carlos, County of San Mateo. It is alleged that they purchased their properties within the tract from the defendant Roy McGain with the understanding that water would be supplied and that said McGain, or his successors, has since July 1928 furnished them water for domestic purposes at regular monthly charges.

The prayer of the complaint is in effect that the Commission adjudge the water service rendered to complainants to be a public utility service, that the owners of the water system be required to continue the service to complainants and other residents within said subdivision and that the water supplied from a certain described well on the tract be declared to be for the sole benefit of the residents therein.

No answer was filed by defendants Roy McGain, Byron Bearce or Mrs. Myrtle Simmie. Mrs. Carmelita B. Kendall and Thomas A. Simmie filed their answers.

Public hearings in this matter were held at San Carlos after all interested parties had been duly notified.

The evidence indicates that complainants and other residents of the San Carlos Manor tract, approximately eleven in all, have received public utility water service since sometime in 1928 from the defendant McGain, or others who may be his successors. Such service was first undertaken by McGain who was the subdivider of the tract. Whether or not he was acting as the agent for defendant Carmelita B. Kendall is not clear. It is not denied by McGain that he installed the water supply and distribution and regularly served water for compensation to residents of the subdivision as well as to owners of cattle pastured adjacent thereto.

The source of supply consists of a series of five wells or collecting basins which are interconnected. The lowermost of the wells is located on Lot 10 in San Carlos Manor and is claimed as private property by defendant Simmie through a deed dated June 8, 1931, and who, it appears, has recently begun to take

water from it for his own use upon lands not within the San Carlos Manor tract and which use is to the detriment of complainants herein. Water is pumped from the well on Lot 10 into a storage tank and thence distributed to the consumers by gravity. The wells or basins were constructed many years ago but the pumping equipment and distribution system were installed by defendant McGain in 1928 and, in so far as the record shows, are still owned by him.

The evidence is quite clear that the water has been distributed by the owners and/or operators of this water system to the residents of this tract generally for compensation. The service without doubt has been public utility in character from its inception. The evidence is also conclusive that the defendant McGain was one of those originally responsible and the one who claims now to have either a full or partial interest in such properties devoted to the public service. The evidence, however, is not complete as to whether any of the other named defendants are equally responsible. If any of such property devoted to public use has been transferred by the original dedicators, no consent therefor has been obtained from the Railroad Commission. Hence McGain is primarily responsible for the continuance of adequate water service to the extent of his dedication.

As to the other defendants, the complaint will be dismissed without prejudice.

The following form of Order is recommended.

O R D E R

Complaint as entitled above having been filed with this Commission, public hearings having been held thereon, the matter

having been submitted and basing its order on the findings and conclusions in the opinion herewith,

IT IS HEREBY ORDERED that the defendant Roy McGain file, within thirty (30) days from the date of this Order, the schedule of rates charged for public utility water service rendered by said Roy McGain within that area described as San Carlos Manor tract, City of San Carlos, San Mateo County, California.

IT IS HEREBY FURTHER ORDERED that the complaint herein be dismissed without prejudice as to the other named defendants, Carmelita B. Kendall, Byron A. Bearce, Mrs. Myrtle Simmie and Thomas A. Simmie.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of September, 1931.

C. J. Deane
Leon Whitely
W. A. Linn
W. B. Harris
Fred G. Alexander
 Commissioners.