

Decision No. 8058.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

WILLIAM H. NERF,)
Complainant,)
vs.) Case No. 1418.
PORT COSTA WATER COMPANY,)
a corporation,)
Defendant.)

Courtney L. Moore for complainant.
A. E. Shaw for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that he is the owner of lot 3, block 9, first addition to the town of Crockett, fronting on Virginia Street and the house constructed thereon; that defendant is a public utility serving water through mains within 100 yards of complainant's lots; that he has applied for service but does not allege a refusal of defendant to serve him but prays an order requiring service of water to complainant for domestic uses in and about his house.

The answer alleges that defendant was proceeding to lay main in the State Highway along the tract in question but was prevented from so doing by one Thos. Hanna,

predecessor in title to the complainant; that complainant and his immediate neighbors are receiving an adequate supply of water from defendant's system through its mains laid in the said State Highway and a private service of one of its consumers; and that said Hanna heretofore filed a complaint against defendant in Case No. 1260 to compel defendant to extend its main and serve water to lot 4, block 10 in said tracts in the vicinity of complainant's lots; that said complaint was subsequently dismissed; and that no new conditions have arisen which would require any other or different determination.

It is to be inferred that defendant was proceeding to serve complainant as requested when its work of laying the main was stopped.

A public hearing in the case was held by Examiner Westover at Crockett.

In Case No. 1260 referred to in the answer a hearing was held by Examiner Westover at which it developed that defendant was unable to give adequate service above a certain elevation on the hills which form a large part of the town of Crockett. The testimony in this case was to the effect that at about the time of the hearing of Case No. 1260 the Commission's chief hydraulic engineer in company with the defendant's superintendent went over its system for the purpose of determining the elevation at which reasonably good service could be given; that this elevation was agreed upon as 170 feet above sea level and defendant thereupon published a notice to the effect that it would not attempt service at higher elevations and it thereupon caused a survey and plat to be made showing the location of the 170 foot contour line in reference to the territory served by defendant.

Most of the testimony presented at the hearing related to the obligation, if any, upon defendant to serve lots lying above the 170 foot contour line at a considerably higher elevation than complainant's residence and as to the route to be followed by defendant's mains in furnishing service to complainant for it developed that defendant did not refuse to serve the complainant but sought to serve him by laying a main along the State Highway, known also as Pomona Street, rather than lay its main along Virginia Street, reaching an elevation slightly below the 170 foot elevation, believing that it could give better service and better pressure by laying the main in the State Highway.

The tract in which complainant's lot is located was subdivided and practically all sold by Thos. R. Hanna, whose company owns the adjoining land on the upper side of the hills and who wishes to have water served at high elevations to be better prepared to subdivide and sell the adjoining acreage if the later wishes to do so.

In conveying an easement for the State Highway, known also as Pomona Avenue, he expressly reserved all rights to lay pipes, wires, sewers, mains and conduits in the roadway. In his subdivision he left a 10-foot right-of-way for such uses, which extends at right angles with the State Highway connecting it with Virginia Street, which substantially parallels it. Except for a short stretch, Virginia Street grade lies above the 170 foot elevation.

Mr. Hanna testified that one of his purposes in stopping the laying of the mains in the State Highway, for which defendant had procured a permit from the State Highway Commission, was that by requiring the mains to be laid in Virginia Street he would bring water from defendant's system nearly to or possibly above the 170 foot contour line.

already referred to. He and his attorney stipulated, however, that if the main were laid in Virginia Street and complainant served thereby that he would not because of that circumstance demand that defendant later serve water at higher elevations than 170 foot elevation referred to nor upon property shown by defendant's survey as lying on the hills above the 170 foot contour line.

Defendant serves water in several towns along the Straits of Carquinez and vicinity, its main source of supply being a group of wells near Concord, Contra Costa County, from which water is piped and stored in tanks or reservoirs in various locations. The Crockett supply is pumped from the mains by a booster plant located near the Southern Pacific Station, by which water is lifted into a 96,000 gallon tank at an elevation of about 216 feet and into a 30,000 gallon tank at an elevation of about 266 feet.

Most of the town of Crockett, a large part of the residential portion of which is located on steep hillsides, is served from these two tanks. Defendant also maintains a 5,000 gallon high level tank at an elevation of about 285 feet, supplied by a small auxiliary pumping plant which serves about 47 consumers including a few in the vicinity of complainant. This auxiliary tank is about 2500 to 3000 feet distant from the lot of complainant.

The position of defendant as to its general obligation to serve is that it has dedicated its water to public use at levels not exceeding 170 feet and that to make its position clear and avoid misunderstandings, it

caused the notice to that effect to be published; and further that the service of water from the 5,000 gallon tank at the 285 foot level is not a dedication to public use at such levels except in the immediate vicinity of the tank.

The testimony of defendant showed that its present water supply is not adequate to fully satisfy its present demands; that the town of Crockett is growing and demands upon its system at lower elevations than 170 feet are increasing; that it is boring and developing new wells because of its need of water and that water bearing lands purchased by it near Concord for the purpose of further developing its supply are in litigation as a result of complaint by neighboring ranchers that pumping of water from wells on the newly acquired land will reduce the water level in the wells of the ranchers and greatly reduce their supply of water.

Mr. Hanna's position is that the circumstance that defendant is serving some patrons from the small tank at the 285 foot elevation constitutes a dedication of water to public use at elevations which can be conveniently served from said tank and at distances 3000 feet or more away from it.

We have taken occasion to discuss the general situation at considerable length in order to avoid any misunderstandings between the parties or patrons of defendant or buyers of hillside property in and about Crockett lying at elevations above the 170 foot contour line.

We wish it to be distinctly understood that the Commission does not hereby require service above the 170 foot elevation although it may develop that part of the main used in serving complainant may be placed above the 170-foot elevation in order to serve his premises lying at a
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somewhat lower elevation.

O R D E R

A public hearing having been held upon the above entitled case, the matter having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that defendant serve water to complainant on lot 3, block 9 of the first addition to the Bay Addition to the town of Crockett, for domestic uses, provided that the point of service from defendant's mains shall not exceed an elevation of 170 feet above sea level.

Dated at San Francisco, California, this *2nd*
September
day of ~~1920~~ 1920.

Edwin O. Edgerly

H. D. B. ...
Irving ...
Commissioners.