

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

James P. Glass,
Complainant,

vs.

Del Mar Water, Light & Power
Company,
Defendant.

Case No. 326.

George E. Woodruff for complainant
Edward Kuster for defendant

THEBLEN, Commissioner:

O P I N I O N

The complaint in this case alleges, in effect, that complainant is the owner of lots 11, 12 and 13 in block 40, in what is known as the Del Mar Heights Tract, located at Del Mar, San Diego county, California; that defendant is a public utility supplying water to the town of Del Mar; that defendant is now selling and distributing water to all persons living in Del Mar except complainant; that complainant has demanded of defendant that it supply water to him but that defendant has refused to do so; that complainant accordingly desires this Commission to make an order compelling defendant to convey to complainant's lots a sufficient supply of water for complainant's use at such rates and upon such conditions as the Commission may deem just and reasonable.

Defendant's answer alleges, in effect, that defendant is a subsidiary corporation of the South Coast Land Company, which company has bought extensive properties at Del Mar, and

that defendant was organized for the purpose of supplying water in the development of said lands; that defendant has entered into a contract with the Santa Fe Land Improvement Company for an amount of water not to exceed fifty miner's inches in each twenty-four hours, and that defendant has not sufficient water to supply complainant; that the lands of complainant lie at a higher elevation than defendant's water system, and that such lands cannot be reached by defendant's water system unless remodelled at a prohibitive cost; that the real object of the present proceeding is to secure water for the entire Del Mar Heights tract; and that it would be unjust to compel defendant to remodel and extend its system at great expense and divert its water for unreasonable distances to an undeveloped tract to the deprivation and injury of the land for whose benefit the water was originally developed and the water system constructed.

South Coast Land Company was incorporated February 23, 1906, and shortly thereafter acquired the townsite of Del Mar, together with other acreage in the vicinity. Those portions of this tract which are available for use, have been gradually subdivided until, at the present time, almost all the land available for building purposes has been subdivided. The total number of lots in these subdivisions is 2100. The South Coast Land Company early looked around for a supply of water for this land, and finally, on January 4, 1908, entered into a contract with the Santa Fe Land Improvement Company, which Company owns what is known as the San Dieguito Ranch, some six miles northeast of Del Mar, on both sides of the San Dieguito river, under which contract the Santa Fe Land Improvement Company leased to the South Coast Land Company for the period of twenty years, so much of the property as might be necessary for the sinking of wells thereon by the lessee. It was stipulated that lessee should not, during any twenty-four hours, pump in excess of fifty miner's inches of water.

The lessee also agreed to pump for the lessor a maximum of 50,000 gallons of water during each twenty-four hours for the lessor's use on its ranch, and to furnish to the Atchinson, Topeka and Santa Fe Railway Company, at its railway station at Del Mar, such water as might be needed for railroad use, for the park on the grounds surrounding the station and for its railroad section and bunk houses, but not for the railroad company's locomotive engines.

The lessor expressly reserved the right to sink as many wells on its ranch as it might from time to time deem necessary for its own use. The lessor has now planted a considerable portion of its ranch to alfalfa, and during the irrigating season pumps water from eight wells, which are located in a small pocket near the mouth of the San Dieguito river, some 300 feet easterly from defendant's wells.

Shortly after the date of the contract between the South Coast Land Company and the Santa Fe Land Improvement Company, the South Coast Land Company, in February 1908, effected the incorporation of the Del Mar Water, Light and Power Company, (hereinafter referred to as the water company), the defendant in this proceeding. The articles of incorporation give the water company power, among others, to sell and distribute water for domestic, irrigation and other purposes, to carry on the business of a water company, and also to manufacture, generate, furnish and sell electric light, heat and power. The principal place of business is the town of Del Mar, but no territorial limit to the water company's service is delimited in the articles. Mr. Keller president of the water company, testified that the primary motive for organizing the water company was to supply water, light and power to persons who might buy property from the South Coast Land Company.

The water company, in addition to supplying some 24 consumers on property bought from the South Coast Land Company, and the hotel, garage and power house owned by said company, also

supplies water to some 17 consumers - being all the users of water - living in what is know as the "old town" of Del Mar, on land not purchased from the South Coast Land Company, and has furnished water for highway construction and for the use of contractors, and a relatively insignificant amount to farmers in barrels. Mr. Keller testified that he considered the water company to be a public utility, and the evidence establishes the correctness of this view. Defendant laid some stress on the contention that defendant had held itself out as serving only "Del Mar". The Del Mar Heights Tract, in which plaintiff's lots are located, is practically surrounded on the north, west and south by land belonging to the South Coast Land Company, and I find that any definition of "Del Mar" which is broad enough to include the lands of the South Coast Land Company, is also broad enough to include the Del Mar Heights Tract.

The water company acting under the contract with the Santa Fe Land Improvement Company, has sunk three wells some 300 feet to the west of the wells of the Santa Fe Land Improvement Company, in the pocket hereinbefore referred to near the mouth of the San Dieguito river. Of these wells, two are in use, the third not being pumped because the water is muddy. At these wells is situated what is known as pumping plant No. 1, which pumps the water and forces it through a ten inch riveted steel pipe about one mile west to a sump, where is located pumping plant No. 2. The function of pumping plant No. 2 is to pump water for use by the Santa Fe Land Improvement Company, in accordance with the terms of the contract. From the sump at pumping plant No. 2 the water is led through a ten inch pipe, principally of vitrified sewer pipe, some five miles in a general westerly direction to another sump at what is known as pumping plant No. 3. This plant is used as a ~~boosting~~ ^{the} station to lift water to a concrete reservoir at Del Mar, with a capacity of 175,000 gallons, located at an elevation of about 210 feet above sea level. From this reservoir water is supplied through a distributing system to the lower zone of Del Mar. Pumping plant No. 4, located

at this reservoir, lifts the water through a four inch pipe to two 12,000 gallon wood stave tanks located on a tower on what is known as Inspiration Point. The elevation of the bottom of these tanks is 351 feet. These tanks supply four or five houses which are situated in what may be termed the higher zone of Del Mar. These tanks are the highest source of distribution possessed by the water company.

Complainant's lots are located at an elevation of about 400 feet, and are a part of the Del Mar Heights Tract. This tract contains approximately 200 acres, subdivided into 780 lots, and adjoins the South Coast Land Company's Arden Heights Tract No. 6 on the south. The northerly boundary of the Del Mar Heights Tract is located about 4300 feet south from the high service tanks hereinbefore referred to.

The South Coast Land Company has heretofore subdivided and placed on the market five tracts known as Arden Heights Tracts Nos. 1, 2, 3, 4 and 5. It has now subdivided, and is about to put on the market, what is known as Arden Heights Tract No. 6, which tract, as heretofore stated, adjoins the Del Mar Heights Tract on the north. In order to enable prospective purchasers of property in Arden Heights Tract No. 6 to secure water, it will be necessary to lay a main south through the tract from the tanks on Inspiration Point. Plaintiff asks that he may secure water from this pipe and offers, in case the water is delivered therefrom to or near the northern boundary of the Del Mar Heights Tract, to pump it up to his lots and to incur all expense subsequent to the delivery of the water to said point.

Defendant's objections are principally threefold:

- (1) Defendant objects to the fact that the building restrictions in the Del Mar Heights Tract are much less ⁸⁻¹⁻¹⁹²² than those on its own tracts, and objects to furnishing water to what may be considered a rival tract.
- (2) Defendant claims that there is not sufficient water for supplying any land in Del Mar Heights Tract in addition to the lands in its own tracts.

- (3) Defendant claims that it cannot, with its present system, deliver water to any portion of the Del Mar Heights Tract.

The first objection cannot have weight with this Commission. A public utility cannot refuse to supply a person with water simply because it does not like that person or his way of doing business, or because it may consider him as a rival in some other business which the owners of the utility conduct. Other ~~other~~ conclusion would enable a water utility to pick out the persons whom it is willing to supply, supplying its friends and refusing to supply all others.

The second objection, namely, the adequacy of defendant's supply of water, raises the most important question in the case. As was said by this Commission in the case of Tyndale Palmer vs. Southern California Mountain Water Company, decided January 21, 1913, where a water company has only a limited supply of water, either the utility itself or some public authority must have the right to limit the use of that water within a specified area.

Where a water company has been organized as a public utility by the owners of a tract of land for the purpose, primarily, of developing that tract, and where the water company thereafter makes arrangements with the owners of water held in private ownership, as is the fact in this case, and water is developed, the owners of the land in question should certainly have, within reasonable limits, the first use of the water so developed. Accordingly, if it appeared in this case that all the water which the water company may develop under its contract, and such additional water as it may secure from the Santa Fe ^{Land} Improvement Company, in case such additional water may be developed, is necessary for the reasonable development of the lands of the South Coast Land Company within a reasonable period of time, this Commission would not compel the defendant to supply water to outsiders. On the other hand, if the water of which defendant may avail itself is

sufficient for the reasonable development of the South Coast Land Company's property within a reasonable time, and there remains additional water to which the defendant is entitled, not necessary for such purposes, this Commission will not undertake ^{to stop} the development of Del Mar and its vicinity by failing to direct defendant, a public utility, to do its duty to lands other than those owned by the South Coast Land Company.

There is a conflict in the evidence with reference to the amount of water available on the Santa Fe Land Improvement Company's ranch near the mouth of the San Dieguito river. Mr. C. S. Alverson, testifying for the complainant, stated that in his opinion 400 miner's inches could be pumped from the river bed. He based this statement largely on the claim that there was a large underground flow coming down the San Dieguito river, and this opinion was based on his experience with reference to other streams in San Diego county. There is no satisfactory testimony that the conditions as to the San Dieguito river are the same as those with reference to other streams to which Mr. Alverson referred. His testimony was apparently not based on the size or the storage capacity of the basin from which the water is being pumped, but more largely on the theory of a continuous underground flow.

Mr. F. C. Finkle, testifying for the defendant, stated that in his opinion the gravel beds hold 158.5 inches of water for one year, and that the limit of safety has been reached with the present draft of water.

Because of the confusion as to this very material element in the case, the Commission directed Mr. G. S. Strout, its assistant hydraulic engineer, to make a thorough investigation into the situation. Mr. Strout made a careful examination of that portion of the basin from which fresh water may safely be pumped, and testified that the surface area from which fresh water may be pumped amounts to about 290 acres. Considering that the

river sands have a porosity of 30% of their volume, that the available depth of draft is slightly below sea level and that the upper five feet of the sands is not available on account of evaporation and recharging, Mr. Strout estimated a storage of 2610 acre feet. With a draft on the gravels of 110 miner's inches for irrigation from the Santa Fe Land Improvement Company's wells for seven months during the year, and an average of 35 miner's inches for domestic use in Del Mar, the total yearly draft would be 1425 acre feet. Mr. Strout also estimates an inflow from the channel of the stream above amounting to 275^{acre}/feet. His results for one year were a total of 2685 acre feet, from which about 1425 acre feet could be pumped per year on the basis heretofore stated.

Mr. Strout concluded that there is available for the water company the full fifty miner's inches covered by the contract.

While the evidence on this point is conflicting, I am convinced that the water company may safely pump at least the fifty miner's inches which are specified in its contract with the Santa Fe Land Improvement Company, and shall so assume in this opinion.

The next important question is as to the amount of water which is now being used by the water company. Mr. Strout's investigation shows that each portion of defendant's plant is at present so constructed that it can handle the full fifty inches, with the exception of the vetrified pipe line running between pump No. 2 and pump No. 3. Because of the fact that this pipe line is constructed of cement and has weak joints so that it can not well withstand pressure, a maximum of only about 28.2 miner's inches of water can be delivered through this pipe. Far less than all of the water, however, which can be led through this pipe, has actually been used by the water company. This Commission has been unable to secure a record of the amount of water actually pumped by defendant for a period of more than two months. The data submitted in this respect covers the month of July and a portion of the month of August, 1912, and gives an average of daily pumping for a period of forty-seven days of 7.4 hours per day. Considering the amount pumped as being 28.2 miner's

inches, we find that the present system during those two months, which months may fairly be regarded as months of maximum use, delivered only 17.2 per cent of the fifty miner's inches to which the water company was entitled under its contract.

We have had no complete record of the water consumed for the reason that the larger consumers, such as the hotel, bath house, power house, and some of the larger residences, were not metered at the time of the hearing. The forty-one other consumers, however, were metered, and the record of their consumption for the twelve months of 1912, as shown by defendant's own records, is as follows:

<u>Month</u>	<u>Water recorded in gallons</u>
January	59,000
February	86,000
March	45,000
April	70,000
May	100,000
June	202,000
July	197,000
August	236,000
September	172,000
October	139,000
November	134,000
December	122,000

The record for the month of July, 1912, is as follows:

Total water pumped	3,350,000	gallons
Total water metered	197,000	"
Total water unmetered	3,153,000	"

The unmetered water represents not merely the large uses of the hotel, bath house and power house, but also the street sprinkling and other uses and leakage.

It now becomes necessary to determine the amount of water which would be necessary to take care of the lands subdivided by South Coast Land Company. Taking the month of August, 1912, with a consumption of 236,000 gallons for forty-one consumers, gives an average monthly consumption per tap of 5756 gallons, or a daily consumption of 185 gallons. On this basis one miner's inch of water, apart from leakage, would supply 70 taps.

The South Coast Land Company claims to have 2100 lots subdivided. On the basis of 70 taps to the miner's inch, and on the assumption that each of the 2100 lots is using water, it would take

30. miner's inches of water to supply the entire subdivided tract, including Arden Heights Tract No. 6. We then have the following tables, bases on the figures for July, 1912:

Present maximum metered consumption per day,	.51	miner's inches
Present maximum unmetered consumption "	6.10	" "
Balance needed for entire tract "	29.49	" "
Total,	<u>36.10</u>	" "
Balance available -	21.90	miner's inches

From the above table it appears that if each of the 2100 lots of the South Coast Land Company were sold and settled upon and using water, 21.9 miner's inches of water, less leakage, would still be available from defendant's fifty inches, for increased street sprinkling purposes and increased demands from the town's possible industrial features.

The assumption upon which this computation is founded is based on one house on each of the 2100 lots and will probably never be realized. Mr. Keller stated that he would be disappointed if his company did not have 175 to 200 houses on the tract within the next four years. On the basis of one miner's inch to 70 taps, 200 houses would require only 3 miner's inches, to which should be added the leakage and the increase in public uses. It is clearly evident that a very large portion of the defendant's present water supply will not be called upon for use on the property of the South Coast Land Company for many years to come, and will be available for other uses.

The Del Mar Heights Tract, as already said, contains about 760 lots. On the basis of 70 taps to the miner's inch and of one tap on each lot, it would only take 11.14 miner's inches of water, plus leakage, to supply the entire tract if every lot were built upon. To this amount must be added the water needed for public uses. Based on the acreage, with only one miner's inch to fourteen acres, it would require fourteen miner's inches to supply the tract, without taking into consideration public or industrial use of water. I am convinced that it will be many years before any considerable portion of the Del Mar Heights Tract is built up, and that for many years a maximum of three or four miner's inches will be sufficient to

supply the entire tract.

The engineering question of delivering water to or near the northern boundary of Del Mar Heights Tract is a simple one. There was some conflict of testimony as to the exact location of the pipe, but all parties agreed that it is feasible to lay a pipe line from the tanks on Inspiration Point, through Arden Heights No. 6, to or near the northern boundary of Del Mar Heights Tract. The distance from the tanks is about 4500 feet. The South Coast Land Company, shortly after Arden Heights Tract No. 6 is placed on the market, will have to lay a pipe line through that tract for its own purposes. The pipe line so laid can readily be used to supply water for use on plaintiff's property. Plaintiff can then pump the water from the point of delivery to his own property, as he has agreed to do.

Assuming a length of pipe 4500 feet, the cost laid will vary from \$600.00 to \$1,205.00, depending upon the size of the pipe. A two-inch standard screw pipe would cost about \$945.00 and a four-inch riveted steel pipe about \$1,205.00.

From the foregoing resume of the facts in the case, it is evident that the water company may pump the full fifty miner's inches of water to which it is entitled under the contract, and that this amount of water will not be necessary for its own purposes for many years to come. While granting to the full, for the purposes of this case, that the South Coast Land Company has the first right to this water for its own lands, the facts of this case show that the company does not need all of the water for its own lands, and that there is sufficient water remaining so as to enable the defendant safely to deliver water to the plaintiff.

As the South Coast Land Company might not need the pipe line throughout the entire extent of its Arden Heights No. 6 tract, at least for some time, it would not be fair to the defendant company to compel it to bear the entire cost of the installation of this pipe line, and on the facts of this case, I am of the opinion that the

defendant company should construct this pipe line, but that one half of the cost should be borne by plaintiff. If other residents of Del Mar Heights Tract later derive water through the same source, plaintiff may call upon them to share with him the outlay which he has made.

The defendant's duty in the premises will cease with the delivery of the water at or near the northern boundary of the Del Mar Heights Tract. From that point all further expenses will be borne by plaintiff and by those who may thereafter use the water on the Del Mar Heights Tract.

Defendant is at present delivering water at the rate of 25 cents per thousand gallons. This will be the price which plaintiff will be directed to pay for the water delivered for his use. Defendant's revenue will in this way be increased without a corresponding increase in its operating expenses.

I submit herewith the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and evidence having been introduced by all parties, and the Commission being fully advised in the premises, the Commission makes the following findings of fact:

1. We find as a fact that defendant Del Mar Water Light and Power Company is owning, controlling, operating and managing a water system for compensation within this state.

2. We find as a fact that defendant may reasonably take from the sands of the San Dieguito River the fifty (50) miner's inches of water to which it is entitled under its contract with the Santa Fe Land Improvement Company.

3. We find as a fact that the maximum consumption of water delivered by defendant per day has hitherto been 8.61 miner's inches, or thereabouts.

4. We find as a fact that defendant company will not within a reasonable time require said fifty (50) miner's inches of water for use on the lands owned by South Coast Land Company, and

that it will have on hand an additional supply of water in such an amount that it can reasonably and safely supply plaintiff in this proceeding.

5. We find as a fact, that with its present plant, defendant may reasonably deliver such water to a point at or near the north boundary of the Del Mar Heights Tract, and that defendant's present plant will be adequate for a number of years to come to supply both such demand as may be made upon said plant by persons buying property from the South Coast Land Company and persons living in what is known as old town of Del Mar, and other persons who may settle on Del Mar Heights Tract.

6. We find as a fact that such water may be so delivered without any addition to defendant's present plant other than the pipe line hereinafter referred to.

Basing its conclusion upon the foregoing findings of fact, and upon the further findings found in the opinion which precedes this order,

IT HEREBY ORDERED AS FOLLOWS:

1. DEL MAR WATER, LIGHT AND POWER COMPANY is hereby ordered to deliver from its water system, water for plaintiff's use at or near the north boundary of the Del Mar Heights Tract, and thereafter to continue to deliver such water at a compensation of twenty-five (25) cents per one thousand (1000) gallons so delivered.

2. The entire expense of placing such water upon plaintiff's land from such point of delivery shall be borne by plaintiff.

3. DEL MAR WATER, LIGHT AND POWER COMPANY shall, within twenty (20) days after the effective date of this order, construct from its tanks on Inspiration Point, a pipe line of size sufficient to accommodate the plaintiff, running to said point of delivery. Upon the completion of said pipe line and before defendant shall be obliged to deliver water for plaintiff's use, plaintiff shall pay to defendant one half (1/2) the reasonable cost of the construction of such pipe line. Such pipe line shall thereafter be maintained at

defendant's sole cost. The defendant shall confer with plaintiff as to the size of such pipe line, and the same may be laid so as to accord, in so far as possible, with the uses of Arden Heights Tract No. 6.

4. This order shall go into effect in twenty (20) days from and after its date.

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 March, 1915.

H. D. Ireland
W. H. Gordon
Max Thelmer
Edwin D. Edgerton
Commissioners.