

ORIGINAL

Decision No. 79250

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Peter Joseph Behan, Jr.,  
Complainant,  
vs.  
Criswell Water Service,  
Defendant.

Case No. 9194  
(Filed February 22, 1971)

Karl F. Nigg, Attorney at Law, for complainant.  
Robert P. Criswell, in propria persona, defendant.  
Leslie D. Hay, for the Commission staff.

O P I N I O N

The complaint seeks an order from the Commission directing defendant to install the necessary equipment and furnish water service to complainant's property at 19998 Gist Road, Los Gatos, Santa Clara County, upon complainant paying the necessary and proper charges in connection therewith. It alleges that defendant has refused to furnish water to complainant; that defendant is a public utility and as such has a duty and obligation to furnish the requested service; that the property requiring said service is not habitable without adequate water; that complainant has no other reasonable means of obtaining water service; that installation of a holding tank and a pump in an existing well on said premises would be very expensive and would hold little assurance of success; and that complainant will suffer irreparable injury by the failure of defendant to furnish said service.

The answer to the complaint states as follows: In May, 1963, defendant was informed by Russell Park, who then owned the property in question, that he had drilled a well and installed a

pump and no longer required water service from defendant; as requested, the water was turned off; no payment was made to defendant for any water furnished during 1963; after Russell Park's death, the property was occupied by M. Pappas; she requested that defendant reestablish water service; the water was turned on and she paid for the service from January 1, 1964 to July 1, 1966; she vacated the premises in latter 1966 and did not pay for any water after the middle of said year; the water was again turned off and the 600 feet of one inch-iron pipe serving the property was abandoned; an informal complaint was filed with the Commission by Edward Park on June 17, 1970 to have defendant again serve the property; said complaint was closed by the Commission on August 4, 1970 with no explanation for said action; the pipeline was removed; defendant is under no obligation to furnish water to complainant.

Public hearing was held before Examiner Mooney in San Jose on June 21, 1971, on which date the matter was submitted. Testimony and exhibits were presented by complainant and his attorney, defendant and an engineer of the Commission's Utility Division.

The following facts are established by the record and we find them to be such:

1. Robert P. and Helen P. Criswell, the deceased parents of defendant, acquired approximately 200 acres of land in the Santa Cruz mountains in 1909. Subsequently, they sold various parcels of said land. Defendant's parents furnished water to various buyers, including the original purchaser of complainant's property at 19998 Gist Road.

2. Defendant's parents were declared to be operating a public utility water system by Decision No. 9152, dated June 24, 1921, in Case No. 1478. Said system is now operated by defendant.

3. Complainant purchased the property in issue in June, 1970. The property did not have water service at that time nor does it presently have such service which it requires. It is approximately

one and one-quarter acres and in a mountainous, wooded area. There are two level areas on the property, one of which is occupied by the house. Complainant commenced renovating the house in September or October, 1970.

4. A well and pump were installed on the property in issue in May, 1963, by a former owner of the property. Prior to that time and from early 1964 to latter 1966 the property was served water by defendant. In latter 1966, defendant cut off service to the property for nonpayment of water bills after July 1, 1966 and abandoned the 600 feet of one inch-iron pipe which connected defendant's facilities with the property. All or part of the pipe was later removed. The well is in disrepair and the pump has been removed. The well is open at the top. (Complainant is cautioned that according to law the well should be capped.)

5. Estimates received by complainant from two well drilling companies indicate that the cost of repairing the well and installing a pump would be approximately \$1,600.

6. Defendant's water system serves nine water users on a flat rate basis in an unincorporated area approximately six miles south of Los Gatos. There are three separate service areas. The first serves one customer who pipes his own water from one of defendant's springs. The second distribution system serves defendant's property and one other customer. The third system receives water from eight springs and serves three customers of record who have a total of six residences. Each of said three customers has his own water storage facilities. Prior owners of complainant's property were served by the latter system.

7. In the third system, defendant owns two redwood storage tanks referred to herein as the "upper" and "lower" tanks with capacities of 2,500 and 1,000 gallons, respectively. Water is conveyed from three springs directly into a tank owned by Mrs. Clara May, one of the customers. Two other springs supply water to defendant's "upper" storage tank and in turn also supply the May

tank. When the May tank is filled the overflow water flows to defendant's "lower" tank. In addition, three other springs supply water directly to the defendant's "lower" tank. By this arrangement, three residences are supplied with water directly from the May tank and three residences are supplied with water from the defendant's "lower" tank.

8. For defendant to serve complainant's property, it would be necessary for complainant to install a storage tank to provide service to his premises. Approximately 600 feet of pipe from defendant's "lower" tank (1,000 gallons capacity) to complainant's property would be required to be installed.

9. Defendant is making an effort to provide as near adequate service as is possible to his present customers. The flow of water available from defendant's springs is minimal.

10. Defendant has never been authorized by the Commission to discontinue providing water service to complainant's property or to remove the 600 feet of pipe which connected defendant's "lower" tank with said property. Although a tariff map with an effective date of September 29, 1966 and which excludes complainant's premises from the utility's service area was filed with the Commission, said filing does not constitute approval by the Commission to remove the pipe or discontinue the service. In this connection, it is a well settled principal of law that a public utility may not abandon any service provided by it to the public without requesting and obtaining prior approval from the Commission.

11. Complainant requested defendant by telephone in November, 1970, to furnish water to the property in question. The request was denied. Complainant's attorney on behalf of his client telephoned defendant on February 11, 1971 and again requested that water be provided. The attorney informed defendant that a bond would be posted for any water bills owed by prior owners of the property and that complainant was willing to share in the cost of installing the service. This latter request was also denied.

12. The operating rules of defendant state that requests for water service shall be made in writing. Said rules have never been filed with the Commission and are not a part of defendant's tariff. In the circumstances, said rules are not binding on the public.

13. In the last five years, defendant has lost \$1,455 in operating his water system and is planning to request a rate increase.

14. Complainant is entitled to share in defendant's water production and to be served on a nondiscriminatory basis.

15. As a condition precedent to receiving the service referred to in Finding 14, complainant should install adequate receiving and storage facilities for water on his premises, and the cost of extending defendant's facilities to said premises should be borne by complainant. In connection with the latter condition, it would be patently unjust, based on the facts set out above, to require defendant to bear the cost of replacing the abandoned water transmission line to complainant's property.

16. Because only one customer would be served by the 600 foot water transmission line to complainant's property, any suitable one-inch pipe would be adequate for said line, and due to the rugged terrain over which said line would extend, it would be extremely difficult if not impossible for defendant to comply with the Standards of Construction in Section IV of General Order No. 103 (Rules Governing Water Service) in connection therewith.

The Commission concludes that:

1. Defendant should furnish water service to complainant on a nondiscriminatory basis and install the necessary water transmission line to complainant's property to provide said service.

2. Defendant should be authorized to use any suitable one-inch pipe for said water transmission line and except where said line may cross any road or street, to deviate from the Standards of Construction in Section IV of General Order No. 103.

3. The cost of installing said water transmission line should be paid for by complainant in accordance with the terms of any reasonable agreement between the parties, a written copy of which should be filed with the Commission by the parties immediately upon the consummation thereof.

4. As a condition precedent to receiving water from defendant, complainant should be required to install adequate facilities for receiving and storing said water on his premises.

5. Defendant should complete all work required to provide water service to complainant's property within 45 days after the effective date of the order which follows and should notify the Commission in writing when said water service is established.

O R D E R

IT IS ORDERED that:

1. Defendant shall furnish water to complainant's property at 19998 Gist Road, Los Gatos, on a nondiscriminatory basis and shall install the necessary water transmission line to said property to provide said service.

2. Defendant may use any suitable one-inch pipe for said water transmission line, and except where said line may cross any road or street, defendant may deviate from the Standards of Construction in Section IV of General Order No. 103 in connection therewith.

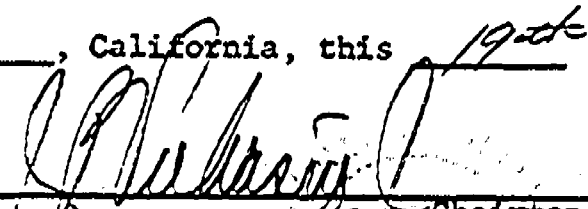
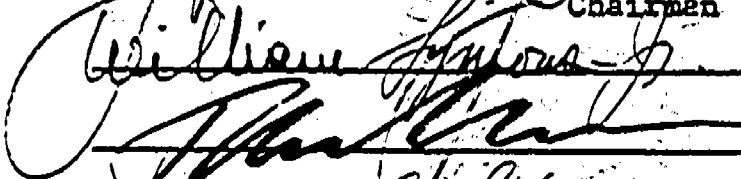

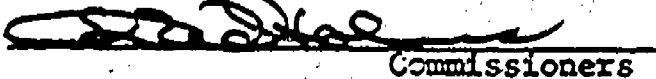
3. The cost of installing said water transmission line shall be charged to and paid for by complainant in accordance with the terms of any reasonable agreement between the parties. A written copy of said agreement shall be filed with the Commission by the parties immediately upon the consummation thereof.

4. As a condition precedent to receiving water from defendant, complainant shall install adequate facilities for receiving and storing said water on his premises.

5. Defendant shall complete all work required to provide the service referred to in ordering paragraph 1 within forty-five days after the effective date hereof and shall notify the Commission in writing when said service is reestablished.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of OCTOBER, 1971.

  
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Chairman  
  
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Commissioners