

Decision No. 23136

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
SUTTER-BUTTE CANAL CO. to sell to
RICHVALE IRRIGATION DISTRICT, and of
latter to buy certain property of
Sutter-Butte Canal Co.

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Application No. 16998.

Douglas Brookman and Isaac Frohman,
for Sutter-Butte Canal Company.
George F. Jones, for Richvale
Irrigation District.

SEAVEY, COMMISSIONER:

O P I N I O N

In this proceeding Sutter-Butte Canal Company, a corporation engaged in distributing and selling water for agricultural irrigation purposes in Sutter and Butte Counties, asks for authority to transfer a portion of its distribution system and water rights to the Richvale Irrigation District, a public corporation, which joins in the application.

A public hearing in this matter was held at San Francisco.

The evidence shows that the Richvale Irrigation District was duly organized and exists under and by virtue of the California Irrigation District Act; that the lands within said District comprise an area of approximately 18,000 acres and that there are approximately 15,000 acres of land outside of the District's boundaries which at sometime in the past have received water for irriga-

tion purposes from the Sutter-Butte Canal Company and which may desire water again in the future. During the five-year period last past, of the above 15,000 acres outside the boundaries of the District as at present constituted there has been irrigated each year, practically all for rice culture, an average of 3,000 acres of land.

The District proposes to continue service to the entire area set out above as well as to certain additional lands adjacent thereto and which are irrigable but which have never as yet received water. In connection with the above lands now outside the District and lying within the service area of that part of the system of the Canal Company which it is proposed to transfer to said District, the Board of Directors thereof have assured this Commission that it is willing and anxious to permit any and all of such outside lands to come within the District at any time proper application therefor is made by the owners. Slightly less than 300 acres of the entire area in and outside of the District are now planted to general crops, the remaining acreage being devoted to rice.

An Agreement of Option under date of November 3, 1930, has been entered into by and between Sutter-Butte Canal Company and the Richvale Irrigation District wherein and whereby said Canal Company granted to the District the option and right to purchase and acquire an undivided one-quarter ($\frac{1}{4}$) interest in and to all of its water rights on the Feather River, reserving and excepting, however, said Canal Company's Sunset Pumping Permit, the same being a right to appropriate by pumping from the Feather River 500 second feet of water, acquired under Pumping Permit

No. 688 granted by the Division of Water Rights March 4, 1920; also an undivided one-quarter ($\frac{1}{4}$) interest in and to the Company's main dam and diversion works and other diversion facilities at the Feather River, together with an undivided one-quarter ($\frac{1}{4}$) interest in the Main Canal from said diversion works to the point where the Biggs Lateral takes off of the Main Canal; also an undivided one-half ($\frac{1}{2}$) interest in the Biggs Lateral to the head of that certain lateral known as the Biggs Extension; also all of said Biggs Extension Lateral, together with all the lateral ditches leading from it, including pumps, buildings and other operative property lying within and necessary to serve the lands of the so-called "Richvale Area," which area comprises all lands heretofore served by the Canal Company in this territory, together with certain additional lands, and includes also the lands within the District. The "Richvale Area" is more particularly set forth and described in the option.

This Agreement of Option among other things provides that the Company and the District shall share in maintaining and operating the jointly-owned facilities in proportion to their respective interests and rights therein. The stipulated consideration for the transfer of the properties and rights set forth above is \$750,000, of which \$500,000 is payable in bonds of the District. The remaining \$250,000, specifically designated as the "contract purchase price," is to be paid within twenty (20) years after the exercise of the option with interest at six per cent per annum on the unpaid balance.

As to the service to be rendered to lands in the "Richvale Area" which are now situate outside the District boundaries,

the option agreement provides that said District hereafter shall continue to furnish irrigation water to said lands at rates not in excess of the then current rates of the Sutter-Butte Canal Company, nor in any event, without the consent of said Company, at rates less than eight dollars (\$8.00) per acre per annum for rice and two dollars and fifty cents (\$2.50) per acre per annum for crops other than rice. The option agreement also provides that, in satisfaction of that part of the consideration designated as the "contract purchase price" and amounting to the sum of \$250,000, as indicated above, the District shall pay to the Sutter-Butte Canal Company all of the gross revenues received for service rendered by it to those lands lying without its boundaries. At the hearing the point was raised as to the intended disposition by the Company of the payments to be received under the above "contract purchase price." In this connection the Commission is of the opinion that this money should be expended by the Company either for the retirement of its bonds or preferred stock or for the payment of indebtedness incurred because of improvements to the Company's properties, or for further and necessary improvements to its properties. Under no circumstances should this money be used for paying dividends on the common stock until such time as all outstanding bonds and preferred stock have been redeemed.

Upon the transfer of those certain portions of the properties, rights and interests of this utility, it is obvious that the books and accounts of the Sutter-Butte Canal Company will require adjustment to reflect the proper withdrawals or retirements from capital. A condition of the Order will provide for the fil-

ing of copies of each and every book entry made to reflect the sale and transfer of the properties referred to in this application.

In view of the fact that this transfer contemplates the joint operation, maintenance and control of a part of the canal system by a public utility and an irrigation district over which latter body this Commission possesses no jurisdiction or control, it is clear that in order to protect the interests of the remaining public utility consumers there should be made available to the Railroad Commission, should the necessity therefor arise, access to so much of the District's records, books and accounts as may reasonably be considered to affect the operation, maintenance and depreciation, reconstruction or replacement of any or all of such jointly-used facilities. Authority so to do should be granted this Commission by the District through a resolution of its Board of Directors.

Paragraph 9 of the Agreement of Option provides for the submission to the State Engineer of the State of California, as an arbiter, the settlement of any disputes which possibly may arise in the future between the Sutter-Butte Canal Company and the District involving the proper allocation of the costs and expenses involved in maintaining and defending the jointly-owned water rights, the expenses of operating, maintaining, improving and controlling the property jointly owned by both parties, and/or in the establishment, operation, maintenance and control of a gauging station in the Main Canal of the Sutter-Butte Canal Company for the apportionment of the waters of the Feather River to the applicants herein. While there is no particular objection to this

method of arbitration of disputes which may arise, it is obvious that this Commission should not be bound by such findings should they adversely affect either the utility or its consumers. I believe that paragraph nine (9) of the agreement should be amended so that any decisions of the State Engineer should not be binding upon the Sutter-Butte Canal Company unless approved by the Railroad Commission.

There were no protests filed at the hearing held in connection with this proceeding objecting in any manner whatsoever to the transfer of the properties as herein requested. The testimony and the evidence show that there should be an ample and sufficient water supply available to meet the demands and requirements of all lands lying within the service area of that part of the canal system to be transferred in whole or in part to the District and which are now entitled to service. The evidence further shows that there is an ample and sufficient supply of water also remaining in the ownership of the Sutter-Butte Canal Company to supply all of its remaining consumers. I believe that the transfer of the properties referred to in this application should be granted subject to the terms and conditions of the following Order, which I submit herewith.

O R D E R

Sutter-Butte Canal Company, a corporation, having applied to this Commission for authority to transfer a portion of its properties to the Richvale Irrigation District, which joins

in the application, a public hearing having been held thereon, the matter having been submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that Sutter-Butte Canal Company, a corporation, be and it is hereby authorized to transfer to the Richvale Irrigation District, a public corporation, for the sum of \$750,000 those certain portions of its public utility properties, water rights and other interests described in Exhibit "A" filed in this proceeding, such transfer to be made subject to the terms and conditions of said Exhibit "A" amended as indicated in the foregoing opinion and subject to further conditions as follows:

1. Within thirty (30) days after the placing of the deed transferring the aforesaid properties to Richvale Irrigation District in escrow, Sutter-Butte Canal Company shall file with the Railroad Commission a certified copy of said deed, unexecuted.
2. Within thirty (30) days from the date that Sutter-Butte Canal 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 before this Commission or any other public body as a finding of value for rate-fixing or for any purpose other than the transfer herein.
4. Sutter-Butte Canal Company shall file with this Commission, within thirty (30) days from the date of relinquishment of control and possession of the properties herein authorized to be transferred, a statement of each and every book entry whereby the transfer of said properties is recorded.

5. Within thirty (30) days from the date of this Order, Sutter-Butte Canal Company shall file with this Commission a map setting forth by appropriate designation thereon all lands which at any time in the past have received irrigation service from those portions of its canal system which are being transferred in whole or in part to the Richvale Irrigation District by authority of this Order.
6. Within thirty (30) days from the date of this order Richvale Irrigation District shall file with this Commission a stipulation duly executed by its board of directors agreeing that the Railroad Commission may have access to so much of the district's records, books and accounts as may reasonably be considered to affect or reflect the cost, operation, maintenance and depreciation, reconstruction or replacement, of any or all of the facilities used jointly by the district and the Sutter Butte Canal Company.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective twenty (20) days 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 2nd day of December, 1930.

Al Adams
Frank J. ...
Leon ...
...
Commissioners