

ORIGINAL

Decision No. 1590

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

THE SARATOGA IMPROVEMENT ASSOCIATION,

Complainant,

vs.

Case No. 535.

THE SAN JOSE WATER COMPANY,

Defendant.

W. A. McCausland for complainant.
S. F. Leib for defendant.
Wm. F. James for Peninsular Railway Co., Intervenor.

THELEN, Commissioner.

O P I N I O N.

This case involves the adequacy of the service of water by San Jose Water Company to Saratoga, Santa Clara county.

The complaint alleges, in effect, that defendant supplies water to the citizens of Saratoga for general domestic use and for irrigating lawns and that most of the citizen^s of the town are wholly dependent on the company for their water supply; that defendant's reservoir is so located that some of the citizen of Saratoga are unable to secure water on the first floor of their homes and that many are deprived of water service on the second floor; that the defendant takes its water supply from Saratoga creek, and that the dam for supplying the reservoir is located about a quarter of a mile below the picnic grounds and barbecue pits of the Congress Springs picnic grounds; that refuse is deposited in Saratoga creek by picnickers in such a way that the waters diverted by the defendant become polluted; that certain water closets are located on the picnic grounds in close proximity to the creek and that they pollute the waters thereof; and that during five days in July, 1913, the Water Company failed to supply a large number of the citizens of the town with water, and that damage resulted therefrom. The complainant asks that the defendant be required to construct a reservoir of sufficient capacity to

furnish an adequate supply of water to the citizens of Saratoga on the second as well as on the first floor of their homes, and that defendant be required to take its supply of water from Saratoga creek at a point above the picnic grounds.

The answer denies all the material allegations of the complaint, and in particular alleges that defendant is unable to build a reservoir at any higher elevation and that defendant has never held itself out as intending to supply water to any person other than those who are below the flow of the water from the head furnished by the existing reservoir.

The hearing in this proceeding was held at Saratoga on May 8, 1914. The Peninsular Railway Company, the owner of the Congress Springs property, asked for and was granted leave to intervene and to present evidence with reference to conditions on the picnic grounds. San Jose Water Company asked for and was granted permission to file a brief. This brief has been filed and the case is now ready for decision.

The complainant, at the hearing, presented three chief complaints, as follows:

- (1) Pollution of water;
- (2) Insufficiency of water supply in July, 1913;
- (3) Inadequacy of supply to certain consumers.

With reference to the pollution of the water, the principal charge is that certain toilets on the Congress Springs picnic grounds are located on the banks of the creek, in close proximity thereto, and that the waters of the creek have been polluted thereby. As was pointed out at the hearing, this is a matter concerning which jurisdiction no longer vests in the Commission. Under the provisions of Chapter 373 of the Laws of 1913 (Statutes 1913, p.793) jurisdiction to prevent the supply of water which is polluted or dangerous to health is now vested in the State Board of Health.

Nevertheless, as all the parties desired to present their views on these matters, evidence was received. It appears from this

evidence that the Peninsular Railway Company has abandoned some toilets and is reconstructing the others according to approved sanitary specifications, under the instruction of the County Health Officer of Santa Clara county. All parties agreed that this source of complaint will now be removed.

Referring now to the insufficiency of water during five days in July, 1913, it appears that this insufficiency was due to temporary conditions, arising in part from the extremely dry season in 1913, in part from the acts of upper riparian owners in diverting water at a critical time, and in part from a hidden leak in the pipe running from the reservoir to supply the town. It appears from the evidence that this is the first time since 1892, when the Water Company began its service to Saratoga, that there has been a dearth of water and that it is not to be expected that these conditions will recur.

I come now to the principal complaint, which is that the defendant does not give an adequate supply of water to five certain consumers on Oak Street, in Saratoga, viz., the school house, the Missionary House, and the residences of Osgood, Gassett and King. The evidence shows that the school house, which has the lowest elevation of these five places, has a supply of water on the first floor, but that on account of inadequate pressure, it was found impossible to install^a sanitary drinking fountain on the second floor; that as to the four private residences which are located at a higher elevation, the water frequently does not reach the first story and that it is necessary for several of these people to let the water run or trickle into a basement or excavation, and thence to pump it by windmill into a tank, and that these difficulties were accentuated a year or two ago when the people of Saratoga, after forming a sanitary district, built a sewer to the head of Oak Street, which sewer, in the upper regions on Oak Street, it is frequently impossible to flush because of the lack of water. The Water Company claims that the school and the private residences referred to were built with knowledge of the limitations affecting the water supply, that the company cannot give a more adequate supply to these people and that it is not under

obligation to do so. The complaint with reference to the inadequacy of the supply is limited to the five consumers hereinbefore indicated, all living on Oak Street.

The evidence shows clearly that the supply to these consumers is not adequate. It also shows that defendant's diverting dam and reservoir have been located at as high an elevation on defendant's property as is feasible and that defendant cannot give a better pressure as long as it confines itself to its present equipment. If defendant should seek to divert water at a higher point on the stream and should condemn the right to do so, and should build the necessary dam and make the necessary improvements in its system, the cost would be prohibitive, so that all parties agree that it is not feasible to consider this method of solving the problem. It would be possible, however, to install a pump and entirely feasible by so doing to pump sufficient water out of defendant's mains to these five customers.

Defendant claims that it should not be called upon to incur the necessary capital outlay to install such pump and the expenses of operation and maintenance which would ensue. The company claims that it has never held itself out as supplying any pressure different from that which it has hitherto supplied and that it is under no obligation to do so. The evidence shows that defendant bought its water rights in 1888; that it laid its first mains and began the supply of water in Saratoga in 1892; that it built its present reservoir in 1894; that in 1894 the company laid 700 feet of pipe in Oak Street to the corner of the property on which the school house is located; that the Missionary House was built in 1897, the present school house in 1898, the Gassett house in 1904 and the Congregational Parsonage and the King place at about the same time. There is some evidence that the main which serves these five customers was laid by the property owners themselves, but this fact is, of course, not conclusive with reference to the Water Company's obligations. The Water Company undertook to serve water to these people and has continuously served them and

collected water rates during a period of between 10 and 15 years. This is not a case of extensions to new customers but one of giving adequate service to existing customers who have been served over a considerable period of time.

There is no question in my mind that the five customers to whom I have referred should receive a better service, and there is no doubt that they can secure it by the installation of a pump and tank. The only question is as to who shall bear the expense of installation, maintenance and operation of the necessary improvements. This Commission's hydraulic department reports that an electrically operated pumping plant sufficient to give adequate service at all times would cost in the neighborhood of \$400.00, installed, and that a tank of, say 8,000 gallons capacity, with the necessary valves and connections, would cost not to exceed \$600.00, so that the sum of \$1,000.00 would cover the entire installation. The total sum chargeable annually for interest, operation and depreciation would not exceed \$200.00.

I cannot agree with defendant's contention that a public utility which starts out to give one grade of service cannot be compelled, as time passes, to give to its customers an improved service. If this contention were sound, a railroad company could never be called upon by public authority to install safety block signals or other safety appliances, or to improve the type of its cars, or in any way to make its service more safe and adequate than that which it originally gave. On the other hand, I find considerable equity in this case in favor of the Water Company. The company's revenue at the present time does not seem sufficient to justify an order compelling the company, at its existing rates, to install and thereafter maintain and operate at its sole cost, the improvements necessary to give ^{an} adequate supply of water to the consumers who live on the head of Oak Street. There is also some equity in the claim that the houses at the head of Oak Street were built with full knowledge of the limitations of defendant's water supply.

at that time existing, and that matters have run along for more than ten years without apparently any complaint on the part of the consumers. The construction of the sewer along Oak Street has apparently brought matters to a head.

I find, as a fact, that it is reasonable that a pump should be installed for the purpose of giving an adequate service to the consumers who live at the head of Oak Street, that the expense of installation, maintenance, ~~xxx~~ operation and depreciation should be shared on some equitable basis between the consumers primarily to be benefited and the public utility, and that it may be reasonable to establish a zone rate for these five customers and to have them pay a higher rate for their water than the other customers at Saratoga whose service is at the present time adequate and who will receive no benefit from the proposed improvements.

I do not desire at the present time to work out all the details connected with the proposed improvement, but prefer to leave that matter initially to the parties themselves. I suggest to the complainants herein that if they are willing themselves to install a pump and tank, and thereafter to continue to receive water at their present rate, or if they are willing, in case the Water Company installs, maintains and operates the plant, to pay the necessary increased rate for water, they should promptly confer with the defendant and see whether an amicable settlement cannot be reached. If the parties, in good faith, try to reach a conclusion, and cannot agree within thirty days from the date of this order, and will so report to this Commission, the Commission will direct its hydraulic department to work out the details of a plan, whereupon this Commission will issue a supplemental order establishing the details. The case will be held open for that purpose. The Commission prefers that the parties reach an agreement among themselves, for the reason that such agreement will probably give better satisfaction in the long run than though this Commission should now undertake to prescribe every detail.

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 the Railroad Commission finding that the service to defendant's customers at the head of Oak Street should be rendered adequate on the basis of an equitable sharing of the expense therein as between defendant and its customers on the head of Oak Street, as indicated in the opinion herein,

IT IS HEREBY ORDERED that the parties hereto confer with one another for the purpose of working out the details of the installation of additional equipment and of the sharing of the expense of the installation, maintenance, operation and depreciation thereof. If the parties, after making a bona fide effort, cannot agree on the details, the complainant may, within thirty days from the date of this order, again present the matter to the Commission, whereupon the Commission will make such supplemental order as may seem just and reasonable in the premises.

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 17th day of
June, 1914.

John W. Eschleman
W. L. ...
...
Max ...

Commissioners.