

ORIGINAL

Decision No. 20040

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
 EAST SIDE CANAL & IRRIGATION COMPANY, a
 corporation, JAMES J. STEVINSON, a cor-
 poration, SAN JOAQUIN RIVER WATER STORAGE
 DISTRICT, a public corporation, SAN JOA-
 QUIN & KINGS RIVER CANAL & IRRIGATION
 COMPANY, INCORPORATED, a corporation,
 FIREBAUGH CANAL COMPANY, a corporation,
 GRAVELLY FORD CANAL COMPANY, a corpora-
 tion, SAN LUIS CANAL COMPANY, a corpora-
 tion, SANTA RITA CANAL COMPANY, a cor-
 poration, and MILLER & LUX INCORPORATED,
 a corporation, COLUMBIA CANAL COMPANY,
 a corporation, for an order authorizing
 the transfer and sale of property.

Application No. 14705.

Fred B. Wood and Geo. J. Hatfield, for East Side Canal and
 Irrigation Company, a corporation, and
 James J. Stevinson, a corporation.

W.A. Sutherland, for San Joaquin River Water Storage District.

J.E. Wooley, for San Joaquin and Kings River Canal and Irri-
 gation Company,
 Firebaugh Canal Co.,
 Gravelly Ford Canal Co.,
 Santa Rita Canal Co.,
 Miller and Lux, Inc.,
 San Luis Canal Co., and
 Columbia Canal Co.

G.B. Hjelm, for Sara B. Collier, et al., and Joe Steiner,
 et al., Protestants.

LOUTTIT, COMMISSIONER:

O P I N I O N

In this proceeding, East Side Canal and Irrigation Com-
 pany, a corporation, engaged in the public utility business of
 selling and distributing water for irrigation purposes in
 Merced County, asks authority to transfer its properties to the
 San Joaquin River Water Storage District, a public corporation,
 which joins in the application. The consideration which said

district proposes to pay to the canal company for its irrigation system and appurtenant rights and interests is the sum of \$350,000.

The San Joaquin River Water Storage District was duly formed and organized under and by virtue of the laws of the State of California and embraces a plan providing for the comprehensive development of water for storage, generation of power, irrigation and drainage within an area containing approximately 550,000 acres of land lying in the San Joaquin River Valley. The project contemplates, in part, the acquisition of certain existing distributing agencies, including irrigation district systems and public utility properties, together with certain of their water rights, canals and appurtenant structures. Authority has already been granted the district by this Commission to acquire the public utility properties of the San Joaquin and Kings River Canal and Irrigation Company--Decision No. 19376, decided February 17, 1928.

Public hearings in this proceeding were held at Merced, after due notice thereof had been given.

Protests against the granting of this application were filed by several consumers, principally upon the grounds that the transfer of the system to the storage district would result in increasing to a prohibitive amount the cost of irrigation waters for the lands served; that the consideration involved in the transfer of the properties is greatly in excess of the reasonable fair value of the property and that the proposed transfer ignored and disregarded the provisions of certain water right, rights of way and/or easement contracts held by certain of the consumers and providing for water service and the charges to be paid therefor.

East Side Canal and Irrigation Company is owned by certain of the stockholders of James J. Stevinson, a corporation, and supplies water, diverted from the San Joaquin River, to an area of approximately twelve thousand acres, together with certain other acreage designated as the "Secondary Area", which, from time to time, has been supplied with surplus water. The company owns or controls about fifty-three miles of canals from which it distributes water through privately-owned laterals to its consumers. The district boundaries include all of the service area of the utility, with the exception of a section known as the "Secondary Area" and another tract containing eleven hundred acres, more or less, only a portion of which is now within the district, as at present constituted. As to those lands within the service area of this utility which are now without the district boundaries and have not as yet waived their rights to water service, the district must assume the same obligations and liabilities to continued service, both at present and in the future, as now impress the existing utility and the owners thereof, subject to payment therefor at reasonable rates and under reasonable conditions and requirements.

In Decision No. 1391, dated March 31, 1914, this Commission fixed and established the service area of the East Side Canal and Irrigation Company and defined the obligations of the utility as to certain areas designated as primary and secondary areas in accordance with their respective priorities to service. Through typographical error in said decision, lands situate in Sections 4, 5 and 6, Township 7 South, Range 9 East, were designated as being entitled to irrigation service from the canals of the utility. The evidence herein shows that said sections should have been designated as being located in Range 10 East.

The grounds of protest in this proceeding are similar to those discussed in Decision No. 19376 wherein the Commission authorized the transfer of the properties and water rights of the San Joaquin and Kings River Canal and Irrigation Company to the same district under practically identical facts and conditions and run principally as to the feasibility of the district plan, the amount of the consideration therefor and the undoubted future increase in the cost of irrigation service under district operation over present charges. In commenting on the protests in said decision, the opinion therein states as follows:

"Under the provisions of the "Water District Act", the duty is imposed and the power conferred upon the proper officials of the district to make determination as to what properties are necessary for the proper functioning of the storage district, the amount that shall be paid therefor and the manner in which the district, after the acquiring of such properties as it deems necessary, shall be operated. The district, through its proper officers, having made this determination, it but remains for the Commission to determine whether or not the utility should be permitted to sell its properties and discontinue service.

The policy of the Commission heretofore has been, in applications of this character, to see either that all consumers, which have theretofore been served by a public utility, when it is transferred to a governmental agency, are either included within the boundaries of the governmental agency or district, or, if not so included, that thereafter service be compelled by the district and protected to the consumer whose lands are excluded from the boundaries of the district."

"In re Southern California Mountain Water Company, to sell, etc., 1 C.R.C. 520."

The facts in the instant proceeding do not warrant any different conclusion or justify any departure from the policy and practice heretofore adopted and followed by the Commission.

The following form of order is suggested.

O R D E R

East Side Canal and Irrigation Company, a corporation,

having made application to this Commission for authority to transfer its properties, rights and interests to San Joaquin River Water Storage District, which joins in the application, public hearings having been held thereon, the matter having been submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that East Side Canal and Irrigation Company, a corporation, be and it is hereby authorized to transfer to the San Joaquin River Water Storage District, a public corporation, for a consideration of Three Hundred and Fifty Thousand Dollars (\$350,000.), its public utility properties, water rights and other interests as more particularly described in the application herein and in Schedule "A" annexed to Exhibit "One", attached thereto, which are made a part of this order by reference, subject, however, to the following further terms and conditions:

1. The authority herein granted shall apply only to such transfer as shall have been made on or before December 31, 1928, and a certified copy of the final agreement or contract of sale, together with a certified copy of the final instrument of conveyance shall be filed with this Commission by the East Side Canal and Irrigation Company, a corporation, within thirty (30) days from the date or dates upon which said instruments are executed.
2. Within thirty (30) days from the date that said East Side Canal and Irrigation Company actually relinquishes control and possession of the property herein authorized to be transferred, it shall file with this Commission a certified statement indicating the date upon which such control and possession were relinquished.
3. The consideration involved in this transfer shall not be urged upon the Railroad Commission or any other public body as a finding of value for rate-fixing or for any purpose other than for the transfer herein authorized.
4. Upon assuming control and possession of the property herein authorized to be transferred, San Joaquin River Water Storage District shall immediately and

thereafter continue in adequate and proper amounts, at reasonable rates and under reasonable conditions and requirements, the water service which East Side Canal and Irrigation Company, a corporation, has obligated itself to supply and furnish as a public utility to all those lands within the present service area of said company which are now without the boundaries of said district and which have not as yet waived to said district their rights to water service, provided, however, that the obligations and liabilities of the district to serve said lands without the boundaries of the district shall be the same as now impress the East Side Canal and Irrigation Company.

The authority herein granted shall become effective twenty (20) days from and after the date hereof.

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 9th day of July, 1928.

Leon A. White
C. Seamy
Emmance
Thos. D. ...
M. J. ...
 Commissioners.