

Decision No. 40855

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN E. WILLEY and GRACE WILLEY,
husband and wife,

Complainants,

-vs-

MAY NORMAN, now known as
MAY MONTGOMERY and JAMES MONTGOMERY,
husband and wife,

Defendants.

ORIGINAL

Case No. 4879

Abraham Glicksberg, for Complainants.

Rutherford and Rutherford, by
Sheldon Rutherford, for Defendants.

O P I N I O N

John E. Willey and Grace Willey, husband and wife, filed a formal complaint against James Montgomery and May Montgomery, his wife, alleging that from about 1931 complainants have been receiving water for domestic purposes from the well owned by the County of Napa through a pipe line laid along the county road, and that on or about December 27, 1946, the defendants, without notice, shut off complainants' water supply and have refused to resume service to their premises.

Defendants entered a general denial of the allegations of the complaint and asked that the matter be dismissed for lack of jurisdiction.

A public hearing in this matter was held before Examiner M. R. MacKall in Napa.

The record in this proceeding shows that a certain Mr. Noble who owned Bull Island, lying across the Napa River from Cutting's Wharf, entered into a contract with the County of Napa, authorizing him to dig a well in the right of way

of the county road, about one-half mile from the wharf, which is owned and maintained by said county. In 1931 Mr. Noble dug a well, installed a pumping plant and ran a pipe line down the county road, along or under Cutting's Wharf and across the Napa River to his boat works and buildings on Bull Island. Under his agreement with the county authorities, Mr. Noble provided water taps and outlets for public use and recreational purposes on Cutting's Wharf. Some short time thereafter, under arrangements made either with Mr. Noble or his lessee, Mr. J. N. Anderson, Sr., or with both, Complainant Willey received or made a connection to this pipe line and thereafter received water for domestic purposes for his home and boat renting business on the Napa River at Cutting's Wharf.

In 1932, H. W. Norman and May Norman, his wife and now defendant Mrs. James Montgomery, under written agreement with F. C. Lundy, owner of an adjoining ranch, dug a well and installed a pumping plant on the Lundy Ranch and ran a pipe line to serve their fishing and recreational camp on the river front adjoining Cutting's Wharf. This development is called "Norman's Fishing Resort" and now comprises small boat docking facilities, landing floats, rental row boats and motor boats, a general store, the family home, and 30 rental cabins of from two to five rooms. In consideration for the lease of the well and pump-house site, water was furnished by the Normans to the Lundy Ranch House. The water in this well soon became unfit for domestic use and in 1933, under written agreement with the County of Napa, H. W. Norman dug a new well in the county road right of way, not far from the Noble pumping plant, and connected this well to his own pipe line serving his resort and the Lundy Ranch House. According to the terms of this latter agreement with the County of Napa, Mr. Norman connected his system to the pipe outlets on Cutting's Wharf in order to provide a potable drinking water for public use on said wharf. Later Mr. Norman also connected his water main to the Bull Island line providing the then lessee of the island and boat works, Mr. Anderson, with water for which no charge ever was made other than the consideration which granted the Normans the right to use the Bull Island boatways for cleaning and repairing their resort boats.

The testimony of James Montgomery shows that late in the fall of last year a serious leak developed in the Bull Island pipe line connected to his water system and that he discovered the water was lost through a bad hole in a rusted pipe tapped into and connected with the Bull Island water main. This pipe was cut and plugged by Mr. Montgomery in December, 1946, and immediately thereafter Complainant Willey was out of water.

Mr. and Mrs. Montgomery both testified that they were unaware that the Willeys were connected to their system and had no knowledge of when or how the connection was made. Complainants have never paid them for any water service nor had the complainants ever been billed by defendants. It further appears that several years ago, at least six years and possibly more, an automobile ran into and demolished the old Noble pump house. Since that time the pumping plant has not been operated; nevertheless, complainant Willey has always had water service until the leak was repaired in December, 1946.

A review of the evidence herein shows that the pumping plant and pipe lines now owned and operated by defendants are strictly the private and personal properties of the owners, installed for the sole purpose of supplying water to their own home and resort business. No part of defendants' system was ever connected with the Noble well or with the Noble pipe line to Cutting's Wharf, except under the circumstances hereinabove noted. Such incidental service as has been and still is being supplied is under private contractual agreement and in no wise could be construed as a dedication of any part of the service to public use. The water service heretofore received by complainants was unauthorized and was provided unknowingly and without compensation. The complaint therefore will be dismissed for lack of jurisdiction.

O R D E R

Complaint having been filed with the Public Utilities Commission as entitled above, a public hearing having been held thereon and the Commission now being fully informed in the premises, and

Basing its Order upon the foregoing findings of fact,

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

Dated at Los Angeles, California, this 28th day of October, 1947.

Harold P. Hule

Justice F. Cullen

R. B. Dinkins

Samuel J. Totten
Commissioners.