

Decision No. 26917

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

FRANCIS D. BELL,
Complainant,
vs.
DR. HELEN P. CRISWELL,
Defendant.

Case No. 3780.

ORIGINAL

Carl L. Hubbell, for complainant.

Dr. Helen P. Criswell, for defendant.

BY THE COMMISSION:

O P I N I O N

Francis D. Bell is the owner of a tract of land containing five and one-half acres, more or less, in the Santa Cruz Mountains lying at an elevation of approximately 2,000 feet and located about six miles from the town of Los Gatos. He alleges that he acquired this tract of land from L.C.D. Walkington and A.B. Walkington on the 17th day of December, 1925, under a deed of purchase which, among other things contained a clause purporting to require defendant to supply this parcel of land with not less than 200 gallons of water per day at a minimum charge of one dollar (\$1.00) per month. It is further alleged that defendant has threatened to discontinue service of water to complainant unless there is paid therefor the sum of three dollars (\$3.00) per month, which sum is claimed to be an excessive and unreasonable charge

under the circumstances. The Commission is requested to direct defendant to furnish 200 gallons of water per day to complainant at one dollar (\$1.00) per month.

By way of answer, defendant denies that complainant is entitled to water service for one dollar (\$1.00) per month and alleges that he should pay the same amount as her other consumers, to wit: thirty-six dollars (\$36.00) per year.

A public hearing in the above entitled complaint was heard before Examiner MacKall at San Francisco.

Testimony was introduced in behalf of complainant to the effect that the tunnel from which water is supplied to complainant's premises during the summers of 1932 and 1933 has yielded far less than 200 gallons daily. The claim is made on behalf of Francis D. Bell that under the deed of transfer of this property from L.C.D. Walkington and A.B. Walkington he is entitled to service of water to the extent of 200 gallons daily at a rate stated therein of one dollar (\$1.00) per month and that he is the only consumer supplied by the system operated by defendant.

The record shows that the property now owned by complainant was originally owned by Robert P. Criswell and Helen P. Criswell, his wife; that said parcel of land was transferred to L.C.D. Walkington and A.B. Walkington in June of 1912; and that thereafter in December of 1925 it was purchased by Frank A. Bell who transferred said tract to complainant Francis D. Bell in March of 1933. The original charge for water service made to the Walkingtons while in possession of the property was at the rate of one dollar (\$1.00) per month. At some time immediately prior to the purchase of the property by Frank A. Bell certain tenants of the Walkingtons were charged for water at the rate of thirty-six dollars (\$36.00) per

year. This charge to the tenants apparently was made at some time during the period from 1922 to 1925, inclusive. From the year 1926 to and including 1929 Frank A. Bell paid for water the sum of thirty-six dollars per annum. For the year 1930 he tendered the sum of twelve dollars to cover the charges for that year based upon the rate of one dollar per month. Defendant accepted the twelve dollars notifying said Frank A. Bell that credit was being given to his account in the sum of twelve dollars, leaving a balance of twenty-four dollars due and owing out of the annual charge of thirty-six dollars. During the following years of 1931, 1932, 1933 and 1934 tenders were made of twelve dollars per annum for water service to defendant, which tenders were refused although service was rendered continuously to the premises up to and including the 25th day of January, 1934, when defendant shut off the water and discontinued service notifying complainant that no further water would be supplied unless and until the unpaid balance of the water bills had been paid at the rate of thirty-six dollars per year.

About the year 1909 Robert P. Criswell and Helen P. Criswell, his wife, purchased and acquired somewhat in excess of 200 acres of land in this particular part of the Santa Cruz Mountains, scattered over an area of several square miles. From time to time parcels of land were sold by them mainly for residential purposes, the Criswells agreeing to furnish water to said parcels from springs and tunnels developed at various places throughout their holdings. Defendant now operates a water system obtaining her supply from five or six tunnels and about twenty-five springs. Some of these tunnels and springs supply only one individual home; certain others thereof supply two or more homes; altogether defendant serves about

twelve consumers, for which charges are made upon the annual basis of thirty-six dollars for an amount not to exceed 200 gallons per day per consumer, approximately equivalent to $37\frac{1}{2}$ cents per 100 cubic feet. The territory served by defendant is very steep and mountainous, deeply cut up by numerous gulches and ravines. Complainant's ranch is located near the top of a ridge at an elevation of about 2,000 feet and is the highest in elevation of any supplied by defendant. While it is true complainant is the only consumer served at present from the tunnel located adjacent to his property, nevertheless, the entire system is made up of a group of independent and isolated springs, tunnels and appurtenant pipe lines, each providing water for one or two individuals.

In the case of Howard Throckmorton versus Robert P. Criswell and Helen P. Criswell, Case No. 1478, this Commission had before it the matter of the determination of the status of the service rendered by defendant. Water had been sold to various consumers under arrangements usually set forth in the deeds to the property which all of the consumers had acquired by purchase from the Criswells. In general, all deeds contained provisions governing water service similar to those by which the Walkingtons acquired the property now owned by complainant. In Decision No. 9152 rendered in connection with the above case and dated the 24th day of June, 1921, the Commission held that defendants Robert P. Criswell and Helen P. Criswell were operating a public utility water system. They were therein directed to file with the Commission their rates, rules and regulations. The rates now on file with the Commission and at present in effect provide as follows:

"Per calendar year, not to exceed
200 gallons per day of 24 hours---\$36.00"

Although the record in this proceeding does not definitely disclose

at what time all the consumers were charged thirty-six dollars per annum, it appears from the testimony of Dr. Helen Criswell that efforts were made to collect for all service rendered during the year 1922 and thereafter at the thirty-six-dollar annual rate.

It appears from the record in this proceeding that the original source of water supply to the premises now owned and occupied by complainant came from a tunnel located in Newell Gulch approximately one mile from the Walkington home. Some time prior to 1925 a landslide destroyed this tunnel and source of supply necessitating the expenditure of approximately one thousand dollars by defendant in the search and development of the present tunnel. It was claimed by defendant that originally this tunnel produced a continuous yield of 1,000 gallons daily, now, however, yielding far less.

The public utility character of the service rendered by defendant was definitely determined by the Commission in Decision No. 9152. Nothing was presented in the record of this proceeding which would indicate that complainant is entitled to any more favorable rate than the other consumers or that the rate of thirty-six dollars per annum is an unreasonable charge for the service rendered under such difficult and adverse conditions. It is apparent, therefore, that should Francis D. Bell desire further service from defendant it will be necessary for him to pay his past unpaid water bills upon the basis of the filed tariffs, to wit: thirty-six dollars (\$36.00) per year.

It is suggested in conclusion that defendant make every reasonable effort to keep the tunnel supplying complainant in good repair in order to maintain an adequate volume of water to his

premises.

O R D E R

Francis D. Bell having filed a formal complaint as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 2^d day of April, 1934.

C. C. Seavey
Leon Whitney
M. A. C.
M. B. Harris
W. H. Brown
Commissioners.