

ORIGINAL

Decision No. 50365

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HAL EVRY,	)
	)
Complainant,	)
	)
vs.	)
	)
CABAZON WATER COMPANY, a	)
corporation,	)
	)
<u>Defendant</u>	)

Case No. 5543

O P I N I O N

The complaint herein alleges that Hal Evry, the owner of a house and land at Cabazon, California, has been refused water service to said land by the defendant water company. It is further requested that a decision of this Commission, No. 41241, dated February 24, 1948 in Application No. 28755, which decision sets out the boundaries of defendant company, be amended so that the service area of the defendant company shall include the property of the complainant and that defendant company be ordered to furnish water to complainant's land. The water company has filed an answer setting out, among other things, that defendant's property is not within its service area and that it has refused and continues to refuse service to the land now owned by complainant.

Public hearing was held before Examiner Syphers in Los Angeles on June 14, 1954, at which time evidence was adduced and the matter submitted.

The evidence presented at the hearing demonstrated that the issue herein involved is whether or not the defendant company

should be required to serve water to 10 acres of land presently owned by complainant and located in Section 18, Township 35, Range 2 East. Complainant purchased this property from a Mrs. Truesdale and his claim to water service is based upon two contentions. The first of these is that Mrs. Truesdale while she was the owner of the 10 acres in question, was also the owner of Lot 177 in Section 17, which lot is within the present service area of defendant company. Inasmuch as Mrs. Truesdale occupied both Lot 177 and the 10 acres in question, having a house on Lot 177, and maintaining domestic animals on the 10 acres, it was contended that she was receiving service to all of this property. The second contention was that prior to the purchase by complainant, Mrs. Truesdale had sold one acre of the 10 acres in question to one Barnett and that during his holding of this one acre, he received water service from the defendant company.

By Decision No. 41241, supra, this Commission granted a certificate of public convenience and necessity to the defendant company and directed it to file a map of its service area. Such a map was filed on June 29, 1948 and so far as it relates to the instant controversy the service area of the defendant company was bounded on the west by the line dividing Sections 17 and 18. In other words, the 10 acres here in question were not included in this service area. Exhibits 1 and 2 are maps of the area showing the service area of defendant company and the boundaries thereof.

Relative to the contention of complainant that water was served to Barnett prior to the date of Decision No. 41241, which was February 24, 1948, and that, therefore, the defendant company had in effect included the land in question within its service area,

a witness who had been president of the defendant company during the first two years of its existence in 1948 and 1949 testified that while the map filed pursuant to Decision No. 41241 did not include the land in question this was an error on the part of the person who made the map. He further testified that at the time he did not believe this was important enough to require the filing of a corrected map since in his opinion the company had to serve the area anyway. This witness stated that the additional land which should be included in the service area was 40 acres, which 40 acres includes the 10 acres here in question. He also stated he believed Mr. Barnett had built a house on this property and had received service there prior to the date of Decision No. 41241. He likewise pointed out that Bertha Truesdale had received water through a 2-inch pipe line which was installed in December, 1947, said installation being to Lot 177. He further testified that there was a 1-inch pipe line connecting Lot 177 with Barnett's property although he had nothing to do with the installation of that line and further that Mrs. Truesdale maintained animals on the property in Section 18 which she brought to Lot 177 to be watered.

Exhibit 3 is a group of receipts for water service from the complainant company and its predecessor to Bertha Truesdale, which receipts show service to the connection at Lot 177.

The present president of the complainant company testified that Barnett had not received water until September 30, 1949 and that the service furnished to him during the period from September 30, 1949 to June 19, 1951 was not to any property on Section 18, but to three different houses all located in Section 16. Exhibit

5 consists of copies of receipts furnished to Barnett for this service as well as a cancelled check from the defendant company to Barnett covering a refund on a certain meter installation and a deposit. This witness testified that about April of 1951 he learned that water was being delivered to Barnett's property and upon inspection on June 15, 1951 he discovered that there was a pipe line from Mrs. Truesdale's lot to Barnett's house. On that date he shut off the water and none has been delivered to Section 18 since then. Although Barnett applied for water in August, 1951, the company decided not to serve outside of the service area.

Other witnesses testified concerning the factual situation and in substance pointed out that Barnett's house was built about the first part of 1951 or the latter part of 1950. The testimony of the present president of the water company concerning the shutting off of the service to Barnett was confirmed by another witness. Exhibits 7 and 8 are ledger sheets of the defendant company showing the account of Bertha E. Truesdale and Exhibits 9, 10 and 11 are meter sheets showing service to Barnett at locations other than the property on Section 18.

The complainant testified that he now desires water for a house and 10 acres of land. The house concerned is the Barnett house which is now owned by complainant, and he pointed out that a family presently is living on those premises and is in need of water. Exhibit 4 is a letter which complainant wrote to the defendant company under date of March 11, 1951, requesting water service.

A consideration of this record leads to the conclusions and findings hereinafter set out:

(1) The Barnett house, which was constructed on one acre of the 10 acres here in question, did not receive water prior to February 24, 1948, the date of Decision No. 41241, but did receive water during the construction of the house, which construction probably occurred during the latter part of 1950 or the first part of 1951.

(2) Barnett was not billed for this water service and so far as the records of the company are concerned the only service in that area was to Lot 177, which was owned by Mrs. Truesdale.

(3) The president of the water company at the time its boundaries were set out by Decision No. 41241, supra, considered that certain of the lands of Mrs. Truesdale, which are now designated as being outside the service area, were in fact within the area to which the company was obligated to provide service.

(4) Mrs. Truesdale, when she was the owner of Lot 177 and the 10 acres here concerned, received water at Lot 177 where her house was located. She also maintained certain domestic animals on the 10 acres, which stock was watered on Lot 177.

The principal claims of applicant, as stated at the hearing, were (1) that service to Mrs. Truesdale at Lot 177 constituted service not only to that lot but also to the adjoining property since Mrs. Truesdale was occupying all of the property at that time, and (2) that the Barnett house was served with water. It also developed at the hearing, through Exhibit 6, that under date of August 31, 1950 an agreement was entered into, between the defendant water company and various water users, one of them being Mrs. Truesdale. As a result of this agreement the company installed an extension pipe line to its domestic water

service. Lot 177 now receives water through this extension. At that time Barnett did not join in this agreement. The total cost of the extensions installed as a result of the agreement was \$3,398.88. There were sixteen consumers who participated in this installation, each contributing \$212.43.

In the light of this record we conclude that the Barnett house and the land on which it is situated, consisting of one acre, is now entitled to water service. There is no showing in this record as to any lack of water supply. On the other hand, there is a definite showing of need for water to be served to the house in question. However, the record does not warrant a finding that water should be served to all of the 10 acres of applicant herein. Furthermore, the equities of the case indicate that since the Barnett house would receive water from the extension which was paid for by the sixteen consumers the complainant herein should contribute his proportionate share to the installation of that extension. In other words, if the complainant receives water for the Barnett house there will be seventeen consumers receiving service from the extension. Had seventeen consumers contributed to the cost of this extension their individual shares each would have amounted to \$199.93. Accordingly the ensuing order will provide that the company shall furnish water to the house designated as the Barnett house and the land on which it is situated, consisting of one acre, upon the same terms and conditions as are afforded to any new subscriber, and upon the further condition that the complainant herein shall pay the sum of \$199.93 to the company, which sum shall be divided into sixteen equal shares and refunded to the sixteen other consumers on the extension line in question.

O R D E R

The complaint of Hal Evry having been filed, public hearing having been held thereon, the Commission being fully advised in the matter and basing its decision upon the evidence of record in this case,

IT IS ORDERED that the Cabazon Water Company, upon the filing of a proper application therefor by the complainant, shall provide water service to the house of complainant, hereinafter designated as the Barnett house, and the surrounding land, not to exceed one acre, upon the same terms and conditions as water is furnished to any other new subscriber, provided that the complainant shall, at the time of making an application for water service, pay to the water company the sum of \$199.93, which sum shall be divided among the sixteen consumers now on the water extension concerned.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California this 3rd day of August, 1954.

John E. Mitchell  
President  
James F. Gaerner  
Herbert J. Patten  
Gene Higgins

Commissioners