

CITY OF NAPA, et al.,

Complainants,

vs.

THEODORE A. BELL and
NAPA CITY WATER COMPANY,

Defendants.

ORIGINAL

Case No. 575.

Decision No. 1550

Wallace Rutherford, City Attorney, for complainants.
Theodore A. Bell, in propria persona.
E. L. Johnston and L. E. Johnston for Napa
City Water Company.

THELEN, Commissioner.

O P I N I O N.

In this case the complainants asked for an order directing the Napa City Water Company to extend its water system to that part of the city of Napa which is known as Alta Heights.

The complaint alleges, in part, that the Napa City Water Company is now and for many years past has been engaged in the business of supplying water to the inhabitants of the city of Napa for domestic and irrigation purposes; that prior to September 17, 1913, the petitioners, other than the city of Napa, were living in a subdivision adjacent to the city of Napa, known as Alta Heights; that this subdivision is being promoted by Theodore A. Bell, who constructed a water system therein, in accordance with contract obligations, and has been and now is supplying the purchasers of lots in said subdivision with water at the rate of \$1.50 per month; that for more than one year the water service of said Bell has been inadequate, and that the water supplied by said Bell has been insufficient to cover more than one half their domestic needs and requirements; that on September 17, 1913, Alta Heights became annexed to the city of Napa and

that it is now a part of the city; that complainants have asked the Napa City Water Company to supply water to them for domestic purposes but that the company has refused to extend its mains; that the Napa City Water Company has an ample supply of water and equipment for supplying Alta Heights with water; that the city of Napa has directed the Napa City Water Company to supply water for fire purposes by means of two fire hydrants, to be installed in the Alta Heights district, but that the Napa City Water Company has failed to do so; and that all of the petitioners, except the city of Napa, will take water from the Napa City Water Company for domestic purposes if the company's mains are extended into this territory. The complainants ask that this Commission make an order compelling the Napa City Water Company to extend its mains into Alta Heights and thereafter to furnish water to the inhabitants of Alta Heights for domestic purposes and to the city of Napa for fire purposes.

The answer of Theodore A. Bell alleges, in effect, that he is now furnishing and for some time past has been furnishing water to the complainants, other than the city of Napa, but that he is not a public utility and that the relationship existing between himself and said complainants is purely of a contractual character; that the water which Bell has developed belongs to him and his predecessors in interest in private ownership, and that no public use has ever attached thereto. Bell also denies that his water service has at any time been inadequate, and alleges that his service has been adequate and sufficient to cover all domestic needs and requirements of the inhabitants of Alta Heights. He avers that the Commission has no jurisdiction over him or the subject matter of the complaint and asks that the complaint be dismissed as to him.

The answer of the Napa City Water Company denies that a demand has been made upon the company for the extension of its mains into Alta Heights; denies that the company has refused to extend its mains to Alta Heights; admits that the company has ample water to supply the inhabitants of Alta Heights but denies that it has any

equipment for that purpose; admits that the company has not as yet complied with the city's order with reference to two fire hydrants for the Alta Heights district; alleges that the company's earnings for the last few years have enabled it to pay very small dividends; alleges that the Alta Heights subdivision was laid out in 1906 and consists of 99 lots, on which there are at present but 24 dwellings, of which only 20 are possible patrons of this defendant; alleges that Alta Heights has an elevation of 44.5 feet and that ^{the only way} to give to its residents an adequate service from the defendant is to construct a pipe line from a point on the main county road leading from the city of Napa to Foss Valley, where the defendant's present mains cross the road, and run ^{thence} in a southerly and easterly direction along the county road and East Street to Alta Heights, together with a 4-inch distributing system in the various streets of Alta Heights; and alleges that the cost of this work will be \$8,000 and that the annual revenue would not be in excess of \$336.00. The defendant alleges that it is at all times ready to make all necessary extensions to supply the inhabitants of the city of Napa with water for household and domestic purposes and for irrigation when it can be shown that the company will receive a revenue equal at least to the fixed charges, but that it does not believe that such revenue can be secured from service to the Alta Heights district. The defendant accordingly asks that it be not compelled to make the extensions as requested in the complaint until it can be shown that the revenues will at least equal the bond interest on the new construction and the expense of operation and maintenance properly chargeable to the new service.

The public hearing in this case was held in the city of Napa on May 22, 1914. The evidence shows that the Alta Heights subdivision was promoted by one Doty and Theodore A. Bell, and that Doty's interest was thereafter conveyed to Bell; that Bell and Doty agreed with intending purchasers of their lots that they would "put in sewer, water, electric light, cement sidewalks four feet wide and grade streets," all of which improvements were to be put in prior to

February 1, 1907; that the owners of the tract dug a well and built a tank and laid 2-inch pipes through the streets of the Alta Heights tract, and that by means of a two horse-power pump water has been pumped from the well into the tank and that thence it has flowed into the distributing system; that during at least the last two years the service in the summer time has been inadequate; that during considerable portions of the summer an insufficient supply of water has been furnished to Bell's customers, and that during portions of each summer certain of his customers have received no water at all; and that complaints have been made by the Alta Heights people to Bell's agents, but that no relief has been accorded. The evidence also shows that Napa City Water Company serves only one customer in this tract and that in order to serve the tract adequately, it will be necessary for the company to make a considerable investment. There are some 20 water users on the tract at the present time who are paying \$1.50 per month each. If the Water Company should install the fire hydrants requested by the city, there would be an additional monthly revenue, which at the hearing was stated to be \$2.00 per month for each hydrant. In the conferences subsequent to the hearing, I understand that the city has agreed to pay \$2.50 per month for three additional fire hydrants.

The evidence shows that the inhabitants of Alta Heights district are entitled to some permanent relief. Mr. Bell's attention was directed to the fact that if he is a public utility he is subject to this Commission's power to compel adequate service, and that if he is not a public utility, by reason of the fact that the purchasers of his property have contractual rights against him, he may be liable to suits at law for damages in case an adequate supply of water is not furnished by his system. I suggested at the hearing that Mr. Bell's position is not a very desirable one and that it might be wise for him to turn over his distributing system to the Napa City Water Company, so as to relieve himself of further responsibility in the premises and so as to enable the Napa City Water Company to supply water to this tract without the expense of constructing a second distributing system in the streets of the tract.

Considerable evidence was taken as to the feasibility of several alternative methods by which the Napa City Water Company might extend its system to this tract, and the matter was submitted with the understanding that a representative of this Commission's hydraulic department would again come to Napa and make a thorough examination and that the parties would try to reach an agreement without the necessity of an order from this Commission.

I am glad to be able to say that the parties, as the result of conferences held subsequent to the hearing, have reached an agreement which seems to solve the problem. This agreement has been signed by the Napa City Water Company, Theodore A. Bell and H. F. Clark of this Commission's hydraulic engineering department, and is on file among the records of this case. Under this agreement, the Napa City Water Company agrees to construct an 8-inch cast iron pipe line from a point on the main county road leading from Napa to Foss Valley, where the company's 12-inch main now crosses the road, thence along East Street to the crossing of Evans and East Streets, in Alta Heights, and also a 4-inch cast iron pipe line from the crossing of Evans and East Streets to the crossing of Clark Street and Juarez Avenue. The Water Company agrees to purchase and Bell agrees to sell the latter's distributing system in the streets of Alta Heights tract for the sum of \$500.00, which is to be paid in bonds of the Napa City Water Company. The Water Company agrees to proceed at once with the construction of the proposed pipe line and improvements, upon receiving the authority of this Commission. Bell agrees to continue to supply his consumers with water until the Napa City Water Company has completed its construction and not to use his water supply in competition with the Napa City Water Company in the distribution of water. The Napa City Water Company will ask this Commission's authority to issue bonds in a sum not to exceed \$10,000, to cover the cost of the proposed improvements, and also this Commission's authority to permit a minimum meter charge of \$1.50 per month for each consumer from its Alta Heights extension until at least 50 consumers are served from the

proposed extension.

While this Commission cannot grant an application until it is presented, I see no reason, from my present understanding of the financial condition of the Napa City Water Company, why this Commission should not authorize the company to issue such bonds as may be necessary to cover the cost of the proposed improvements and the Water Company may go ahead with its construction in reliance on receiving from this Commission such order, subject to the usual conditions, unless some unexpected and unforeseen facts should develop at the hearing.

The Napa City Water Company's request that it should be allowed to charge a minimum meter rate of \$1.50 per consumer until at least 50 consumers are served from the proposed extension likewise seems reasonable. The consumers at present pay for a very inadequate service the flat rate of \$1.50 per month. If they can now secure adequate and permanent service at this minimum rate, they will certainly be in a much better position than at present. While the Napa City Water Company's rate in the city of Napa, apart from the minimum, is 30 cents per 1000 gallons, it seems improbable that any of the Alta Heights people will consume an amount of water large enough to necessitate the payment of an amount in excess of \$1.50 per month.

A part of the agreement, which, however, does not appear in the written statement on file with this Commission, is that the city of Napa is to be provided with three fire hydrants instead of two, and that it is to pay for these hydrants a rental of \$2.50 per month for each hydrant. It will not be necessary to make an order with reference to the location of these hydrants. I feel confident that, in view of the adjustment which has been reached, the city and the Water Company will be able to reach a satisfactory agreement on this point.

I desire to express my satisfaction on the agreement which has been reached. The Napa City Water Company, which is now to

undertake the obligation of serving the Alta Heights tract, has shown a very commendable spirit in aiding to secure a satisfactory and permanent solution of this 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 parties having reached the understanding which is embodied in the following order,

IT IS HEREBY ORDERED AS FOLLOWS:

1. NAPA CITY WATER COMPANY shall construct an eight-inch cast iron pipe line from a point on the main county road leading from Napa to Foss Valley, where the company's twelve-inch main now crosses said road, thence along East Street to the crossing of Evans and East Streets, in Alta Heights, and also a four-inch cast iron pipe line from the corner of Evans and East Streets to the corner of Clark Street and Juarez Avenue, and after such pipe lines have been constructed and Theodore A. Bell has sold to said company his water distributing system in Alta Heights, Napa City Water Company shall thenceforth supply water for all appropriate purposes to the Alta Heights district.

2. NAPA CITY WATER COMPANY shall have the right to charge to its consumers from the pipe lines hereinbefore referred to a minimum meter rate of one dollar and 50/100 (\$1.50) per month per consumer, until at least fifty (50) consumers are served from the proposed extensions. The rate for water apart from the minimum shall be the same as may from time to time obtain in other portions of Napa City.

3. NAPA CITY WATER COMPANY shall perform its work as promptly as possible and shall keep this Commission informed with reference to the progress of the work.

It is understood that Theodore A. Bell is to sell his

water distributing system in Alta Heights to Napa City Water Company for bonds of said Company of the face value of \$500.00, and that until the Napa City Water Company has completed its construction work and is able to serve the Alta Heights tract, Mr. Bell is to continue to serve the tract and to retain the profits from such service.

Application may be made to this Commission by Napa City Water Company for authority to issue such bonds as may be necessary for the purpose of securing the funds with which to make the extensions hereinbefore referred to and to purchase Mr. Bell's distributing system.

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 28th day of May, 1914.

W. B. Ireland

Max Thelen

Edwin O. Edgerton

Commissioners.