

Decision No. 13460.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

S. M. CALL,

Complainant,

vs.

EXCELSIOR WATER & MINING COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 1944.

Ray Manwell by Harry Encell, for complainant,

Devlin & Brookman by Douglas Brookman, for
defendant.

BY THE COMMISSION:

O P I N I O N

This is a proceeding brought by S. M. Call, a farmer, against the Excelsior Water and Mining Company, now the Excelsior Water and Power Company, which serves water for irrigation and industrial purposes in Nevada and Yuba Counties. The complaint alleges that the company has at various times refused to furnish irrigation water on a season basis; that during the 1923 irrigating season complainant applied for irrigation water and was refused service at the beginning of the season, and when the application was later accepted complainant was compelled to become liable for the desired quantity of water for the entire season; that the company's refusal to furnish water in 1923 caused com-

plainant untold damage; that the company has an abundant supply of water for all purposes and that water was running to waste at the time the complaint was filed. Wherefore the Commission is asked to determine whether a public utility water company can charge for water that it does not furnish, and that such rules and regulations be established as shall be proper in the premises.

The company in its answer denies that it refused complainant irrigation water except as it was required to do so under its rules and regulation filed with this Commission; denies that complainant suffered any damage by reason of the company's refusal to furnish irrigation water; denies that it has ever refused complainant irrigation water except and only when complainant failed to comply with the provisions of its rules and regulations; alleges that the matters complained of have all been informally presented and determined by the Commission; and asks that the complaint be dismissed.

A hearing in this proceeding was held in San Francisco before Examiner Satterwhite, after all interested parties had been notified and given an opportunity to appear and be heard.

At the hearing it was stipulated that the complaint should be directed against the Excelsior Water and Power Company instead of the Excelsior Water and Mining Company, which was the former name of this corporation.

It appears that complainant made application for irrigation water at the beginning of the 1923 irrigation season but that the application was not accepted by the company for the reason that complainant was delinquent in the payment of the preceding season's water charges. This delinquency was the result of a dispute between complainant and the company over the payment of 1922 season water bills for reasons similar to

those set out in the present complaint. The disputed amount was not deposited with the Commission until the end of June and water was delivered in the early part of July after regular application had been made for same. At the end of the season the company billed complainant for water for the entire season, which brought about the filing of the complaint in this proceeding.

The company contends that it could not do otherwise than charge complainant for the entire season, as the rates in effect provide only for the sale of water on a season basis. The company showed however that complainant was given an opportunity to make regular application for service at the beginning of the season and that he could have removed the delinquency charge at that time by depositing the amount in dispute with this Commission and thereby obtain water for the entire season.

This is a case in which the matters complained of are covered by the rules and regulations of the company. These rules have been accepted for filing by the Commission and appear reasonable. They provide for the discontinuance of service after a thirty-day notice for non-payment of water charges, and further provide that service will not be restored until the amount due is either paid or deposited in full with the Railroad Commission. Complainant had knowledge of the season rate, and was also familiar with the rules and regulations and could have avoided making demands for water so late in the season. To permit complainant or other consumers to defer their demands for water until the middle of the irrigation season would defeat the purpose of the season rate.

The season rate was established for the purpose of

promoting a more uniform use of water throughout the season, thereby avoiding an excessive use during the hot summer months when the water supply is comparatively low, and a corresponding period of non-use in the early spring when water is plentiful. In fact it was testified that the company's ditches did not have sufficient capacity to deliver the quantity of water that would be required to supply the consumers if they should all request water at one time. However, it was testified by complainant and admitted by the company that water is sometimes wasted during the summer months, when it possibly could be used by the consumers if they were permitted to purchase it. In order to provide for the sale and use of excess water it was suggested at the hearing that the company make application to this Commission for authority to file a rate covering the sale of water on demand during the irrigation season when excess water is available. Since the submission of the matter such a rate has been filed and accepted by the Commission.

A careful consideration of all the evidence submitted indicates that the complaint should be dismissed.

O R D E R

Complaint having been made to this Commission by S. M. Call against the Excelsior Water and Power Company, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully informed in the matter,

IT IS HEREBY ORDERED that said complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 23rd day of April, 1924.

C. Leary

H. B. Bondage

Dwight Mastin

J. H. Whitting
Commissioners.