

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

LUCY BOSHER LONG,
Complainant,

vs.

Case No. 505.

HARRY R. ATWOOD,
Defendant.

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Lucy Boshier Long, in propria persona, and
D. F. Glidden for complainant.
C. J. Novotny for defendant.

THELEN, Commissioner.

O P I N I O N.

This is a complaint to compel the defendant, a water utility doing business under the name of Encanto Mutual Water Company, to serve the complainant with water. The defendant claims that the complainant's land is located outside of the territory which the defendant has held himself out as willing to serve, and also that his available water supply is not sufficient to serve any additional land outside of Encanto Heights.

The hearing in this case was held in San Diego on December 29, 1913.

The complainant is the owner of ten-acre Lot K, in the tract of land shown on a map called "Map of Encanto," which map was filed in the Recorder's office of San Diego County, California, on May 6, 1893, by Abraham Klauber. The land shown on this map is a portion of Lot 13, on the tract of land known as Rancho Mission. A frame house was built on this property in 1894 or 1895. The complainant lived there for about five years, and thereafter had certain tenants, but the place has been uninhabited since 1907. Water was formerly hauled from a well. No water has ever been supplied to this property by the defendant or from the source from which the defendant secures his

water, as will hereinafter appear in greater detail.

The defendant secures his water from a main pipe line leading from the lower Otay reservoir to the City of San Diego, which pipe line, together with the reservoirs and appurtenances, were constructed by the Southern California Mountain Water Company but later sold by that company to the City of San Diego, which city now operates the system. The complainant testified that she had made demand for water on the Southern California Mountain Water Company, the City of San Diego and the defendant, in turn, but that she had been refused by each.

Prior to June 16, 1907, the Richland Realty Company acquired the unsold portions of the property shown on the map of Encanto. The individuals who owned this company thereupon made a re-survey of the lands which they had acquired, and on June 16, 1907, filed in the office of the County Recorder of San Diego a map showing such re-subdivision, and designated as a map of Encanto Heights. The same persons thereafter formed the Encanto Heights Mutual Water Company, for the purpose of supplying water to the lands included in the subdivision. At some time prior to August, 1911, the Richland Realty Company made arrangements to secure water for this tract from the Southern California Mountain Water Company. There is in evidence in this case a contract between the Richland Realty Company and the Southern California Mountain Water Company, dated August 5th, 1911, under which contract the Southern California Mountain Water Company agreed to supply to the Richland Realty Company for use on the land described in the contract, an amount of water not to exceed four million gallons per month. The term of this contract was one year. While the contract has not formally been renewed, the City of San Diego and the defendant are still acting under its terms. On November 2, 1912, the defendant bought the existing water system, at that time owned by the Encanto Heights Mutual Water Company. He has operated this system ever since and has conducted business under his own name and at times under the name of Encanto Mutual Water Company.

The main issues in this case are (1) is the complainant's land within the territory which the defendant has held himself out as undertaking to serve, and (2) if not, should this Commission nevertheless, under Chapter 80 of the Laws of 1913, compel the defendant to extend his service to complainant's property.

I have already referred to the map of Encanto, filed May 6, 1893, by Abraham Klamber, showing complainant's property as Lot K. The map of Encanto Heights, filed June 16, 1907, showed only the unsold portions of this tract and omitted Lot K and a large portion of the other property shown on the map of Encanto. The Encanto Heights Mutual Water Company, to which reference has heretofore been made, was incorporated on January 27, 1908, and, as its name indicates, was to be a mutual water company. The articles themselves state that the water represented by the stock is to be located and made appurtenant under the provisions to be made in the by-laws and under reasonable rules and regulations "to specific lands within the limits of that certain tract of land situate in the County of San Diego, State of California, and known as Encanto Heights, according to the official map thereof on file in the Recorder's office of San Diego County." The map thus referred to is the map of Encanto Heights in which complainant's property is not included. The Encanto Heights Mutual Water Company proceeded to supply water to portions of Encanto Heights and in addition thereto, five taps were permitted on the east and west boundary of Encanto Heights to serve territory lying outside of Encanto Heights. In each of these cases the pipe lines outside of Encanto Heights were constructed and are owned by the parties desiring the service of water. A total of some 30 persons are served in this manner. The contract between the Richland Realty Company and the Southern California Mountain Water Company, to which reference has hereinbefore been made, specifically described the property on which the water to be secured from the Southern California Mountain Water Company was to be used and very naturally referred only to the

property of the Richland Realty Company. The complainant's property is not included in the description of the lands on which this water might be used. The defendant, after he acquired the Encanto Heights Mutual Water Company's system in November, 1912, has refused to serve any new customers outside of Encanto Heights but has continued to serve from the five taps to which reference has hereinbefore been made. He stated that he held himself out as serving only Encanto Heights and that the five taps which were used by his predecessors for the service of territory outside of Encanto Heights are not to be regarded as obligating him to serve additional customers outside of Encanto Heights. He pointed out that if he were obligated to serve the complainant's property a similar obligation might be held to arise with reference to large acreages of additional property lying outside of Encanto Heights and not supplied with water.

Section 5 of Chapter 80 of the Laws of 1913, approved April 25, 1913, reads as follows:

"Whenever the railroad commission, after a hearing had upon its own motion or upon complaint, shall find that any water company which is a public utility operating within this state has reached the limit of its capacity to supply water and that no further customers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by such corporation, the railroad commission may order and require that no such corporation shall furnish water to any new or additional consumers until such order is vacated or modified by the said commission. The commission shall likewise have the power after hearing upon its own motion or upon complaint, to require any such water company to allow additional consumers to be served when it shall appear that to supply such additional consumers will not injuriously withdraw the supply wholly or in part from those who ~~took~~ theretofore had been supplied by such public utility."

Under this section it now becomes necessary to examine into the amount of water which is available to defendant and to the extent to which this water has heretofore been used to supply his customers.

As hereinbefore stated, the maximum amount of water stated in the contract between the Richland Realty Company and the Southern California Mountain Water Company is 4,000,000 gallons per month. The water department of the City of San Diego is unwilling to permit Mr. Atwood to take regularly more than this

amount of water. A statement filed by the defendant shows that he has taken from the City of San Diego's mains the following amounts of water since the purchase by the City from the Southern California Mountain Water Company:

<u>1913</u>	<u>Gallons of water.</u>
February	892,440
March	999,937
April	2,462,377
May	3,719,303
June	2,979,127
July	4,038,357
August	3,150,420
September	3,128,500
October	2,878,250
November	1,290,000

The complainant has filed in this case an affidavit to which is attached a copy of a statement supplied to her by the water department of the City of San Diego with reference to the amount of water supplied by the City of San Diego to Atwood through meters Nos. 1, 3 and 4, during the period between January 31st and December 15, 1913. The following table shows a consolidation of the readings of these three meters in cubic feet and also reduced to gallons on the basis of 7.48 gallons to one cubic foot:

	<u>Cubic feet</u>	<u>Gallons</u>
January 31 to February 15, 1913	55,400	414,400
February 15 to March 15, 1913	100,600	752,500
March 15 to April 15, 1913	315,200	2,357,700
April 15 to May 15, 1913	483,100	3,613,600
May 15 to June 15, 1913	425,500	3,182,700
June 15 to July 15, 1913	388,600	2,906,700
July 15 to August 15, 1913	362,500	2,711,500
August 15 to September 15, 1913	401,100	3,000,200
September 15 to October 15, 1913	385,200	2,881,300
October 15 to November 15, 1913	393,600	2,944,100
November 15 to December 15, 1913	194,400	1,454,100
Total	3,505,200	26,218,800

It will be noted that the statement submitted by Mr. Atwood is for calendar months, while the statement prepared by the water department covers in general the period between the 15th day of one month and the 15th day of the succeeding month. It would appear that there are discrepancies between the two statements, even bearing in mind the fact of the different periods of time which

they cover. It is unnecessary, however, to go into the matter of these discrepancies. It sufficiently appears from both statements that during the last year there have been a number of thirty day periods in which the water consumed by Mr. Atwood's customers has been in excess of 3,000,000 gallons. The statement prepared by the water department of the city shows that during the period between April 15th and May 15th, 3,613,600 gallons were supplied by the City of San Diego to the Encanto Mutual Water Company, while the statement submitted by Mr. Atwood shows that during several calendar months the amount of water received by his company was in excess of 3,000,000 gallons per month, while during one month his statement shows an amount in excess of 4,000,000 gallons.

The testimony shows that the defendant has at present some 260 live taps, that some 40 additional houses were constructed in Encanto Heights during the last year and that there is reasonable probability of further growth. In view of these facts it is evident that the demand of Encanto Heights, which defendant is clearly obligated to serve to the extent of his capacity, will soon tax the defendant to the utmost under the amount of water which has been allotted to him by the City of San Diego. In view of this situation, I find that it will be unreasonable to demand that he shall extend his service to further property lying outside of Encanto Heights. If he were compelled to do so people owning property in Encanto Heights, which district he has undertaken to serve, and intending to build there, would soon find themselves unable to secure water because of the demands of new customers living outside of Encanto Heights, while during certain months of the year the existing customers in Encanto Heights would find the supply of water to which they are entitled cut down by reason of the demand of these new outside customers. For these reasons I am of the opinion that this complaint should be dismissed.

Within a day or so after the submission of this case complainant filed an application for rehearing. As an application for rehearing, under the provisions of Section 66 of the Public

Utilities Act, can be entertained only after the decision in the case, it is clear that this application was prematurely filed and that it is not necessary for the Commission to take any action thereon.

A movement is now on foot for annexing all of Encanto, including complainant's property, to the City of San Diego and there seems a reasonable probability that this proposition will carry. In that event, the City of San Diego would be under the same obligation to serve water, at least for domestic purposes, to the people who inhabit this territory as it is to other inhabitants within the city limits. Such a course seems to be the ultimate solution of complainant's difficulty.

I submit herewith the following form of order:

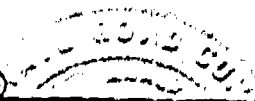
O R D E R .

A public hearing having been held in the above entitled proceeding and the case having been submitted and being now ready for decision, and the Commission finding that it would be unreasonable to compel the defendant to serve the complainant with water for her property known as Lot K, as shown on the map of Encanto filed in the office of the County Recorder of San Diego County on May 6th, 1893,

IT IS HEREBY ORDERED that the complaint in the above entitled proceeding be and the same is hereby dismissed.

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 15th day of January, 1914.


W. L. ...
...
Mar. Shelton
Commissioners.