

Decision No. 12414.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

GROVELAND WATER USERS ASSOCIATION,)
Plaintiff,)

vs.

Case No. 1742.

YOSEMITE POWER COMPANY,)
a corporation,)
Defendant.)

Rowan Hardin, for complainant.

Charles S. Wheeler and Charles S. Wheeler, Jr.,
by Charles S. Wheeler, and J. B.
Curtin, for defendant.

BY THE COMMISSION:

O P I N I O N

This is a complaint by an association of land owners in Groveland and vicinity, Tuolumne County, which alleges in effect:

That defendant is a California corporation and is the owner of a ditch, commonly known as the Golden Rock Water Ditch, having a capacity of 3000 miner's inches, diverting water from the South Fork of the Tuolumne River and conveying the same in a westerly direction to a point between the towns of Groveland and Big Oak Flat;

That for more than twenty years this ditch and the waters diverted thereby have been used in the so-called Groveland Section of Tuolumne County for irrigation, do-

mestic and mining purposes, and that such use is the only beneficial use heretofore made of the ditch and the waters diverted thereby;

That the total area of good agricultural lands under the present ditch system, or possible extensions thereof, and within the area heretofore supplied with water from this ditch, is approximately 8000 acres, of which at least 2561 acres in the Groveland Section are now ready for irrigation and whose owners are willing to pay a reasonable charge for such waters as are required for the irrigation of the lands;

That only a small quantity of water has been run through the ditch system during the past two years, and that demand has been made upon defendant to supply water for irrigation, domestic and mining use in the Groveland Section but that defendant has refused to supply water for such purposes, claiming that it intends to use the water entirely for the generation of hydro-electric power;

That there are no other water systems in this vicinity from which complainant can secure water, and that the use thereof for power purposes will entirely deprive complainant of water to which these lands are entitled;

That defendant's ditch system and the flumes thereon are in poor condition and in need of repair, and that the estimated cost of such repairs is approximately \$12,000.

That complainant has subscribed \$9,260 in cash and \$3,325 in the form of labor, and tenders the same to defendant for use in making the necessary repairs to the system.

Complainant therefore asks that the Commission find that the land owners in the Groveland Section are entitled to all the waters of the South Fork of the Tuolumne River which are required for irrigation, domestic and mining use on their lands, and

that defendant be required to deliver such waters from its ditch system. Request is also made that, if defendant is not in financial condition to make the necessary repairs to its ditch system, an order be made authorizing complainant to advance the necessary funds upon such terms and conditions as are equitable.

Defendant's answer to the foregoing complaint constitutes a general denial thereof, and in addition contains the following allegations:

That the Golden Rock Ditch was originally constructed for mining purposes and that the use of water for such purposes had largely or entirely ceased when, in the year 1905 or thereabouts, defendant acquired the ditch and water rights appurtenant thereto for the purpose of developing hydro-electric energy;

That pending the utilization of the property for power purposes defendant has at times in the past carried water through its ditch and permitted persons along its route to use water for irrigation, domestic and mining purposes, but upon the distinct understanding that such use would not be determinative of any continuing right thereto, but could be terminated at any time;

That the ditch and the water rights pertaining thereto have never been dedicated to public use, nor is defendant a public utility;

That the use of any water through defendant's ditch by complainant for the uses desired would entirely prevent the use of water for the development of hydro-electric power by defendant, and would prevent the carrying out of the plans and objects for which defendant was incorporated;

That the cost of putting the ditch and flumes in such condition as would be required for supplying water as re-

quested by complainant would be greatly in excess of \$12,000;

That the Golden Rock Ditch is not the only source of water supply available to complainant but that there are numerous springs in the Groveland Section which will furnish an adequate water supply for irrigation purposes.

Subsequent to the filing of the complaint and defendant's answer thereto the Commission's Hydraulic Division made an investigation of the matters complained of and prepared a report thereon. Later, public hearings were held at Groveland before Examiner Satterwhite and the matter is now ready for decision.

This ditch system consists of a diversion ditch and a main ditch. The diversion ditch extends from the Middle Fork of the Tuolumne River to the headwaters of Ackerson Creek and has a capacity of approximately 25 cubic feet per second and a length of about two miles. It consists of an earth canal and some timber flume, and diverts the water of the Middle Fork into the South Fork of the Tuolumne River and increases the possible diversion into the main ditch, which consists of earth canal, timber flume, and steel siphons, having a total length of approximately 40 miles and a capacity of about 75 cubic feet per second at its upper end. The location of the ditch is in accordance with the customary practice for old mining ditches and follows all draws and ravines. As a consequence the total length is greatly in excess of the length of modern ditches in similar locations, which make use of siphons or flumes to shorten distance. The ditch system will require extensive cleaning and repairs in order to convey water without excessive loss in transit. A branch ditch, built to convey water to the Kanaka and Hoffman mining claims, has not been used since 1909 and has since deteriorated to such an extent that it is now in very poor con-

dition. At a point between the towns of Groveland and Big Oak Flat the main ditch divides into several laterals which originally carried water to the Longfellow Mine, to Deer Flat, to the Priest Section, to Moccasin Creek, to Penon Blanca, and to Coulterville. Use of water on these ditches, except those to the Longfellow Mine and to Deer Flat, has ceased for many years and the ditches are in very poor condition.

There are approximately 16,000 acres of land lying at elevations sufficiently low to permit theoretically of irrigation from this ditch system. A large portion of the land is, however, so steep, rough, or so badly cut and gullied by mining operations as to make its use for agricultural purposes a practical impossibility. Probably the maximum area capable of successful irrigation does not exceed 7,000 acres. Owing to the rough character of the district the irrigable lands do not generally occur in large bodies but are somewhat scattered, a characteristic which will make the distribution of water more expensive than it would be in a district composed of lands not so rough as those found in this section. The irrigable lands are in the main well adapted to the production of fruit and other crops grown in the foothill districts of the northern part of the State. A large part of the district is covered with a heavy growth of timber and brush which will require time and a considerable expenditure of money to clear so that the land can be put into crop.

In 1852 the first locations for water were filed and in 1856 various holders of water rights and locations on the Tuolumne River incorporated under the name of The Golden Rock Water Company for the purpose of constructing canals, flumes, and other works for furnishing a supply of water from the Middle and

South Forks of the Tuolumne River and other streams, to the territory between the Merced and Tuolumne Rivers, for mining, agricultural, mechanical and other purposes.

Construction of the ditch system was commenced in 1856 and was completed in 1858 at a cost in excess of \$150,000. In 1860 water was being supplied to miners in the vicinity of Big Oak Flat and Moccasin Creek. In 1867 The Golden Rock Water Company transferred all rights and property to Erwin Davis and G. A. Conrad, and thereafter the property was transferred on various occasions for nominal considerations and several sheriffs' sales were made to satisfy judgments against the owners.

In 1874 Caleb Dorsey purchased the ditch system and two mining claims for \$5,000, and leased the ditch to one Rocco, who replaced the flumes at the upper end of the ditch, which, prior to the purchase by Dorsey, had been burned or had fallen into a state of disrepair. Rocco also replaced some flumes with siphons and supplied water to miners along the ditch as far as Penon Blanca and Coulterville. In 1879 or 1880 Dorsey resumed control of the property and operation of the ditch was discontinued.

From 1880 to 1895 the property changed hands a number of times and several sheriffs' sales occurred. In 1890 the ditch and two mining claims sold for \$1,251.20. Practically no use was made of the property from 1880 to 1902, when the upper twelve miles of the ditch were used to convey water for gravel mining operations near Buck Meadows, but this use was soon discontinued and the ditch was practically abandoned until 1906, when it was cleaned and repaired by the Big Creek Gold Mining Company, which had purchased the ditch and water rights in 1905 for \$75,000, and water was conveyed to Deer Flat for mining purposes.

In 1908 the property was acquired by the Tuolumne Power Company, which in 1911 sold the system to Yosemite Power Company, incorporated in 1910 for the purpose of acquiring the properties of Tuolumne River Power Company, Tuolumne Power and Light Company and La Grange Water and Power Company. In 1917 the La Grange Water and Power Company's plant was sold to Sierra and San Francisco Power Company.

On October 16, 1918, Yosemite Power Company entered into an agreement with the City of San Francisco which permitted the city to take possession of and operate the Golden Rock Ditch for a period of three years, and to use such water as was required for construction purposes on the Hetch Hetchy project, reserving only such water as was required for domestic use on the Peri Ranch, owned by Yosemite Power Company. In accordance with this agreement the City of San Francisco operated the ditch and at the expiration of the three-year term continued to use the ditch and the water conveyed therein for construction purposes.

It is evident that the operation of this ditch system, from its very beginning has been intermittent and that no water has been conveyed therein for long periods of time. The exact dates and duration of these periods of disuse cannot, however, be accurately determined. It is clear that the ditch was idle from about 1870 to 1874, a period of four years, except for some water which may have been used for mining purposes on the upper twelve miles of the main ditch. It is also evident that the ditch was not used from 1879 or 1880 to 1906, except for some deliveries of water on the upper end, and that during this period no water whatever was delivered to the Groveland, Big Oak Flat or Deer Flat Sections.

Prior to 1906 it appears that the water was used almost ex-

clusively for mining purposes, agricultural and domestic use not being permitted except in rare instances and in connection with mining activities.

At various times subsequent to 1906 water was run down the ditch and sold for mining and agricultural purposes. It is claimed by defendant that such sales were with the understanding that no continuing rights could be acquired thereby and that such use of water could be discontinued at any time. Complainant asserts, however, that no restrictions of any kind were placed upon the use of water.

Since the City of San Francisco commenced operation of the ditch practically no deliveries of water for agricultural purposes have been made.

It is evident that the operation of this property, from its very inception, has resulted in nothing but financial embarrassment to its owners.

Both the Middle and the South Forks of the Tuolumne River have all the characteristics of the typical western mountain streams, which produce heavy runoff in May and June and diminish to a very low flow in August and September when the water is most urgently required for irrigation purposes. This ditch system has no provisions for storage of water and the evidence indicates that the construction of storage reservoirs, without which only a very small acreage can be assured of a full supply of water, would not only be extremely costly but would undoubtedly involve the owners of the property in extensive litigation with the Turlock and Modesto Irrigation Districts.

The evidence presented at the hearing indicates that the cost of placing the ditch system in proper condition to convey water without undue loss in transit would be at least \$27,600; that the annual maintenance and operation expense would

amount to \$11,800; and that \$1,000 should be allowed annually to care for depreciation of the property. Yearly revenues, which should be earned to equal annual charges based upon the foregoing items, would be approximately \$15,000, or more than \$53 per acre for the 279 acres now in orchard or crop. This is undoubtedly more than the service is worth to the consumer.

There were filed at the hearing statements from prospective users of water which showed an aggregate acreage which would be irrigated, if a water supply were available, of 2541 acres. The testimony indicates, however, that unless storage reservoirs are constructed there is not available a sufficient supply of water for the irrigation of this acreage and that in several years only a very few hundred acres could be furnished a full supply of water. The evidence also indicates that in the period from 1911 to 1920, inclusive, there would have been sufficient stream flow to permit of a full supply for the irrigation of 1000 acres in only five years of the ten.

These statements also indicated that at the present rate of 15 cents per miner's inch per 24 hours the amount of water which would be used for irrigation purposes was 33050 inch days, which would be equivalent to a revenue of \$4,957.50 per year, or \$6,842.50 less than the estimated maintenance and operation expense.

It is evident that the area of land under this ditch system which could be furnished a full supply of water is limited, and could not afford to pay the cost of furnishing the supply, also that the construction of storage reservoirs to increase the area which could be irrigated would not only greatly increase the investment upon which consumers would have to pay a return but would in addition result in extensive and costly litigation.

Upon the question as to whether or not there was a dedication

of the water supply to public use the record is conflicting and in some particulars not entirely clear. It appears that although the original owners of the system incorporated in 1856 for the purpose of constructing a canal system for furnishing water for mining, agricultural, mechanical and other purposes, the use of such water as was actually diverted into the ditch was confined almost entirely to mining operations until 1906, and that such irrigation use as occurred, if any, was entirely incidental and subordinate to mining operations.

It is admitted by defendant that subsequent to 1906 water was delivered and sold for irrigation use in varying amounts depending solely upon the available water supply and the uncertain demands of consumers. These sales were relatively small in amount as is indicated by the fact that during the period from 1911 to 1918 inclusive, the average revenue from the sale of water for both mining and agricultural purposes was only \$734 per year; the maximum year being \$1,436 and the minimum \$286. Defendant asserts that such sales were made with the distinct understanding that they would in no way be determinative of a continuing right and could be discontinued at any time. Complainant on the other hand contends that such is not the case and that no understanding of such a nature existed.

The primary and only object of Yosemite Power Company was unquestionably the generation and sale of hydro-electric energy, although some sales of water for irrigation were admittedly made for accommodation purposes. There was submitted in evidence at the hearing an affidavit made April 21, 1913, by Lester R. Wiley, President of Yosemite Power Company, and filed in the office of the Supervisor, United States Forest Service, Stanislaus National Forest, Sonora, California, to the effect that the company "proposed" to deliver through its ditch at least 3,000 inches of

water for the purpose of irrigating lands under the ditch. A study of this affidavit, however, convinces us that it was made for a purpose connected with the proposed withdrawal of land from the National Forest area for homestead purposes and little or no weight can be given it as indicative of intention to dedicate water for public use generally.

There was some evidence to the effect that in 1918 defendant attempted to obtain from the water users in the vicinity agreements to release the company from supplying water to them at any time in the future that it saw fit. There was however no evidence to show that the attempt to secure these releases was anything other than an endeavor to settle in an amicable manner a controversy between defendant and the land owners along the ditch.

As has been previously stated, the evidence regarding dedication to the general public for irrigation purposes of the waters diverted by this ditch system is extremely contradictory in character, and for that reason very careful consideration has been given to all material factors affecting a determination in the matter. Under the circumstances we are convinced there has been no dedication of water to public use. It also appears, under the conditions of water supply and the probable cost of rendering service, that the delivery of water for irrigation use is an economic and practical impossibility.

The Commission is deeply impressed with the desires of the residents of the Groveland Section to develop the country through the application of water to the agricultural lands in the vicinity, but cannot disregard the legal and economic aspects of the case, and a dismissal of the complaint is unavoidable.

O R D E R

Groveland Water Users Association having made complaint against Yosemite Power Company, a corporation, as entitled above, public hearings having been held thereon, briefs having been filed, the matter having been submitted, and the Commission being now fully informed in the matter,

It is Hereby Found as a Fact that Yosemite Power Company, a corporation, is not a public utility, subject to the jurisdiction of this Commission, and that under present water supply and operating conditions, the irrigation of lands from the ditch system of defendant herein is an economic impossibility.

And basing the order upon the foregoing finding of fact and upon the statements of fact contained in the preceding order,

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

Dated at San Francisco, California, this 27th day of July, 1923.

O. L. Sennels

H. K. B. B. B. B. B.

Irving Martin

Ernest S. S.

J. H. H. H. H.
Commissioners.