

Decision No. 9597.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

O. P. MILLS,

Complainant,

vs.

SAN JOSE WATER WORKS and  
T. H. HERSCHBACH,

Defendants.

ORIGINAL

Case No. 1509.

E. M. Rosenthal, for complainant.

Joseph R. Ryland, for San Jose Water Works.

Henry G. Hill, for T. H. Herschbach.

BY THE COMMISSION.

O P I N I O N

O. P. Mills, the complainant in the above entitled proceeding, owns and operates a public utility water system in a district adjacent to the City of San Jose, more particularly described as the area bounded by Malone Road, Lincoln Avenue, Minnesota Avenue, Northern Road and Almaden Avenue. He alleges to have served this area for the past 20 years.

Defendant Herschbach is subdividing a tract of land adjacent to the intersection of Minnesota and Lincoln Avenues and within the territory alleged to have been served by Mr. Mills. Complainant alleges it is contemplated that the San Jose Water Works will construct pipes and serve this subdivision, thereby depriving him of business to which he is rightfully entitled, the loss of which will

cause him injury and damage, and asks in effect that this Commission prevent the intrusion of the San Jose Water Works into the territory described.

Both defendants filed answers in which they enter a general denial of the allegations of the complaint.

A public hearing was held in this matter at San Jose on September 14, 1921, by Examiner Satterwhite.

It appears from the evidence that although complainant has served consumers in the vicinity of the subdivision now being placed upon the market by defendant Herschbach, he has never served consumers located upon this tract itself. It appears that the San Jose Water Works also has mains in this vicinity, and has actually served the only consumer of water heretofore located upon the tract in question. It also appears that of the two utilities available for service at this location, the owner prefers the service of the San Jose Water Works to that of complainant.

From the evidence it seems clear that the service habitually furnished by the San Jose Water Works is at least equal if not superior to that furnished by the complainant. San Jose Water Works intends to inaugurate a program of construction in this vicinity, with the idea of increasing the capacity of mains and also increasing the area capable of being served. As a result of this expressed intention on the part of the San Jose Water Works, several residents of Lincoln Avenue have applied to this company for service, although the mains of complainant lie in the street in front of their property.

It would therefore appear from the foregoing that the tract, over the service of which the present controversy has arisen, lies within the service area of each of these utilities; that the defendant San Jose Water Works is better able to furnish high-grade service than is complainant; that the preference of the owner of

this tract is for the service of the San Jose Water Works, and that the only service to this tract heretofore given was by this company. In view of these circumstances it seems but fair that the wishes of the persons desiring service be respected, since no obligation exists compelling them to receive service from complainant Mills.

O R D E R

O. P. Mills, owner and proprietor of a public utility, having complained to this Commission of an alleged invasion of territory by another utility, namely, the San Jose Water Works, and in effect praying for an order restraining San Jose Water Works and T.H. Herschbach from installing water mains and rendering water service on a certain tract adjacent to the corner of Lincoln and Minnesota Avenues, a public hearing having been held and the matter having been submitted and being now ready for decision, and it appearing to this Commission that the complaint herein should be dismissed,

IT IS HEREBY ORDERED that the complaint herein be and it is hereby dismissed.

Dated at San Francisco, California, this 4<sup>th</sup> day of October, 1921.

H. D. Loveland  
Chas. F. Powell  
J. H. Pennington  
Commissioners.