

ORIGINAL

Decision No. 6575

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

---oOo---

|                             |   |                |
|-----------------------------|---|----------------|
| McEWEN BROS. a corporation, | ) |                |
|                             | ) |                |
| Complainants,               | ) |                |
|                             | ) |                |
| -vs-                        | ) | Case No. 1275. |
| FRED MEYERS,                | ) |                |
|                             | ) |                |
| Defendant.                  | ) |                |

Harold R. McKinnon for complainants.  
C. A. Odell for defendant.

BY THE COMMISSION:

O P I N I O N

The complaint alleges that for a number of years complainant furnished water to houses Nos. 404 and 412 South 16th Street, Richmond, but that defendant on or about September 1, 1918, without permission from complainants or the Railroad Commission, ran a pipe line to the rear of these houses and is now supplying them with water. The prayer is that defendant be required to discontinue service and remove his pipe line from territory served by complainants.

The answer admits the service, and claims the right to serve by virtue of a county franchise granted prior to the incorporation of the City of Richmond; and alleges that complainant has never obtained a franchise and is not entitled to an exclusive or any other right to supply water to the premises in question.

Public hearings were held by Examiner Westover in Richmond.

The parties to the action are serving water for domestic purposes in adjoining territory in Richmond. The premises in question are located on the east side of 16th Street near Virginia Street. The lots extend in the rear to the east line of the subdivision known as Griffins and Watrons Subdivision.

By agreement dated November 16, 1918, the owners of the tract arranged with complainants, McEwen Brothers, owners of a subdivision lying to the west, to extend 2 inch mains over the Griffins and Watrons Subdivision, from the system by which the McEwen property was served, the latter property to have preference in service.

Service by McEwen Brothers to one of the houses <sup>began</sup> in 1909, and to the other about 1912. Such service continued until about September 1, 1918. Both these consumers testified that water for several years was brackish and served under very poor pressure, especially in the summer time. For several years both consumers tried to induce the defendant to serve them, but until September 1, 1918, he declined to do so, stating that the cost of the necessary extension was prohibitive.

Complainants admit that their wells were impregnated by salt water which seeped in from the bay, owing to dredging operations in the vicinity. This condition they claim was remedied by sinking new wells. The pressure was improved by installing new mains in 1917. The premises in question can now be served by McEwen Bros. from a tank about 2700 feet distant and 48 feet high.

The consumers affected never asked the Commission for relief against the service conditions complained of, and defendant never sought the authority of the Commission to extend his service. When service conditions became bad the consumers affected should have complained to the Commission, which would have immediately taken steps to require adequate service. This remedy is open to consumers at any time in the future.

In view of the improvements made by complainant in its system, it apparently can now furnish to the consumers in question the high standard of service which the Commission requires from public utilities in general; and an opportunity should be given it to demonstrate that it can do so. If this cannot be demonstrated within a reasonable time, the Commission will entertain an application by defendant for leave to serve the premises in question. Meanwhile his said service should be discontinued, but his pipes may remain.

Defendant places considerable reliance upon the circumstance that he received a county franchise authorizing him to use the streets, roads and highways for the purpose

of laying pipes and mains to serve water, and that complainant did not. It does not appear, however, that an attempt was made to give him an exclusive privilege for that purpose. Complainant laid pipes and serves water under the constitutional franchise contained in Sec. 19, Art. XI of the Constitution.

O R D E R.

Public hearings having been held in the above entitled case, evidence having been taken and the case being submitted and now ready for decision.

IT IS HEREBY ORDERED that defendant discontinue service to houses Nos. 404 and 412 South 16th Street, Richmond, within twenty (20) days from date hereof, but that his pipes by which said houses are served remain in place until the further order of the Commission.

IT IS HEREBY FURTHER ORDERED that complainants serve water to the above described premises immediately defendant ceases such service and that adequate service be maintained at all times by complainants.

Dated at San Francisco, California, this 16<sup>th</sup>  
day of August 1919.

*Edwin O. Egan*  
*Herbert J. ...*  
*Frank R. ...*

Commissioners