

Decision No. 24804

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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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.

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James Davis, for Complainants

J. M. Howard, for Hugh McKeivitt, for
Thomas A. Simmie.

George Stockfleth, of Sullivan, Roche,
Johnson & Barry, for Defendant
Carmelita B. Kendall.

STEVENOT, Commissioner:

OPINION ON REHEARING

On September 14, 1931, by Decision No. 24037 Roy McGain was directed to file the schedule of rates charged for water service rendered by him within an area described as San Carlos Manor Tract, City of San Carlos, San Mateo County. Thereafter, Thomas A. Simmie and Myrtle Simmie, defendants as to whom the complaint was dismissed without prejudice, petitioned for a rehearing, which was granted.

The lands now comprising the subdivision were originally owned by Nate Brittain and later by his daughter, Mrs.

Carmelita B. Kendall. In 1926 McGain entered into a contract with Mrs. Kendall for the purchase of certain properties and proceeded to subdivide it into lots. At that time and for many years prior thereto a series of wells was located upon the property, and were connected by a siphon system, the water eventually being collected in a cistern or reservoir well, which, after the subdivision, was on Lot 10, Block 1 of the tract.

In 1928 McGain, in the name of "San Carlos Water Company" purchased and installed a pump on Lot 10, and also caused mains to be laid in the streets. Water was pumped from Lot 10 to wooden tanks on Lot 24, Block 4, at a higher elevation, and from there siphoned under pressure throughout the tract. The average number of consumers residing upon the tract has been approximately eleven. After operating the pumping plant personally for some time, McGain appointed Messrs. Becker and Decker as his agents to manage and operate the system, pay expenses of operation, and make the necessary collections from consumers.

In addition to residents on the tract, water was served to Good Bros. Dairy by means of a pipe running across the "Alameda de las Pulgas" (the street marking the eastern boundary of the tract), for the watering of cattle pastured by the dairy on property adjacent to San Carlos Manor Tract. Mr. John Good testified at the rehearing that for several months he paid from \$1.50 to \$2.00 per month to Mr. Decker.

Mr. McGain testified that the installation by him of the water mains and pumping plant was for the benefit of purchasers and prospective purchasers in the tract, and that he represented to such purchasers and prospective purchasers that this water system was dedicated as a part of San Carlos Manor. At the same

time that he installed the mains the siphon system connecting the various wells was overhauled. McGain's intention at that time was to dedicate this water system to the use of the people of San Carlos Manor Tract and any one purchasing property within the tract could obtain water from the system. That intent has never changed and defendant McGain still considers his obligation to the people as continuing. He has filed his schedule of rates in compliance with the original decision in this proceeding and is assuming responsibility for the water system at the present time.

The depository well on Lot 10 from which water is pumped into tanks, itself produces about one-third of the water supply, the balance being siphoned from the other wells heretofore mentioned. The pumping plant and distribution system installed by McGain have not been transferred by him to any one. It is clear from the record that the entire water system, consisting of the series of wells from which water is siphoned to the depository well on Lot 10, the latter well, the pumping plant on Lot 10, the reservoir and storage tanks located in Block 4, and the mains through which water is delivered to the various consumers, is a complete and entire water system in and of itself, and that none of its component units may be separated therefrom. The pumping plant and well on Lot 10 may be said to be the vital portion of a system which we must consider in its entirety in determining public utility status.

Mrs. Carmelita Kendall testified that the series of connecting wells had been upon the property for many years, that acreage was sold by her to McGain and that she knew that McGain was furnishing water to the lots in the tract. Mr. J. B.

McGuffin, who was employed by Mr. McGain as a salesman from May, 1927, to some time in 1929, testified that it was represented to prospective purchasers that the water system upon the tract was dedicated to the purchasers of lots.

Under all the circumstances as disclosed by the record I am of the opinion that the water supply and system involved herein has been dedicated to public use as a public utility within the area covered by the San Carlos Manor Tract subdivision and that our prior order directing defendant McGain to file rates should be affirmed.

Petitioners for rehearing are the owners of certain properties north of and outside the tract, lying in part immediately opposite Lots 10 and 11 in Block 1 and across Las Pulgas Creek, which is the northern boundary of the tract. Because of the curvature of Carmelita Drive it was assumed by all parties for several years that the collecting well was upon Lot 11 of Block 1, rather than Lot 10. On May 22, 1931, R. E. Greenley deeded Lot 11 to Myrtle C. Simmie, which deed was recorded on June 17, 1931. After this purchase a diagonal line was drawn by a surveyor at Simmie's request and it was discovered that the well was actually on Lot 10. On June 6, 1931, Mrs. Stana Le Dell and Palmer J. Le Dell deeded Lot 10 to Myrtle C. Simmie, which deed was recorded on June 8, 1931. It is unnecessary to trace the chain of title of Lot 10 in this proceeding, as it is not the function of this Commission to determine title to property.

I recommend the following order.

ORDER ON REHEARING

Petition for rehearing of our Decision No. 24037 having been granted, said rehearing having been had and the matter submitted, and good cause appearing,

IT IS HEREBY ORDERED that the order portion of said Decision No. 24037 (36 C.R.C. 614) is hereby affirmed.

The foregoing Opinion and Order on Rehearing are hereby approved and ordered filed as the Opinion and Order on Rehearing of the Railroad Commission.

Dated at San Francisco, California, this 21st day of March, 1932.

C. S. Seawright
Leon A. Whiteley
W. H. Linn
W. B. Harris
Fred G. Stewart
Commissioners