

Decision No. 20576

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Garnet N. Nail, Eva A. Jenkins, Philip McElroy, S.C. Brown and Frank McElroy for an order fixing rates for the use of water for irrigation purposes from Meadow Valley Creek, Plumas County, California, operated as a public utility by A.R. Jacks.

Application No. 14988.

In the Matter of the Investigation upon the Commission's own motion into the practices, rates, rules, regulations and operations of A.R. Jacks supplying water for irrigation purposes from Meadow Valley Creek, Plumas County, California.

Case No. 2610.

M.C. Kerr, for consumers.

A.R. Jacks, in propria persona, for defendant.

BY THE COMMISSION:

O P I N I O N

A.R. Jacks owns and operates a small public utility which serves water for domestic and irrigation purposes in Meadow Valley, Plumas County, California. Several consumers have formally requested the Commission to establish the rates to be charged for the service rendered, alleging that said Jacks has arbitrarily increased the rates each season. In order to be informed as to all phases of the utility's activities, the

Commission instituted an investigation on its own motion into the affairs of this utility.

A public hearing was held in these proceedings before Examiner Rowell at Quincy, Plumas County, and it was stipulated that the matters would be consolidated for hearing and decision.

The water supply for this system is obtained by diversion from Meadow Valley Creek and is distributed through approximately three miles of ditches to the consumers. There are about 160 acres of land in Meadow Valley that are susceptible to irrigation from the system, of which 80 acres are owned by Jacks. The principal crops irrigated are hay and alfalfa, both of which are cut for winter use.

The evidence shows that defendant Jacks has refused to supply water to certain of the former users unless they would sign a written agreement to the effect that the waters to be delivered were conceded to be surplus waters only and that, in the case of a shortage of supply, the rights of the consumer would be secondary in priority to the rights of said Jacks for use upon his own lands. Most of the users refused to sign such an agreement and, as a result, have not received water. The evidence in this proceeding clearly indicates that the waters of this system delivered for irrigation and domestic purposes are wholly and entirely dedicated to the public use and in no sense of the word can any part thereof be considered as surplus waters. This specific point was so determined by the Supreme Court of this State July 26, 1927, in the case of James E. Nail et al. vs. A.R. Jacks and Philip McElroy vs. A.R. Jacks (201 Cal. 662), from which the following extract is taken:

"The trial court found that the appropriation and use of the water in Meadow Valley Creek by defendant and his predecessors was for a private purpose, \*\*\*\*\*".

"(1) The contention of the appellants is that the trial court assumed an erroneous view of the evidence tending to establish the dedication of the water in Meadow Valley Creek to public use, and that the testimony bearing upon the issue of dedication of the water in the creek to a public use is without conflict. From our examination of the record we are of the view that the contention of the appellants is correct. The record is silent as to any positive or competent evidence showing when and how, or by whom, or for what purpose the ditch was constructed and the waters first diverted. The record does show, however, that as far back as 1871 the waters were being used for power, mining and irrigation purposes, the ditch having been constructed and used prior to that time. For many years prior to the closing down of a sawmill operated on the ditch the water was generally used for the irrigation of farm lands in Meadow Valley, for which use a rental was regularly paid. Defendant himself testified that since his earliest recollection the water had "been confined to irrigation by the bulk of the Meadow Valley people." From the testimony of the defendant it also appears that as the ranchers in Meadow Valley increased their clearings they were required to pay him an increased rate for water. The evidence introduced on behalf of the plaintiffs is indubitably to the effect that since 1871, if not before, there was on the part of the owners of the ditch a "holding out" to sell water to any applicant within the area adjacent to the system and within the limits of the supply, and that the defendant and his predecessors have actually sold water to the land owners who applied for the same. (2) The fact, assuming it to be a fact, that the first diversion of the water was for a private purpose is not inconsistent with the theory of a subsequent dedication to a public use. (Traber v. Railroad Com., 183 Cal. 304, 312 (191 Pac.366).) There is nothing in the record to substantiate the claim of the defendant that he distributed water to the other land owners in Meadow Valley only from a surplus after his own requirements were satisfied. The history of the distribution and use of water in the valley does not support such a contention."

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Hereafter, the operator of this utility will be required to supply all those entitled to water service, and who apply therefor, to the limit of the available supply and, in the event of a water shortage, such as may occur from time to time during an abnormally dry season, it should be clearly understood that said

Jacks, as a consumer, is entitled to no greater percentage of the waters available than any of the other water users.

The evidence shows that Jacks has, arbitrarily and without authority, increased the rates charged for irrigation service. In 1925, this rate was 4 cents per 24-hour miner's inch; in 1926, it was increased to 6 cents and in 1928 to 10 cents. The domestic rate has been increased in a similar manner from \$1.50 per month to \$2.00. These increases, together with the attempt to limit the service to surplus water, have resulted in most of the consumers discontinuing the irrigation service.

In addition, the testimony presented herein shows that the owner of this utility has been very inconsiderate and dictatorial in his treatment of the consumers and has, possibly through lack of understanding, failed in practically all cases to deliver the proper amount of water for each miner's inch of irrigation water. The owner of this utility will be required to install such distributing boxes as will provide a reasonably accurate measurement of all irrigation water delivered to his consumers, including his own property, for all such service furnished after the date of the order herein, and said consumers also should be informed as to the method of measurement in order that the past controversies may be eliminated in the future.

Owing to the incomplete records of expenditures and the inaccurate method of delivering the water and making charges for the service rendered, it is extremely difficult to estimate the annual charges or the annual revenues, or to design a rate that will produce an adequate revenue. Mr. Jacks, however, testified at the hearing that he was willing to accept an irrigation rate of 6 cents per twenty-four hour miner's inch and a domestic rate of \$2.00 per month.

Although the consumers claimed that the rate of 6 cents per inch is excessive, the record indicates that with the full amount of water delivered under proper methods of measurement this rate will not be unreasonable. Under the existing conditions and methods of delivery, the \$2.00 domestic rate is more than the service is reasonably worth at this time and will, therefore, be established at \$1.50 per month.

The point was raised as to the rates to be charged to Mrs. Eva A. Jenkins for the irrigation water received from the drainage and seepage arising on the Jacks Ranch. As far as the evidence presented in this connection goes, it appears that this service is not delivered from the main canal system and not a part of the regular public utility service but, on the other hand, is based upon private contractual agreement and is a service which the other consumers are not entitled to demand as a legal right. Under such circumstances, it is apparent that the Commission is without jurisdiction to establish the rates to be charged for this seepage or drainage water.

#### O R D E R

An application having been filed with the Commission as entitled above, the Commission upon its own motion having instituted an investigation into the affairs of the public utility water system owned and operated by A.R. Jacks in and in the vicinity of Meadow Valley in Plumas County, a public hearing having been held thereon, the matters having been submitted and the Commission being now fully advised in the premises,

It is hereby found as a fact that the rates and charges of A.R. Jacks for water delivered to his consumers, in so far as they differ from the rates herein established, are unjust and unreasonable and that the rates herein established are just and

reasonable rates to be charged for the service rendered, and basing its order upon the foregoing findings of fact and upon the statements of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that A.R. Jacks be and he is hereby authorized and directed to file with this Commission, within thirty (30) days from the date of this order, the following schedule of rates to be charged for all service rendered subsequent to December 31, 1928:

RATE SCHEDULE

Domestic Service

Monthly Flat Rate:

Residences-----\$1.50

Irrigation Service

Per 24-hour miner's inch-----\$0.06

(One miner's inch shall be considered the equivalent of one-fortieth (1/40th) of a cubic foot of water per second.)

IT IS HEREBY FURTHER ORDERED that A.R. Jacks be and he is hereby directed to file with the Railroad Commission, within thirty (30) days from the date of this order, rules and regulations to cover the distribution of water to consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of December, 1928.

Leon A. White  
Chairman  
Commissioners.