

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JAMES S. WAYNE, INDIVIDUALLY AND AS)	
TRUSTEE OF THE JAMES S. WAYNE LIVING)	
TRUST)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2009-00264
)	
HENRY COUNTY WATER DISTRICT NO. 2)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Henry County Water District No. 2 ("Henry District") is hereby notified that it has been named as defendant in a formal complaint filed on July 6, 2009, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Henry District is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days of the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

By the Commission

ATTEST:


Executive Director

ENTERED
AUG 13 2009 *al*
KENTUCKY PUBLIC
SERVICE COMMISSION

Legal

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUL - 8 2009
GENERAL COUNSEL

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF

JAMES S. WAYNE, INDIVIDUALLY AND AS)
TRUSTEE OF THE JAMES S. WAYNE)
LIVING TRUST)
COMPLAINANTS)

CASE NO. 2009-00264

vs.)

HENRY COUNTY WATER DISTRICT #2)
DEFENDANT)

COMPLAINT

Pursuant to KRS 278.260, James S. Wayne, Individually and as Trustee of the James S. Wayne Living Trust, by and through counsel, hereby submit this Complaint to the Kentucky Public Service Commission to restore ownership of the McCarty Lane water line and to restore water service delivered by Henry County Water District #2 to the property of the James S. Wayne Living Trust.

1. The Complainants in this matter are James S. Wayne, Individually and as Trustee of the James S. Wayne Living Trust, owner of real property at 10543 McCarty Lane, Campbellsburg, Kentucky 40011. James S. Wayne resides at ~~11111~~, Louisville, Kentucky, 40204.

2. The Defendant in this matter is Henry County Water District #2, c/o James Simpson, Chief Operating Officer, Henry County Water District #2 (“Water District”), 8955 Main Street, P.O. Box 219, Campbellsburg, Kentucky 40011.

3. On August 14, 2000, Mr. Wayne and his wife, Deborah Wayne, purchased, along with Maria Scharfenberger, a 116.3 acre farm (“the Farm”) located at 1054 McCarty Lane in Campbellsburg, Kentucky. In 2005, the Waynes purchased Ms. Scharfenberger’s share of the Farm and transferred the Farm into the James S. Wayne Living Trust. James Wayne and Deborah Wayne are the Trustees of the trust.

4. The previous owner told James S. Wayne prior to the purchase by Wayne that the Farm had access to water from the Henry County Water District #2, because that previous owner had constructed a one mile long private water line (“Wayne water line”) across the adjacent property, with permission of that property owner, parallel to McCarty Lane, from the Water District’s main line which runs along U.S Highway 421 to the Farm, and this representation and assurance was, in part, what Wayne purchased with the purchase of the Farm. When the Wayne water line was constructed, the water meter for the Wayne water line was located at the Water District’s main line at Highway 421. The purchase price of the farm included the purchase of the Wayne water line.

5. The undersigned discussed this matter with the Public Service Commission staff, who confirmed that common practice and custom with water districts is that Water District Ownership of water lines ends at the location of the water meter.

6. The James S. Wayne Living Trust is the sole owner of the Wayne water line, where such line was constructed by the prior owner of the farm and where such line was included in the purchase price of the farm which ownership extends from the original

location of the water meter for the Wayne water line (near Highway 421) to the Farm. The James S. Wayne Living Trust and James S. Wayne, as Trustee and Individually, have the legal right to uninterrupted supply of water from the Henry County Water District #2 to the Farm, at the approved rate.

7. In the Fall of 2008, Water District employees, or those acting under the direction of the Water District, removed the water meter to the Wayne water line without the knowledge or consent of James S. Wayne or the James S. Wayne Living Trust, and ceased to provide water supply to the Farm.

8. James S. Wayne consulted the attorney who assisted with the purchase of the Farm, who confirmed that James S. Wayne had purchased the Wayne water line when the Farm was purchased. James S. Wayne objected to the Water District actions, employed the undersigned attorney, wrote the attached February 12, 2009 letter to the Water District, requested a meeting with the Board of the Water District, attended such meeting with the undersigned attorney on April 14, 2009 (see attached letter from the undersigned to the Water District) to seek to be restored to ownership and control of the water line that James S. Wayne purchased, and to be restored to water supply from the Water District, but there has been no substantive response. The Farm is without the water supply it had when it was purchased.

9. The December 22, 2008 value to construct the Wayne water line is \$33,987.00, assuming no solid rock is encountered. The depreciated value of the line is estimated to be approximately one half of this amount.

10. The actions of the Water District constitute the taking of the private property of another, without due process, and without public necessity and without just compensation, and the wrongful denial of water supply.

WHEREFORE, James S. Wayne, Individually and as Trustee of the James S. Wayne Living Trust asks the Public Service Commission to find and determine and order the following relief:

1. That the Public Service Commission determine that the James S. Wayne Living Trust is the sole owner of the Wayne water line and that the Farm be restored to receive water from the Water District as was the case when the Farm was purchased; or

2. That the Public Service Commission determine that the James S. Wayne Living Trust shall be justly compensated for the Wayne water line by the Water District, and that the Farm be restored to receive water from the Water District.

3. For all other relief to which James S. Wayne and the James S. Wayne Living Trust may be entitled.

This 8 day of July, 2009.

Respectfully submitted,

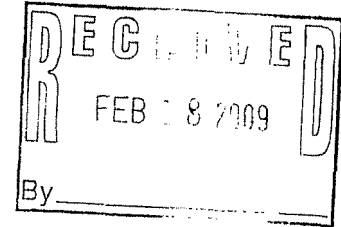


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hank.graddy@gmail.com

~~XXXXXXXXXXXXXXXXXXXX~~
Louisville, Kentucky 40204

February 12, 2009

Mr. James Simpson
Chief Operating Officer
Henry County Water District #2
8955 Main Street
P.O. Box 219
Campbellsburg, Kentucky 40011



Dear Mr. Simpson,

On August 14, 2000 my wife and I purchased, along with Maria Scharfenberger, the 116.3 acre farm at 1054 McCarty Lane, Campbellsburg, Kentucky. Subsequently, in 2005, my wife and I purchased Ms. Scharfenberger's share of the farm and transferred it to the James S. Wayne Living Trust. We are the trustees of the trust.

At the time of the 2000 sale, we were told by the seller of the farm that the farm had access to Henry County Water District #2 water because he had constructed a one mile long private water line across another property owner's land, with permission from that property owner, to the farm from the Henry County Water District #2's main line which runs along U.S Highway 421. Our private line runs parallel to McCarty Lane. At the time of its construction, until the Fall of 2008, the meter for our line was located at the line's origin at Highway 421. The purchase price for the farm included this private water line.

Our attorney, Hank Graddy, has discussed this matter with counsel for the Public Service Commission, who confirmed that standard or common practice with Water Districts is that Water District ownership of water lines ends at the location of the water meter.

My wife and I are the sole owners of the water line from our property until the line intersects with the District's main line along Highway 421, where such line was constructed by the prior owner of our farm before he sold to us.

In the Fall of 2008, employees of Henry County Water District #2 removed our meter from its location when we purchased our property without our knowledge or permission.

The December 22, 2008 value to construct this line is \$33,987.00, assuming no solid rock is encountered. The depreciated value of the line is estimated to be up to one-half of this amount.


I am requesting a meeting, at the earliest possible date, with you, and whom ever you wish to accompany you. We will bring our attorney, Mr. Graddy, so you may want to

bring your attorney. The purpose of the meeting is to discuss the ownership and use of our private water line.

Please call me at [REDACTED] to arrange a convenient time for our meeting.

With warm regards, I am,

Sincerely,


James (Jim) S. Wayne

cc. Mr. Hank Graddy ✓
Attorney at Law

W. H. GRADDY & ASSOCIATES

Attorneys at Law
103 Main Street
P.O. Box 4307
Midway, KY 40347

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Elizabeth R. Bennett
Randal A. Strobo

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April 30, 2009

Mr. James Simpson
Chief Operating Officer
Henry County Water District #2
8955 Main Street
P.O. Box 219
Campbellsburg, Kentucky 40011

Re: Jim Wayne: April 14, 2009 meeting with Henry County Water District

Dear Mr. Simpson:

This letter follows our meeting with the Board on April 14, 2009.

Please let me know when the Board has selected an attorney so that we can set up a time to discuss the contents of Mr. James Wayne's February 12, 2009 letter to you, which I have attached for reference.

I look forward to hearing from you.

Very truly yours

W. Henry Graddy, IV

CC: Jim Wayne

WHG: pb

Honorable W. Henry Graddy
W. H. Graddy & Associates
P.O. Box 4307
103 Railroad Street
Midway, KY 40347

James T Simpson
Chief Operating Officer
Henry County Water District #2
8955 Main Street
P. O. Box 219
Campbellsburg, KY 40011