

Decision No. 22701.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
A. R. JACKS for an adjustment of
water rates for irrigation and
domestic service supplied by said
A. R. Jacks to certain consumers
through ditch system diverting water
from Meadow Valley Creek, Plumas
County, California.

Application No. 16229.

John J. Dailey, by S. C. Young,
for Applicant.

WHITSELL, COMMISSIONER:

O P I N I O N

In this proceeding A. R. Jacks, who owns a small irrigation utility in Meadow Valley, Plumas County, asks the Commission to adjust the rates charged the consumers for irrigation service.

The application alleges that the revenue derived from the existing rates is not sufficient to equal the operating expenses. The Commission is asked to adjust the rates to provide additional revenue; to establish a service charge for the acreage served; and to declare that one-half only of the appropriated waters of Meadow Valley Creek has been dedicated to the public use and that the remaining one-half has been and now is private water belonging to applicant and appurtenant to his lands.

A public hearing on this matter was held at Quincy after due notice thereof had been given.

The rates now in effect were established by the Commission

in its Decision No. 20576, dated December 13, 1928, (32 C.R.C. 495) and are as follows:

Domestic Service

Monthly Flat Rates:

Residences..... \$1.50

Irrigation Service

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

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

The water supply 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, and of this amount applicant owns and irrigates 80 acres. The principal crops irrigated are hay and alfalfa and grass for pasturage.

A. R. Jacks testified that the estimated original cost of the ditch system, exclusive of water rights, is \$3,615.; that the operating expenses for the year 1929 totalled \$350. and the operating revenues for the same period amounted to but \$152.44. He further testified that the capacity of the main ditch was estimated to be approximately 1,200 miner's inches; that the minimum flow during the summer months varied from 175 to 200 miner's inches and that, owing to the present cost of water, he had only two irrigation consumers that took water during the entire 1929 season.

The consumers testified that the existing rate of water was higher than they could afford to pay; that, owing to the high elevation and general climatic conditions and the fact that the growing season is so short, being on an average of only three months long, the principal crops are hay and grass for pasturage.

The consumers further testified that, because of the extremely gravelly nature of the soil throughout Meadow Valley, irrigation of crops is necessary about every ten days and for these reasons contend that they are unable to pay in excess of \$3.00 or \$3.50 per acre per season.

Wm. Stava, one of the Commission's engineers, presented a report covering an investigation of the utility properties and operating accounts which showed the estimated original cost of the system, including additions to capital during the year of 1929, to be \$3,675. and a depreciation annuity of \$69. computed by the five per cent sinking fund method. The report indicated that the applicant's operating expenses contained approximately \$60. of capital expenditures and that \$158. was expended for repairing the dam which should have been amortized over a period of years. Additional repairs to the dam are necessary, however, and it is estimated that normal annual operating expenses, exclusive of depreciation, will approximate \$250. on the basis of operations for 1929.

Applicant in his petition requests the Commission to determine that not more than one-half of the waters of Meadow Valley Creek appropriated and made available for irrigation and domestic use through his ditch system has ever at any time been dedicated to the public use and that said applicant operates a public utility system with respect to one-half only of said available water supply. Counsel for applicant, in Memorandum of points and authorities submitted in connection with this proceeding, contended that there has been only a partial dedication of applicant's water and water system to the public use and that half thereof is a private water right and appurtenant solely to the lands owned by said applicant by reason of the fact that the service to the other

consumers grew out of the practice of selling surplus waters not needed by applicant for use upon his own lands.

It should be pointed out at this time that in the previous proceedings involving this utility (Application No. 14988 and Case No. 2610) the said Jacks advanced the same claims which are again presented in the instant proceeding. In Decision No. 20576 rendered in connection with the two above mentioned matters, the Commission, in discussing these contentions, stated as follows:

"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 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 Phillip McElroy vs. A. R. Jacks (201 Cal. 668).

* * * * *

"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 water users."

It is sufficient to state that a finding such as urged by counsel for applicant would be, in our opinion, wholly inconsistent with the direct ruling of the California Supreme Court on this very issue, as well as contrary to the said decision of this Commission. In this proceeding, therefore, the Commission will consider operating expenses of the entire system as a whole, together with the revenues receivable from all consumers including waters supplied to the Jacks' ranch.

The evidence shows that no actual measurements have been made of the water diverted or of the water used on the land owned

by Jacks, neither have accurate measurements been made of the water delivered to the few remaining consumers. It is therefore difficult to estimate the probable revenue that should have been derived from the sale of water to the Jacks' lands or to determine the duty of water on any of the lands served. There is no dispute over the fact that the consumers are unable to pay under the existing rates for the extremely large quantities of water necessary to properly mature crops in the gravelly soil. The system is small and is not large enough to be operated as a separate enterprise but must, of necessity, be run in connection with some other business activity and, in fact, has always been so operated since its inception.

Applicant has requested the Commission to readjust the schedule of rates on a basis that will furnish increased revenue and provide a fair and adequate return on the service he is required to supply. It is clear that the large decrease in the use of water by the consumers has been the direct result of their inability to pay under existing rates for the large amount of water required. By permitting the consumers to pay upon a flat rate per acre basis with an option to secure service under a measured basis if they so desire, said flat rate being fixed at an amount which the consumers can afford to pay, it is hoped that the result will be a resumption of the use of water by all former consumers with a corresponding increase in annual revenues. We will therefore establish such a rate structure as outlined above and, in the event the consumers in the future fail to avail themselves of irrigation service to an extent which will provide a net return upon the investment reasonable under the circumstances, applicant may be forced to come to this Commission for authority to discontinue entirely this public utility service. I feel confident, however, that this latter course will not become necessary with its attendant economic

loss through permitting approximately one-half of these much-needed waters to be entirely wasted through lack of beneficial use. I believe that a fair trial of this service under the rates set out below will permit all consumers to avail themselves of irrigation service and at the same time produce revenues which will permit the applicant to continue to render the service without financial loss.

The following form of Order is recommended:

O R D E R

A. R. Jacks having filed an application with this Commission for an adjustment of rates to be charged for irrigation service rendered consumers in Meadow Valley, Plumas County, a public hearing having been held thereon, the matter 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 water service rendered subsequent to the date of this order:

	<u>Domestic Service</u>	
<u>Monthly Flat Rate:</u>		
Residences.....		\$1.50

Irrigation Service

Flat Rate:

Per acre per season..... \$3.00

Measured Rate:

Per miner's inch per 24 hours..... \$0.04

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

The consumer may have the option of receiving service under either the Flat Rate or the Measured Rate.

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 29th day of July, 1930.

Clarence
Emmert
Leon Whaley

Commissioners.