

Decision No. 14365.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

**CONFIDENTIAL**

In the Matter of the Application of )  
EAST SIDE CANAL AND IRRIGATION COMPANY )  
a corporation, in re service and rates )  
in 1924. )

Application No. 10486.

G. J. Hatfield and F. B. Wood, for applicant.

WHITTLESEY, Commissioner:

O P I N I O N

This is an application by East Side Canal and Irrigation Company, a public utility furnishing water for irrigation in and in the vicinity of Stevinson, Merced County.

Applicant alleges that its property consists of a canal approximately twenty-one miles in length, together with the appurtenant and necessary structures and reservoirs for distributing irrigation water for agricultural purposes, and claims the right to divert 500 cubic feet of water per second from the San Joaquin River when such amount is flowing therein, subject to certain riparian and prior appropriation rights above the point of intake. It is also alleged that owing to the extreme drought and lack of rainfall no water has flowed in the San Joaquin River at or near the point of diversion of the system during the entire irrigation season of 1924, and that as a result a number of water users who have paid in advance for service have received no water.

It is further alleged that during the irrigation season

of 1924 the company obtained a limited supply of water from Bear Creek, a small stream which crosses the main canal at a point several miles below the point of diversion from the San Joaquin River and from which source an occasional supplemental supply of water is obtained, and that by this means the company was able to supply a portion of its consumers with water for a single irrigation and to certain other consumers sufficient water for a partial irrigation of their lands.

In view of the fact that the practices of this company require the payment for service to be made in advance of the irrigation season and that the cost of operation has been the same as it would have been had an adequate supply of water been available, applicant alleges that it should not be held responsible or accountable for the lack or depletion of water supply wholly beyond its control, and therefore requests the Railroad Commission to determine its rights and obligations in the matter of the disposition of the moneys collected for irrigation service for the season of 1924.

A public hearing in the above entitled proceeding was held at Newman, Stanislaus County, after all interested parties had been duly notified and given an opportunity to be present and be heard.

The schedule of rates at present in effect on this system was established by the Railroad Commission in Decision No. 6274, decided April 17, 1919, and is as follows:

FLAT

Per acre per annum for water delivered for irrigation of lands at turn-outs provided along the banks of its main canal and the Collier Extension of same, and payable on or before February first, for use during the ensuing year. . . . \$2.00

From the evidence presented it appears that the San Joaquin River in the vicinity of the main diversion of this system, with the exception of two days has been dry since the middle of March of this year, and as a result there has been no water available at the intake of the canal during the entire irrigation season. Sixty-nine consumers however received one irrigation or partial irrigation from water coming into the main canal from Bear Creek. The remaining one hundred and twenty-one consumers received no irrigation water whatsoever.

It is the contention of the company that the costs of management, operation and maintenance of its irrigation system have been practically the same as though an adequate supply of water had been available and normal service rendered its consumers and that as the failure of supply can be attributed only to the excessively dry year, a matter wholly beyond its control, the company will suffer very severe financial hardship if the revenues collected for this season must be returned to the consumers. The water users however who did not receive water at any time during the year feel that the money advanced by them at the beginning of the season for irrigation service should be refunded by the company, or at least applied as a credit to their accounts for service to be rendered during the season of 1925. Those consumers who received sufficient water for one irrigation, or a partial irrigation, consider that they are at least entitled to a refund of part of the money which they have advanced for service, or to have such amounts credited to their accounts as above.

The schedule of rates as fixed by the Commission specifically states that the charge per acre of \$2.00 is for "water delivered". It is clear therefore that those water users who received no water in return for their prepayment of service are entitled either to a refund of the amounts so paid or credit to that

extent for future water deliveries. It is also equally clear that in the case of those consumers who received only a part of their normal water deliveries, the company is entitled in all fairness to receive some compensation for such water as was delivered, and such consumers are entitled to have returned to them by way of credit for future use or otherwise, the value of the difference between their usual deliveries and the quantities actually received.

It should be clearly understood that any irrigation system operating with such limited storage facilities as this is subject to a considerable uncertainty of water supply resulting from the fluctuations in rainfall and stream flow from year to year, and for that reason obligates itself only to furnish to its consumers such water as may be available at its points of diversion. Years of limited supply therefore must be expected and under ordinary circumstances variations in water deliveries resulting from such causes would probably not be subject to general adjustment. However, conditions on this system throughout the entire irrigation season of 1924 were so abnormal and extreme that the majority of users received no water at all and those who were able to obtain water unfortunately did not secure a sufficient quantity to be of much benefit and were not able to mature their crops.

While the Commission fully recognizes the fact that the refunding of this money will work a considerable financial hardship upon the utility, the additional fact must not be lost sight of that the great majority of the water users have also suffered very severe and disastrous losses through their failure to obtain water to irrigate their crops.

After a careful consideration of the evidence presented

in this matter it appears that it will be most equitable to all concerned to authorize the applicant herein to refund the amounts paid for irrigation water this season by crediting such sums to the respective accounts of those consumers for the irrigation season of 1925 as set out in the following order.

O R D E R

East Side Canal and Irrigation Company, a corporation, having made application to this Commission asking for a determination of its rights and obligations in regard to moneys collected for the season of 1924 for irrigation service which it was unable wholly or in part to deliver to its consumers, a public hearing having been held thereon, the matter having been submitted, and the Commission being now fully informed thereon, and it appearing that East Side Canal and Irrigation Company, a corporation, has failed completely in many cases and to a large degree in others, to deliver water for irrigation purposes during the season of 1924 to its water users from whom it has collected the charges for service in advance of deliveries,

IT IS HEREBY ORDERED that East Side Canal and Irrigation Company be and it is hereby authorized and directed to credit to those consumers who paid for irrigation water to be delivered during the season of 1924 and received no water during that season, the amounts so paid, the same to be applied on irrigation water to be delivered during the season of 1925; and to charge those consumers who received irrigation water from Bear Creek in the proportion that the water received bears to the quantity of water which would have been delivered to them from the system under average conditions of supply, and shall credit the amounts remaining, if

any, to the respective accounts of those consumers to apply on irrigation water to be delivered during the season of 1925.

IT IS HEREBY FURTHER ORDERED that in case any of the consumers entitled to credit as ordered above, do not receive irrigation service from the East Side Canal and Irrigation Company during the coming irrigation season of 1925, said company shall upon demand of such consumer or consumers refund the amounts due, on or before the first day of November, 1925.

IT IS HEREBY FURTHER ORDERED that the East Side Canal and Irrigation Company serve or cause to be served a notice setting forth the provisions of this order upon each consumer affected thereby.

The effective date of this order is hereby fixed as December 22, 1924.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of December, 1924.

Clarence

Dwight Martin  
Egerton Shore

J. H. Whittier  
Commissioners.