

Decision No. 22222

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation upon the Commission's own motion into the rules, regulations, contracts, practices and operations, or any of them, of the EAST SIDE CANAL AND IRRIGATION COMPANY, a corporation.

ORIGINAL

Case No. 2720.

George J. Hatfield and Fred B. Wood,
for the East Side Canal and Irrigation Company.

H.K. Vose, for the Highline Ditch Association.

L.A. Miller, for the Goose Neck Ditch Association.

L.J. Jacobson, for the Hotel Ditch Association.

C.W. Austin, for the Stork & Straight Ditch Association.

G.B. Hjelm and J. Baumgart, for the Farm Bureau,
at large, Spillway Ditch, Main Canal and
Collier Extension.

John F. Edminster, by George L. Jeppe, for
Ball Hill Ditch Association.

Sara B. Collier, for herself.

Edson Abel and L.S. King, for California Farm
Bureau Federation, Stevinson Farm Center and
Merced County Farm Bureau, Protestants.

C. Ray Robinson, for General Water Users
Association, Protestant.

DECOTO, COMMISSIONER:

O P I N I O N

This is a proceeding instituted by the Commission on its own motion into the rules, regulations, contracts, practices and operations of the East Side Canal and Irrigation Company, a

corporation, engaged in the business of supplying water for irrigation purposes to an 11,000-acre tract of land in Merced County known as Stevinson Colony, within which tract is located the Town of Stevinson.

Public hearings in this matter were held at Newman.

This investigation was instituted by the Commission to determine what measures should be taken to improve the unsatisfactory service conditions which have existed on this system for the past several years and also to inquire into the advisability of or necessity for changing the present utility service area of this company as heretofore fixed and determined by this Commission through formal order, said company having from time to time represented informally to the Commission that conditions have so changed since the establishment of said service area that modification thereof was and is now imperative and to the public interest.

The East Side Canal and Irrigation Company has appeared before the Railroad Commission in a number of formal proceedings and reference is made in particular to this Commission's Decision No. 1391, dated March 31, 1914, (4 C.R.C. 587) for a more detailed description of this system, its history and methods of operation. Briefly, this canal company was formed and organized by James J. Stevinson who, through the James J. Stevinson Corporation, owned or controlled a large tract of land lying along and adjacent to the San Joaquin and Merced Rivers. There still exists a community of interests in the stock ownership of these two corporations. The Stevinson Colony is a tract of land of approximately 11,000 acres, originally subdivided about the year 1902 and sold off in tracts of five to twenty acres by the Stevinson Corpora-

tion. The water supply, except for the last five years, was obtained entirely from the San Joaquin River by direct diversion. This water is conveyed through the Main Canal, owned and operated by the East Side Canal and Irrigation Company, for a distance of thirty miles to the Stevinson Colony lands where the larger part of the distribution is accomplished through a system of some fifty-one miles of lateral canals or ditches constructed by the Stevinson Corporation, which still claims ownership thereof although said lateral canals are now operated and maintained after a fashion by the water users themselves through five community ditch associations. Since 1925, an additional and more dependable water supply has been obtained and used by the irrigation company from the waste and drainage waters emanating from the Merced Irrigation District.

The utility contends that there is a serious failure and unwillingness on the part of the various ditch associations to cooperate with the utility in the distribution of water with the result that the laterals are not properly cleaned and the structures are frequently allowed to remain in disrepair which, in turn, prevents the quick running of large heads of water, thus producing loss of time and considerable, unnecessary waste of water. It is further charged that the associations' method of lateral operation and control prevents the establishment of more economical methods of service and, through lack of control over the direct distribution of water to the individual consumer, has made it necessary in a large number of cases each year for the company to bring suits in the civil courts to collect the charges due for water service. Although some of the officials of the ditch companies denied that the present dual operating

methods under this canal system were inefficient and wasteful of water, yet the investigation of this Commission in connection with this proceeding and the decisions in former matters involving this utility, as well as the great weight of the evidence herein, clearly indicate that the continued operation under the present ditch associations' practices will effectively block the adoption of much-needed, more efficient water-conserving operating methods. In this connection it should be noted that this identical problem was before this Commission in a previous proceeding involving this utility and in its Decision No. 1755, dated August 27, 1914, (5 C.R.C. 239) it was recommended in the interest of efficiency and economy that the utility take over these same lateral ditches and operate them. The matter was made optional, however, a rate of \$1.00 per acre being established under consumers' operation of the laterals, or \$1.50 per acre under complete company control, the result being that the utility finally elected to have the consumers continue the ditch operation and maintenance as in the past. The above one dollar per acre rate subsequently was increased to two dollars per acre per year in Decision No. 6274, dated the seventeenth day of April, 1919, (16 C.R.C. 635).

This utility can only render proper service through the adoption of new rules and regulations requiring direct application to the company early in advance of the season showing definitely the water requirements and acreage to be irrigated for each consumer, by the establishment of a proper rotation

system of deliveries at intervals of approximately every thirty days and by adopting the further requirement of continuous use of water throughout the entire twenty-four hours except during such periods as surplus waters would make such a requirement unnecessary and unreasonable. Such improved distribution methods will eliminate a large amount of the present waste and loss of water and should make available a water supply for a considerable additional acreage. As such saving is impossible under the present associations' method of distribution, the order herein will direct the utility to take over the entire distribution of water throughout the area served by it. Conditions are such that the lateral canals can be taken over by the utility without the capital expenditure of more than a purely nominal sum of money. However, the maintenance and operation of these lateral ditches will increase the expenses of the utility. At present each ditch association levies and collects assessments from the water users under its lateral ditch covering the costs of distributing the water to the individual consumer and the costs of cleaning the ditches and repairing structures. These assessments vary in the different associations from 25 cents per acre per year to \$1.25, depending largely upon the amount of repairs made and the labor that is actually furnished. Payments of these assessments have been made either in money or in labor, or both. The testimony indicates that systematized maintenance of the laterals by the utility, in conjunction with the operation of its Main Canal, should enable it to perform these duties at a cost less than that now required under the several independent units. The evidence further shows that the company should be able to properly clean the ditches and repair the

structures at a cost of not exceeding 75 cents per acre per year and this amount will be authorized as an additional charge to all consumers now served or to be served in the future through the present association-controlled laterals. Obviously, no change will be made in the existing rate charged to consumers served directly from the Main Canal who use water for the raising of general crops.

The evidence shows that approximately 500 acres of rice have been irrigated annually under this system at the same rate as charged other crops. In view of the fact that this crop requires from three to five times the quantity of water necessary for general crops, it is clear that rice-growers are now obtaining service at a preferential rate as compared to the growers of other crops and that, in order to eliminate this discrimination, a rate for rice-growing should be established more fairly comparable to the quantity of water used. Such a rate for the irrigation of rice will be established in the following order.

The East Side Canal and Irrigation Company claims the adjudicated right to divert seven-eighths of all the waters naturally flowing in the San Joaquin River at its point of diversion up to but not exceeding $245\frac{7}{8}$ second feet of a total flow of 281 second feet, and, with the exception of up-stream riparian rights, recognizes no prior rights to diversion from said river other than the right of the so-called Old Columbia Canal to 120 second feet and the right of the San Joaquin and Kings River Canal and Irrigation Company to 750 second feet. By reason of the fact that water flows into the East Side Canal from sources other than the main diversion, such as sloughs,

creeks, drains, etc., it is impossible to determine from the records of the company the quantity of water actually diverted from the river for any season. Water is required and can be used to advantage for irrigation purposes in this area until the end of October. In actual practice, water from the San Joaquin River is seldom, if ever, available this late in the season, there having been practically none at all throughout the entire season of 1924 and during 1929 the river water was available for a period of ten days only. Although in its testimony the utility stated that during normal years water should be available for direct diversion from the San Joaquin River until the middle of August, yet the evidence also shows that service from this source has never been and is not adequate nor sufficiently dependable to enable the farmer to raise crops successfully without private standby wells. As heretofore stated, for the past five years, or from the season of 1925, water has been received by the East Side Canal and Irrigation Company and delivered to all its consumers from the intercepted drainage or waste waters emanating from and discharged by the Merced Irrigation District. The testimony of Geo. J. Hatfield, who in addition to being General Manager of the canal company is also an official of the James J. Stevinson Corporation, is to the effect that this water belongs solely to the latter corporation and not to the utility which has used these waters temporarily and by permission only. The amount of the supplemental water supply from the district depends entirely upon the operating methods and practices of the district. The estimated quantities of water received from this source in 1929 varied from 65 to 100 second feet but averaged for June 100 second feet

and 75 second feet during July and August.

The evidence shows that, in settlement of certain litigation and claims of the James J. Stevinson Corporation arising out of alleged infringement upon its riparian rights by the Merced Irrigation District, it was agreed by and between these two parties, by contract dated October 22, 1929, that the district would furnish from its drainage or other waters 24,000 acre feet per annum for use of the Stevinson Corporation. These same drainage waters which may be intercepted by the East Side Canal have also been filed upon by agents of the said Stevinson Corporation or by agents acting in behalf of the owners of the lands in the so-called Stevinson Irrigation District comprising solely lands owned by said corporation. By reason of the community of interests existing between the Stevinson Corporation and the canal company, no protest was made by the latter against these filings nor apparently has any attempt whatsoever been made at any time by the company to acquire these rights for itself. Should the Stevinson Corporation at some future time attempt to confine the use of these drainage waters exclusively to its own lands as it contends that it has the legal right so to do, it is obvious that the other consumers of the public utility would be left wholly dependent for water supply upon the direct diversion from the San Joaquin River. This situation has a very direct and important bearing upon the request of the canal company for a modification of its present service area.

The service area of this utility was established by the Railroad Commission at a time when it was anticipated that the entire Stevinson Colony would quickly develop into a well-settled and thriving community, practically all under irrigation, and when conditions on the San Joaquin River appeared more

favorable for an adequate water supply. Changes in the river channel and subsequent litigation over water rights on this river, together with the fact that farming in this colony has not prospered as expected, has greatly altered the situation. Today there exists within the Stevinson Colony large areas of lands sold to colonists that have never at any time been put under irrigation and a very large acreage that has not taken water for any purposes for from five to fifteen years. Manifestly, it is not only uneconomical but also unreasonable to hold water for these lands indefinitely in the future when there is now a demand for the water held for these lands for uses in areas adjacent to but outside the heretofore established zone of service.

The evidence shows that had there been in the past a more dependable water service and water supply, there unquestionably would have been now under irrigation a substantial portion of those lands which at present have not been irrigated for the past fifteen years. Giving consideration to these various matters, it appears proper that the utility should be permitted to serve lands now outside its established service area provided its water supply continues adequate and that, by so doing, it does not interfere with or diminish the supply required by the present consumers within the present service area and provided further that those landowners or tenants within said present area who do not now take water from the utility be given a fair opportunity to become consumers within a reasonable period of time. Three years, including the year 1930, appears a proper period for this purpose. The alteration of this service area obviously should be made contingent upon the continued availabil-

ity to all utility consumers of the intercepted drainage waters now being and since 1925 used by the utility and its consumers.

The following form of order is submitted.

O R D E R

The Commission having instituted an investigation into the affairs of the East Side Canal and Irrigation Company, a corporation, as entitled above, public hearings having been held thereon, the matter having been submitted, the Commission being now fully advised in the premises and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED as follows:

1. That East Side Canal and Irrigation Company be and it is authorized and directed to adopt the measures necessary to acquire control and possession of all lateral distribution canals supplying water for irrigation purposes to its consumers within ninety (90) days from the date of this order and thereupon assume the responsibility and obligation of operating and maintaining said canals in an efficient and proper manner.
2. That East Side Canal and Irrigation Company is hereby authorized and directed to file with this Commission, on or before ninety (90) days from the date of this order, the following rates to apply for all service rendered through said lateral distribution canals, if and when said company assumes control, possession and operation thereof, provided, however, no increased charge over existing rates shall be made for service rendered to consumers served directly from the Main Canal and the Collier Extension of same:

For All General Irrigation Service other than for Rice:

For all general irrigation service other than for rice rendered consumers through lateral distribution canals maintained, controlled and operated by East Side Canal and Irrigation Company per acre per year, payable on or before February first for use during the ensuing year-----\$2.75

For Rice Irrigation:

For all rice irrigation service rendered consumers through lateral distribution canals maintained, controlled and operated by East Side Canal and Irrigation Company per acre per year-----\$8.00

(\$2.00 per acre to accompany application for service and \$6.00 per acre payable on or before July first.)

For all rice irrigation service rendered consumers directly from the Main Canal and the Collier Extension of same per acre per year-----\$7.25

(\$2.00 per acre to accompany application for service and \$5.25 per acre payable on or before July first.)

3. That East Side Canal and Irrigation Company shall file with this Commission, within thirty (30) days from the date of this order, revised rules and regulations governing the distribution of water and its relations with its consumers, said rules and regulations, among other things, to provide for a system of pre-season applications for water, a schedule of water deliveries and distribution by rotation at successive periods of substantially thirty (30) days throughout the season when water is available, said rules and regulations to become effective upon their acceptance for filing by this Commission.
4. That East Side Canal and Irrigation Company is hereby authorized to discontinue further water service to those lands within its present service area which have not been irrigated in whole or in part for any purpose whatsoever during the years 1925 to 1929, inclusive, and whose owners, lessees or occupants do not demand and pay for irrigation service at any time during the years 1930, 1931 and 1932, provided said East Side Canal and Irrigation Company, within ninety (90) days from the date of this order, duly notify in writing at his last known address each landowner within its present established service area of the provisions of this order and of its intention to so discontinue service under the terms thereof, and provided further that said East Side Canal and Irrigation Company publish or cause to be published in a newspaper of general circulation in Merced

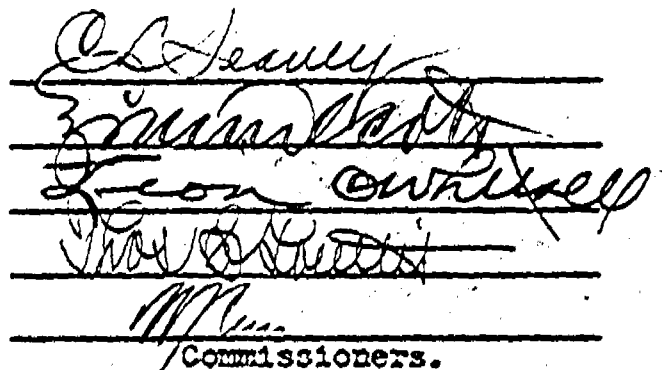
County, at least five times within a period of ninety (90) days from the date of this order, the provisions contained in Paragraph 4 of this order, together with a statement to the effect that said company intends to discontinue service under the terms and conditions as provided herein.

5. That East Side Canal and Irrigation Company shall file with this Commission, within ninety (90) days from the date of this order, a map delineating thereupon the present service area of this utility as heretofore established by this Commission and showing also thereupon by appropriate designation all lands within said service area which have not been irrigated in whole or in part at any time by water furnished by said company during the years 1925 to 1929, inclusive, or any of said years, and said company shall also file with this Commission, within ninety (90) days from the date of this order, a map delineated upon which there shall be the existing service area of said company as now established, together with the boundaries of the service area wherein said company now desires to extend service, said latter service area to be considered established upon written approval of this Commission and to remain so only unless and until the present water supply from the drainage, waste and other waters intercepted by the East Side Canal are no longer made equally available for service to all its public utility consumers, in which event the service area shall thereupon revert to its present status.

For all other purposes, the effective date of this order shall be 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 17th day of March, 1930.



 Commissioners.