

Decision No. 9479.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

JAMES MARWICK,)
)
) COMPLAINTANT,)
)
) vs.)
)
) LAGUNA BLANCA WATER COMPANY,)
)
) DEFENDANT.)

CASE NO. 1330.

Thompson and Robertson, for Complainant.
Archibald M. Johnson and A. A. De Iigne,
for Defendant.

BY THE COMMISSION:

O P I N I O N

James Marwick, complainant in the above entitled matter, alleges that defendant, Laguna Blanca Water Company, is a public utility water company, delivering water for domestic and irrigation use to the residents of Hope Ranch and subdivisions thereof in the County of Santa Barbara; that said defendant has failed, refused and neglected to furnish water to complainant's premises located in Hope Ranch Park No. 1, formerly served by defendant. Complainant further alleges that said premises are within the territory which defendant holds itself out to serve. An amended complaint was filed, demanding service of water, not only upon complainant's land lying within the area of Hope Ranch Park No. 1, but also upon lands owned by him lying outside of said area.

Defendant in its answer alleges that complainant's premises cannot be supplied with water from its system by gravity at the present time for the reason that the said premises are located

at a higher elevation than defendant's reservoir and that the pipe line formerly used for supplying this service was abandoned by mutual consent between defendant and one of the former owners of the premises. It is further alleged in the answer that it would be impossible to deliver water to complainant by the method formerly used for the reason that the present system is not in such condition as to withstand the pressure necessary to force water up to complainant's premises. Finally, it is contended that defendant's water supply is insufficient to furnish service to complainant without detracting from the supply to the balance of its consumers.

Public hearings were held in this matter before Examiner Satterwhite at Santa Barbara, and investigations were made by Mr. M. E. Ready, a representative of the Commission's Hydraulic Division.

From the evidence, it appears that in 1902 the Pacific Improvement Company acquired large holdings of land just north of Santa Barbara, including the Hope Ranch, part of which was later subdivided and called Hope Ranch Park No. 1. On August 31, 1906, the Pacific Improvement Company deeded to the water company a large tract of land on the western slope of the San Rafael mountains comprising several hundred acres, together with all tunnels, pipe lines, etc., then owned by the Pacific Improvement Company.

It appears that the Pacific Improvement Company sold only five tracts in Hope Ranch Park No. 1. Of these, three were subsequently re-purchased by the company. One of the remaining two tracts is that consisting of Lots 66, 67 and part of 69, containing approximately 8 acres, which was sold to James McFulty, II., on January 24, 1913. On March 1, 1917, he sold this property to Stephen Rutherford, who in turn on May 6, 1918, transferred it to James Marwick, complainant herein.

The evidence shows that the water company's main source of supply is a tunnel located on a tract of land on San Rafael Moun-

tain at an elevation of 1377 feet above sea level, and that the minimum flow from the tunnel is approximately twelve miner's inches. The water is conducted from the tunnel through a six inch pipe line approximately five miles long to a reservoir of 1,000,000 gallons capacity on the Hope Ranch at an elevation of about 370 feet above sea level. Laguna Blanca is located between the reservoir and the tunnel at an elevation of about 150 feet and is used when the reservoir is full to store the surplus water which is later used for irrigation.

The evidence shows that the Laguna Blanca Water Company held itself out to supply water to any one within the area of Hope Ranch Park No.1, and has also supplied for the last ten years about 15 consumers located along its transmission line and outside the boundaries of this subdivision. It is clear that it has been operating as a public utility, and this the company admitted at the first hearing in this proceeding.

Immediately after Mr. McNulty purchased Lots 66, 67 and part of 69, which are at an elevation of approximately 550 feet, from the Pacific Improvement Company, the water company installed a pipe line and a tank to supply him with water. He was served from that time until January 20, 1917, when his house burned down. It appears that the tank was filled from two to four times a month. This water was used exclusively by Mr. McNulty for household purposes and irrigation on this eight-acre tract. A number of other lots nearby could have been supplied from this tank, but it appears that no other consumers were ever so served. The evidence also shows that as late as May or June of 1917 water was supplied to Mr. Rutherford, successor of Mr. McNulty. This was the last service made to this property by the water company. After negotiations were started to sell to Mr. Marwick the pipe line was disconnected from the tank by the water company, and after Mr. Marwick had filed complaint with the Commission

the remaining portion of the pipe line was removed.

On April 15, 1916, Mr. McNulty signed an agreement whereby he agreed to accept service at a much lower elevation than formerly and to install a tank and pumping plant to elevate the water to the company's tank on the top of the hill. The company agreed to sell him this tank and additional land on which to build this pumping plant. The time limit for this installation was set at November 1, 1916. This agreement however was never carried out and the company continued to serve until May or June of the following year. The company now claims that inasmuch as Mr. McNulty failed to build his pumping plant, that he abandoned all rights to service to his property.

Authority to discontinue service can be granted by the Railroad Commission only, and it appears that the defendant has never filed such an application. Although the evidence indicates clearly that defendant's water supply is limited, its contention that there is insufficient water for the supply of complainant's premises should not be urged at this time. Obligation on the part of the company was assumed when it undertook to serve water to this property at the time it was purchased by Mr. McNulty, and this property is rightfully entitled to its proportionate share of the present supply whatever that may be.

To supply water to this property in the manner in which it was previously supplied will, we believe, greatly increase the maintenance expense of the entire system. This will act to the detriment of all the other consumers in the quality of their service and also make the service more expensive. With this in mind, we believe it would be unfair to the other consumers to require the restoration of the service in question in the manner heretofore furnished.

In our opinion a fair and proper adjustment of this matter is as follows: Defendant should furnish service to complainant at the foot of the steep slope below the latter's property, at a point

in Lot 70 in said Hope Ranch Park No.1, on Collado Avenue, near the boundary line between Lots 55 and 70, said point being practically that formerly chosen for the location of a pumping plant, and being the highest point to which defendant can deliver water by gravity from its reservoir. Defendant should then provide the complainant, on a fair basis, with proper easements or rights-of-way for the construction, operation and maintenance of a pumping plant located as above, and for a pipe line across intervening property to the property of complainant, said plant and pipe line to be constructed, operated and maintained by complainant.

Complainant has contended that he is entitled to service to his entire property, both within and outside of Hope Ranch Park No.1. In view of the very limited supply of water at the disposal of defendant, we are of the opinion that defendant should not be required to serve beyond the area to which it has to date undertaken to give service.

O R D E R

James Marwick having filed formal complaint with the Railroad Commission against the Laguna Blanca Water Company, as outlined above, public hearings having been held, the matter having been submitted and being now ready for decision;

IT IS HEREBY FOUND AS A FACT that the Laguna Blanca Water Company, defendant herein, is engaged in the business of distribution and sale of water as a public utility;

2. That the property owned by the plaintiff at the time of the filing of this complaint, being Lots 66 and 67 and part of Lot 69 of Hope Ranch Park No.1, is within the area to which service of water by defendant has heretofore been dedicated and has heretofore been supplied water by said defendant;

3. That the reconstruction and maintenance of the necessary pipe line and the use thereof by defendant for supplying water

to said property of plaintiff to the point of delivery heretofore used would involve unreasonable expense to defendant;

And basing its order upon the foregoing findings of fact and upon the further statement of facts in the opinion which precedes this order;

IT IS HEREBY ORDERED that the Laguna Blanca Water Company deliver water in proper quantity to complainant Marwick for use on Lots 66, 67 and part of Lot 69 of Hope Ranch Park No. 1, only, at a point on Lot 70, of Hope Ranch Park No. 1, located adjacent to Collado Avenue near the boundary line between Lots 55 and 70 and at the highest elevation to which water can be delivered from its reservoir;

2. That the Laguna Blanca Water Company shall provide the complainant on a fair basis, with proper easements or rights-of-way for the construction, operation and maintenance of a pumping plant located on Lot 70, at the point described above, and for a pipe line across intervening property to the property of complainant;

3. That the Laguna Blanca Water Company be not required to reconstruct its pipe line and resume service to the complainant at the point above indicated until complainant has constructed the plant and pipe line necessary to transmit the water from said point to his property;

4. That within thirty (30) days of the date this order is served upon said Laguna Blanca Water Company, and every thirty days thereafter until this order is fulfilled, it shall file with this Commission a detailed statement of the progress

made in carrying out the provisions herein set forth.

Dated at San Francisco, California, this 30th
day of August, 1921.

H. C. Brundage

H. D. Loveland

Dwight Martin

J. F. [unclear]

Commissioners.