

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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ORIGINAL

Decision No. 187

PERCY G. BETTS,
Complainant,
vs.
PEOPLE'S WATER COMPANY,
Defendant.

Case No. 284.

S. J. Hankins for complainant,
McKee and Tasheira for defendant.
R. C. Staats, City Attorney, for City of Berkeley.

TEBLEW and LOVELAND, Commissioners.

O P I N I O N .

PERCY G. BETTS, a resident of what is known as the Claremont district in Berkeley, living at 182 Alvarado Road, on July 2, 1912, filed his complaint against People's Water Company, alleging in brief that said company is engaged in furnishing water to the people of Berkeley and vicinity, that complainant is one of its patrons, that for more than three years last past defendant's supply of water to complainant for domestic use has been insufficient, particularly during warm weather, that on specified days, namely, May 29, 30 and 31, June 7 and June 27, 1912, there was no water supply, that by reason of inadequate service and lack of water, complainant and his family have been greatly inconvenienced and the value of complainant's property reduced and that the supply of water for fire protection is inadequate. Complainant asks that defendant be required to install forthwith such equipment as will provide an adequate supply of water. On July 22, 1912, defendant filed its answer denying most of the material allegations of the complaint,

admitting the shortage of water on the days specified in the complaint, but alleging that such shortage was occasioned by causes beyond its control, as hereinafter specified. Defendant also avers that it is at present installing an additional storage reservoir and two additional pumps for the territory affected and that in order to supply complainant—and his neighbors—it has cut off a lower level which formerly derived water through the pipes which now serve complainant and that it has confined the use of such water to the higher levels on which complainant lives.

At the hearing, which was held on August 14, 1912, the Commission asked for ^{the} views of counsel on the question whether the jurisdiction to grant the relief prayed for vests in this Commission or in the City of Berkeley. The City Attorney of Berkeley argued that the power vests in this Commission. Both complainant and defendant expressed the desire to submit the matter to the Commission and Mayor Wilson of Berkeley stated that the city was willing that the Commission should decide the case, though desiring to reserve such jurisdiction, if any, as the city might have in similar cases. Under these circumstances, we shall not make the detailed investigation into the question of jurisdiction which we otherwise would have made but shall exercise the jurisdiction which all the parties desire we should assume.

There is but little contradiction as to the material facts of this case. The district affected is that portion of Claremont which lies easterly of a general north and south line running immediately easterly from Hotel Claremont. It is a hilly country having about twenty-five residences with some five more now under construction. The district was referred to in the evidence as Zone I, and derives its water from the Dingee Reservoir, which is located in the top of the hilly country east of Piedmont and from the inter-county tunnel between Alameda and Contra Costa Counties. From these sources of supply four inch pipe lines run to a point of convergence in the Tunnel Road, where the diameter is six inches. Complainant and most

of the other residents in this locality are served from four inch pipes which diverge from the Tunnel Road main. Several years ago, when the Claremont district was first opened up for building purposes, the entire district was served from these two sources. In 1910, as the population in the westerly portion of the district, referred to as Zone 3, increased, that Zone was cut off from the system heretofore described and has thereafter been served from the Temescal reservoir. In the same year, a portion of the Garber water supply was diverted to the tanks in the rear of the Claremont Hotel and used to supply what was referred to as Zone 2, lying between Zones 1 and 3. The pipe lines which traverse Zone 1 lead to these same tanks and the water flowing through the same was formerly permitted to flow into said tanks and thence into Zone 2. During the early portion of 1912, however, because of frequent complaints as to inadequacy of water supply in Zone 1, defendant decided to conserve for Zone 1 the entire water supply from Dingee Reservoir and the inter-county tunnel and consequently shut down a gate in the pipe leading from Zone 1 to said tanks. Defendant has ever since kept that gate closed and has thus prevented conditions of inadequate water supply for Zone 1 which existed in the summers of the two preceding years because of the use of water flowing through Zone 1 and conserved in the lower levels in Zone 2. Notwithstanding these precautions, complainant and his neighbors were without water during May 29, 30 and 31; June 7; and June 27 and 28. Defendant's engineer testified without contradiction that the difficulty the first time was due to the fact that some person unknown to defendant had closed the gate at the Dingee reservoir so as to shut off the water running therefrom into Zone 1: that the second time the pipe line leading from the Dingee reservoir had been broken by a blast exploded by laborers working for the Oakland and Antioch Railway: and that the third time this same pipe line was found to be almost clogged up by eucalyptus roots, necessitating the replacement of the pipe. To further insure a supply of water to Zone 1, defendant has just completed the erection of a 100,000 gallon storage tank to the left

of the tunnel road above Claremont at an elevation of some seven hundred and thirty or forty feet. This tank will contain a sufficient supply of water for between three and four days and will also furnish additional fire protection for the district. Defendant has during this year also materially increased the water supply in Zone 2.

The evidence is uncontradicted that during the summer months in the last three years the residents of Zone 1 have suffered considerable inconvenience and annoyance from an inadequate water supply. Complainant testified that during the summer months three years ago the water was off every two or three weeks for from one to three days. The same condition existed during the next year. During this year complainant received no water on the dates hereinbefore specified. Several of complainant's neighbors testified to the same effect. All, however, admitted that since July 1, 1912, the service has been excellent.

At the conclusion of the testimony, complainant stated that he would be satisfied if this Commission made an order forbidding defendant from again raising the gate which now prevents the water from Zone 1 from flowing into Zone 2, without having first secured the consent of this Commission. Defendant stated that it would accept and obey such order, provided that it had the right to open the gate in case of extreme emergency, which it defined to mean fire in Zone 2 or the shutting off of the supply in Zone 2 by breakage of the pipe leading to the tanks or other unforeseen emergency. We find that complainant's offer as thus modified by defendant is a fair solution of the difficulty and recommend that an order be made accordingly.

Some little evidence was introduced at the hearing concerning the need for additional fire protection in the district affected. Defendant interposed the objection that under the law as declared by the supreme court of this state in Niehau Bros Co. vs. Contra Costa Water Company, 159 Cal. 505 and Uriah vs. Uriah Water

& Improvement Company, 142 Cal. 175, a public distributor of water is under no duty, apart from express contract, to protect its consumers against loss by fire. Defendant nevertheless stated that it would give such protection in so far as it reasonably could do so. We are not ready to admit that the doctrine of those cases, in view of the provisions of the Public Utilities Act, is still the law of this state. On that point we express no opinion. In view, however, of the steps recently taken by defendant with reference to the water supply of Zone 1, particularly the construction of the 100,000 gallon storage reservoir, we shall not at this time make any recommendation on this point.

We submit the following form of order:

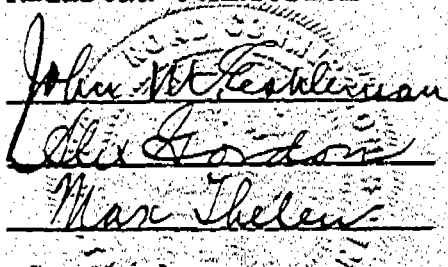
O R D E R.

A public hearing having been held in the case entitled as above, and evidence having been introduced by both parties, and the case having been submitted, and the Commission finding that the facts as stated in the foregoing opinion are true,

Defendant is HEREBY ORDERED to keep closed the gate which now prevents the water from Zone 1, as hereinbefore in the opinion defined, from flowing out of Zone 1 except in case of extreme emergency which is hereby defined for the purpose of this case to mean fire in Zone 2, as hereinbefore in the opinion defined, or the shutting off of the water supply in Zone 2, by breakage of the pipes leading to the tanks or other unforeseen emergency. In so far as the complaint in this case conforms to this order it is hereby sustained and in the other respects it is 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 16th day of August, 1912.


John M. Gresham
Chas. Gordon
Max Thelen
Commissioners.