NEW PHASE IN WATER CONTROVERSY

Notice Served on City of Helena That Unless Certain Conditions are Complied With Supply of Water for Fire and Sewerage Purposes Will be Discontinued.

Special Dispatch to the Standard.

Helena, July 1.—Another chapter in the controversy between the Helena Water company and the city of Helena was opened to-day by the former. It served written notice on the city, through the mayor and the city council, that unless payment is made at the rate of $18,000 a year for the water used for municipal purposes in June the supply of water to the city of the Business Men's association, and the company will be prevented by the court, if necessary, from carrying out its threats. The notice, which is signed by C. S. Tuckerman, as president of the Helena Water company, is dated Boston, June 24, and is as follows:

"On the year 1890, the fire ordinance No. 248 of the ordinances of the city of Helena, there was granted to the Helena Consolidated Water company a franchise to construct, maintain and operate a system of water works in the city of Helena for the purpose of supplying the city and its inhabitants with water, for which ordinance provision was made for payment by the city for water furnished for fire, sewerage and other purposes during the period of five years at the rate of $1,500 per month per hydrant for 200 hydrants and $75 per month per hydrant for each hydrant in excess of 200 hydrants were made by the city for said period of five years according to the terms of said ordinance.

Action Against City.

"In the year 1895, and after the expiration of said five-year period, a controversy arose between the city and the company in regard to the amount to be paid for water supplied to said city. As the result of this controversy action was brought by the company against the city to ascertain the reasonable values of water furnished the city and to recover for the water supplied between the 15th of January and the 15th day of December, 1895. Said action a trial was had and it was decided that the reasonable value was about $24,000 a year, and judgement was rendered accordingly on Nov. 21, 1896. Later, and on the tenth of August, 1897, a contract was entered into between Jerome H. Mills, receiver of the property of the water company, and the city, providing for a supply of water for the city for a period of five years at the rate of $18,000 per year, but further providing for the payment for water theretofore furnished at the same rate. Said contract is authorized by ordinance No. 357 of the ordinances of said city. Pursuant to this contract the payment which had theretofore been received by the water company amounting to $18,000 per year was set aside, and an action was begun in the federal court by James H. Mills, receiver, against the city to recover for water furnished between the 15th day of January, 1895, and the 15th day of July, 1897, at the rate of $18,000 per year. In this action judgment was rendered on Dec. 1, 1897, in favor of said receiver for the sum of $31,210, which was the amount due on July 31, 1897, at the rate of $18,000 per year, less certain credits therefore given on account. The payment of this judgment was refused and became necessary to apply for a writ of mandamus against the city to enforce payment. In the proceedings instituted in the federal court to obtain such a writ of mandamus judgment was rendered awarding the writ, and an appeal was taken by the city to the circuit court of appeals where the judgement was affirmed. Thereupon this judgment was paid.

Contract Repudiated.

"After the passage and approval of ordinance No. 357 payments were made according to the terms of the said ordinance until the month of July, 1898, when the contract was repudiated, since which time not a dollar has been paid by the city for water supplied for fire, sewerage and other purposes. An effort was made to compel payment by the city according to the contract evidenced by excess of the limit provided by the legislature of the state. Since the decision of the supreme court actions have been begun and are now pending in the federal court to recover from the city for water supplied since May 1, 1898.

"On the first day of April, 1899, the successor of the Helena Consolidated Water Works company as the water company, assumed the control and management of and since said time has operated the water plant and system formerly operated by the Helena Consolidated Water company.

"You are now notified that unless payment is made for water furnished during the month of June, 1899, at the rate of $18,000 per year, and for each month thereafter at the same rate, the the supply of the city for fire and sewerage purposes will be discontinued."

Mayor Edwards made the following statement in reference to the demand of the water company:

"As to the statement of the company concerning the value of the water being estimated at $24,000 a year, I will say that such is not the case. The reasonable value of the water has never been estimated. The city is and has been at all times willing to have the reasonable value estimated by a jury. At the time the reasonable value of the water was alleged to be worth $24,000 at $24 000 the city was denied its right to trial by jury. Judge Blake, when on the bench, insisted that both sides had waived a jury. When he took this position the city counsel, Sanders & McIntyre, immediately left the courtroom and left City Attorney Bullard alone to preserve such rights in the case as would justify an appeal. The trial was proceeded with and Judge Blake gave to the water company all it asked for—that is, $24,000 a year. Thereafter, however, the judgment was vacated, the consideration being that the city consent to judgment in favor of the water company at the rate of $18 000 a year and accept a contract for the same value. This was done, and the contract has since been nullified. This is the way the alleged value of $24,000 a year was fixed, although it does not appear that way in the complaint.

Merely a "Bluff."

"As to forcing the city to pay at the rate of $18,000 a year, or $1,500 a month, or discontinuing the supply, I will say that the effort was made by the company in 1895 through mandamus proceedings to compel the city to enter into a contract. In this case the late Justice Horace R. Buck held that the water company must furnish the city with water from month to month at a reasonable value, regardless of a contract. From this decision no appeal was ever taken. It therefore appears that the effort was merely a repetition of the former one and probably brought for the purpose of furnishing its friends with a little fuel to be used before the Business Men's association. In my opinion the threat is merely a 'bluff.'

"The franchise of the company provides that it shall sell water to all persons, bodies or corporations in the city desiring to purchase the same, and to the city for fire, sewerage and other purposes, in case the city desires to purchase the same. The franchise also provides water rates, and the city, being a consumer of more than 4,000 gallons daily, is undoubtedly entitled to the rate of 20 cents per 1,000 gallons, which is the maximum charge.

"Under the law the bills must be presented duly itemized and sworn to. The city has demanded from the water company a bill of particulars—that is, a duly itemized bill showing the amount of water used, for what purpose and at what rate. The water company thus far has declined presenting a bill for water furnished to the city for fire and sewerage and all other purposes at $1,500 a month. The water used by the city can be measured, and is alleged to have reached the amount at the rate of 20 cents per 1,000 gallons would not exceed $1,500 per month. The city has entered and tendered the company $500 a month, and when all the facts in connection with the case are presented to a jury, I am satisfied that the rate will be fixed within the tender."

The new suit brought by the water company to-day against the city is supplementary to that now pending. The old suit is for $31,210, water furnished from May 1, 1895, to April 1, 1901. The new suit is for $21,000 for water furnished from April 1, 1901, to March 31, 1902, for which an itemized bill is alleged to have been filed with the city clerk April 1 last; also for water furnished in April and May last. As a basis for the claim the passing of an ordinance granting a franchise to George H. Wooldridge in 1890 is alleged. The company claims to be his successor, and to have ever since supplied the city with water. A copy of the Wooldridge franchise is filed with the complaint.

The question of reasonable value, which is the main point at issue since the decision of 1896 was declared invalid by the supreme court, will be decided by the determination of the suits now pending in the federal court. One of these is to enjoin the city from building a plant in competition with that of the company, and in this a temporary injunction has been issued, forbidding the city to construct a plant for other than municipal purposes. The other suits are those mentioned for $52 500 and $21,000 respectively, in payment for water furnished. All three probably will come up when Judge Knowles convenes court on Aug. 20 after the summer vacation. Two other suits will be tried before a jury, which may then, for the first time, fix the reasonable value of the water supply.