

Decision No. 432

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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SARAH E. LUDY,

Complainant,

vs.

GREAT WESTERN POWER COMPANY OF
CALIFORNIA and WESTERN CANAL
COMPANY,

Defendants.

ORIGINAL

) Case No. 2847

_____)
In the Matter of the Investigation)
on the Commission's own motion in-)
to the operations, practices, rates,)
rules and regulations, services,)
service area, contracts, intercor-)
porate relations, classifications,)
or any of them, of GREAT WESTERN)
POWER COMPANY OF CALIFORNIA and) Case No. 2858
WESTERN CANAL COMPANY in the dis-)
tribution and sale of water in the)
Counties of Butte, Glenn, Sutter)
and Colusa, State of California.)
_____)

Ware & Ware, by Allison Ware, for
Complainants.
Chaffee E. Hall and W. H. Spaulding, for
Defendants.
Douglas Brookman and Isaac Frohman, for Sutter-
Butte Canal Company
Milton M. Hogle and Duard F. Geis, for John
H. Graves and J. S. Robinson and in behalf
of Mr. Belieu for Frank Spencer.
J. J. Deuel, Edson Abel and L. S. Wing, for
California Farm Bureau Federation and Butte
County Farm Bureau.

HARRIS, Commissioner:

OPINION ON REHEARING

The complaint in this matter was filed on March 31,
1930. Before proceeding to hearing, after answer filed by de-
fendants, the Commission instituted its own investigation into
the operations of defendants, and thereafter the two matters

were heard and considered jointly.

After extensive hearings, concluded on September 11, 1930, the Commission, on December 19, 1930, rendered its decision and order No. 23196 dismissing both proceedings, but upon petition for rehearing being duly filed by complainant, the Commission granted and heard oral argument on such petition, and on March 9, 1931, made its order granting a rehearing. Further evidence was received on April 9 and June 2, 1931, and final arguments on rehearing received on September 22, 1931, and the matter again submitted at that time. In addition to the extensive testimony taken, there were introduced 164 exhibits, chiefly copies of contracts and various corporate instruments.

Mrs. Ludy, the complainant, is the owner of about 1000 acres of land located in the eastern portion of Glenn County, to which she desires the delivery of water by defendants for irrigation purposes. She alleges that her lands were formerly served with water by the defendant Western Canal Company, but that said defendant now refuses to deliver any water unless she purchases stock in said corporation to the extent of one share for each acre irrigated, and at a price of twenty dollars per share.

It is complainant's contention that the Western Canal Company is serving water to other lands in her neighborhood as a public utility, and has facilities and water supply adequate to serve her lands. She contends also that the other defendant, the Great Western Power Company of California, from which the Western Canal Company obtains its water supply, has likewise devoted its waters to the public use and is now, through the medium of its subsidiary, the Western Canal Company, operating as a public utility water company.

Defendants contend, on the other hand, that the Western Canal Company is purely a mutual concern, created only for the purpose of delivering to its stockholders such water as it purchases under a contract with the Great Western Power Company of California, and that the latter holds all its waters for private use only, unaffected with the public interest.

Upon these issues the Commission permitted various parties to enter an oral appearance and to participate in the hearings and arguments, both in support of and opposed to the position taken by complainant.

The complainant presented her case on three theories:

First: that both defendants are public utilities for supplying water for irrigation to a large area in Sutter, Butte and Glenn Counties, including the lands of complainant, by virtue of their succession to the canal system and water rights of the Feather River Canal Company, which, it is claimed, had previously dedicated its property to the same public use.

Second: that the defendant Great Western Power Company of California is a public utility for supplying water for irrigation within the same area by reason of its succession to the properties of the Great Western Power Company, and the latter the successor of the property of the Western Power Company, both claimed to have been water utilities by virtue of their acquisition of lands and water rights through the exercise of the power of eminent domain for domestic and irrigation uses.

Third: that both defendants have themselves, since the acquisition of the properties of the old Feather River Canal Company, and the beginning of service through such canal system, so

conducted their water operations as to constitute a dedication of their property and water rights to the public use.

During the course of the original hearings before the Commission in this matter, only the first and third of these theories were advanced by complainant. The second theory was not seriously urged, nor any material evidence offered thereon until rehearing. In reciting the facts it would appear logical and convenient to assemble them under the three headings above mentioned.

PROPERTIES ACQUIRED BY DEFENDANTS FROM
FEATHER RIVER CANAL COMPANY

The Feather River Canal Company was organized in 1908 to take water from the Feather River near Croville for irrigation purposes under an appropriation of 300 second feet made in the same year by its promotor, S. J. Norris. A canal system was planned for immediate construction sufficient to irrigate at least 30,000 acres, and ultimately to supply a much larger area. Norris, an engineer, had just completed the promotion of the Sutter-Butte Canal Company, and intended, according to his testimony, to follow a similar plan of organization and financing in this new adventure. It must be conceded that it was his intention to sell this water to anyone under the proposed ditch system. His plan was to raise funds for the construction of canals by selling the corporate stock, and also from the sale of water rights at ten dollars each, a "water right", according to his explanation, being the right of a landowner to receive two acre feet of water upon each acre to be irrigated.

The success of the enterprise conceived by Norris was not, however, as anticipated. A stock sales campaign resulted in a sale to the public of only 3200 shares at one dollar each. Nor did he succeed in selling any "water rights". It therefore

became necessary for him to advance his own funds for the completion of the necessary work annually to protect his appropriation of water. Construction of canals was begun in 1909, and their construction continued over several years. To March 1911, he had expended about \$20,000, and had a considerable length of the main canal completed, but, as will be seen presently, apparently no actual diversion of water was made into this canal, or any sales of water made, until some time thereafter.

Having failed to obtain sufficient funds from sales of stock and water rights, Norris was forced to seek a purchaser for his interest in the enterprise. In 1910 an agreement was made to sell to one Hotle, from whom some cash was received, but Hotle defaulted in the deal and the sale was never consummated. Again in 1911 he negotiated a sale through the Brown, Walker, Simmons Company, a brokerage firm in San Francisco, a sale which was finally completed with F. L. Brown, a member of that firm, in March 1911. Norris then owned nearly all the stock of the Feather River Canal Company, having been issued such stock in consideration of his conveyance to the corporation of the water right and rights of way previously acquired by him. As further consideration for his conveyance, the corporation had issued to him 5000 so-called "water rights" to be "located" by him within a certain time upon lands under the canal system and to be appurtenant to such lands.

Thereupon the Brown-Walker interests became the owners of nearly all the stock of the Feather River Canal Company, together with 3000 of the Norris "water rights". Norris continued on as their engineer and as an officer of the corporation. It does not appear that Norris then owned any lands, nor is the record clear as to just what lands the Brown-Walker interests may

have owned. The record is quite clear that no land-selling scheme with water rights appurtenant was involved.

Under its new ownership the Feather River Canal Company proceeded at once to make contracts with several land owners for the delivery of water in perpetuity at fixed rates. These were executed in 1912. One executed with the Agricultural Lands Co. provided for the delivery of water within six months to 14,038 acres of land for domestic and irrigation purposes, in quantity sufficient to cover each acre with at least two feet of water annually, at five dollars per acre. It contained, however, the provision "that all rates for water hereinbefore provided to be delivered and sold for use upon said lands would be subject to such regulations as may be lawfully exercised by the proper officers of the State of California acting under the laws of said State". Another water sales contract made with Geo. L. Walker covering 480 acres also contained a similar provision, as follows: "It is understood and agreed that this contract is made under and subject to the laws of the State of California now in force, and that none of its terms and prohibitions are intended to be in conflict with such laws or any order of the State Board of Railroad Commission made hereunder, but this contract shall be construed as a fixing of rates and agreements of terms between the parties hereto, and to be continued and acted upon so long and so long only as the same may be consistent with the laws of said State and the order of said Board of Railroad Commission".

The same water sales contract of July 20, 1912, between the Feather River Canal Company and Walker is of further interest because of another provision contained therein that the Canal Company might thereafter within six months transfer its canal and water rights to a mutual water company to be organized, "provided,

of course, that said transfer shall be approved by the Railroad Commission of the State of California". In September of that year the Brown-Walker interests caused such a mutual corporation to be organized under the name of Feather River Mutual Water Company, and to it were transferred all the assets of the Feather River Canal Company. However, the consent of the Railroad Commission for such transfer was never sought or obtained.

It was not until the fall of 1914 that the Great Western Power Company, or those in control, entered into an agreement to purchase the Feather River Canal Company properties, and in 1915 that sale was actually completed. Such transfer, as will be seen presently, was for the physical assets and water rights, and was executed by both the Feather River Canal Company and the Feather River Mutual Water Company. The record does not show just what had been the activity of the Feather River Mutual Water Company in the meantime. Nor does the record show just what disposition was made of the outstanding "water rights" or water delivery contracts when this company acquired the assets of the Feather River Canal Company. Apparently it was taken for granted by all parties that they remained outstanding obligations of the old corporation, for, upon the sale of assets being made to the Great Western Power Company interests in 1915, their existence was recognized, and both the selling corporations agreed to hold the new purchasers harmless against any claims which might thereafter arise therefrom. The 5000 "water rights" originally issued to Norris were then held by the owners of several tracts of land, the largest block of 1292 rights being held by the Agricultural Lands Co., and six other smaller blocks by other land owners.

It does not appear that any material additions were made to the canal system during the control of Brown and Walker up to

the time of the sale to the Great Western Power Company early in 1915. Although the water delivery contracts executed by the Feather River Canal Company during the latter part of 1912 seem to have contemplated a delivery of water not later than the irrigating season of 1913, and the canal seems to have been in shape at that time to deliver water for the irrigation of a considerable acreage, at least by the opening of a slight obstruction at the river source, it cannot be found as a fact that any water was

actually diverted into the canal or delivered to consumers at any time during the control of either the Feather River Canal Company or the Feather River Mutual Water Company.

It must, therefore, be concluded from the voluminous testimony on this first feature of the case that it was the intent of the incorporators of the Feather River Canal Company to serve water as a public utility within an area of at least 30,000 acres, for which purpose it deemed its supply of appropriated water to be adequate. It must be found that by its subsequent acts in issuing "rights" for the purchase of water, and the execution of water delivery contracts expressly conditioned upon the right of the state through the Railroad Commission to alter such contracts, that the Feather River Canal Company dedicated the use of its property and water rights to the use of all those within the area of its canal system.

The defendants take the position that since, at the time they acquired the Feather River Canal Company properties, there had theretofore been no actual delivery of water to consumers, such properties could not have been impressed with the public use. They claim further that even were it conceded that the Feather River Canal Company properties were devoted to the public use, their subsequent transfer to the Feather River Mutual Water Company, a claimed mutual corporation, served to relieve them of such public servitude.

I cannot agree with either of these contentions. It may be true, as stated by counsel for defendants, that in all the cases in which was raised the question of dedication to the public use and such dedication was found, there had been some actual use of the property by the public. But such fact is a mere circumstance. The cases do not involve that point. Dedication may be shown by "acts or declarations" (Thayer vs. California Development Co. 164 Cal. 117), and obviously those declarations which must be taken as conclusive evidence of dedication, such as those made when properties are acquired by the exercise of eminent domain, or incorporated in water service contracts with patrons, may be made before service is actually begun as well as thereafter. (Producers Transportation Co. vs. Railroad Commission, 176 Cal. 499; Palermo Land & Water Co. vs. Railroad Commission, 173 Cal. 380; Traber vs. Railroad Commission, 163 Cal. 304). The fact that the Feather River Canal Company, after making unequivocal declarations to the effect that its intended service to contracting consumers should be subject to public regulation, conveyed its property to others before such service was actually begun, could not have served to revoke the dedication. Nor could the fact that its first transferee was a so-called mutual water company have extinguished the public servitude. The law required that such transfer be approved by the Railroad Commission, and the Feather River Canal Company in its contracts expressly recognized that legal requirement.

EXERCISE OF RIGHT OF EMINENT DOMAIN
BY PREDECESSORS OF DEFENDANT POWER COMPANY

Under the first theory of complainant's case discussed above, the obligation of the defendants to continue the service of water in the public use is only to the extent of the Norris appropriation of water. But complainant contends further that all

of the water flowing from the tail-race of the power plant of the Great Western Power Company of California is likewise devoted to irrigation use in the same general area. Evidence was offered to show that its predecessor power companies acquired some of their lands and water rights by the exercise of the power of eminent domain for that use as well as for the generation of electricity. If that power was actually exercised, such evidence must be conclusive of dedication to the public use.

There were placed in evidence copies of complaints in six condemnation suits brought by the Western Power Company or the Great Western Power Company, in each of which it was alleged that the plaintiff was engaged in the business of furnishing and supplying water for the public use for domestic and irrigation purposes in addition to the generation of electric power, and that it was necessary to take the lands and water rights of the several defendants for each of such uses. Some of these suits were not carried to judgment, and are, therefore, to be taken merely as admissions against interest. Yet, in three instances a settlement apparently was made with the owners of the lands sought to be condemned, and deeds to their land subsequently obtained. And in another instance a stipulation was filed for the entry of judgment "as prayed for in said complaint", and a deed to the same lands was subsequently delivered, although such a judgment was not actually entered.

It is contended by defendants that even in those condemnation suits that went to judgment, the judgments themselves did not include a finding that the use for which the property was to be taken was for supplying water to the public

for irrigation, but for electrical use only. However, these instruments cannot be so construed.

In 1903 a condemnation suit was filed by the Western Power Company against one Jenkins. In the judgment entered it was found that the plaintiff was organized for "supplying and storing water for irrigation"; that it was necessary to take the land of defendant; and "that the uses and purposes to which said water and use of water and riparian rights are to be so applied by plaintiff are each of them public purposes and uses, authorized by the laws of the State of California in charge of plaintiff to-wit: uses and purposes to which plaintiff was incorporated as hereinbefore set forth, and more especially for supplying and storing waters for the operation of machinery for the purpose of generating and transmitting electricity". The latter use, indeed, may have been the more special use, but that statement in the judgment did not limit the other uses for which the property was condemned.

In two other suits brought in 1902, one against Barnes, et al., and another against Meadows, et al., it was distinctly alleged that the corporation was organized for the purpose, among other things, for "furnishing of water for 'irrigation'", and that it was necessary to appropriate and store waters for the generation and transmission of electricity, "and to meet and supply said demand for electrical power and light and for water for irrigation and domestic purposes". The judgments in these cases found that plaintiff was a corporation organized and existing "for the purposes specified in said complaint"; that it was necessary that the lands of defendant "be taken and condemned as prayed for in plaintiffs' complaint"; and that "the purposes and uses to which said -- land so sought to be condemned by plaintiff, are public uses and purposes, authorized by the laws of the State of California, in charge of plaintiff, and that said land is necessary to said uses and purposes".

Another pleading placed in evidence was an answer filed by the Western Power Company in a condemnation suit brought by the Golden State Power Company. This answer alleges that the pro-

perties sought to be condemned are already devoted to the public use by the Western Power Company for the purposes stated in the complaint, namely, "for supplying and storing waters for irrigation". This case was not prosecuted to judgment, the defendant Western Power Company having subsequently acquired the business of the plaintiff company.

From these pleadings and judgments it must be concluded that the predecessors of the Great Western Power Company of California intended to and did thereby devote to the public use for irrigation the waters released after serving their function in the generation of electric power. This conclusion is confirmed by the testimony of Mr. Fleishhacker, the President of the Great Western Power Company, in a security issue proceeding before the Commission in 1918, and stipulated in evidence in this proceeding. He then declared that "one of the original objects set forth in the articles of incorporation of the Great Western Power Company was the utilization of water for irrigation". And referring to the organization of the Western Canal Company for the purpose of distributing its waters, he stated further that his company "was confronted with the imperative necessity of causing to be utilized for irrigation the reservoired water before, perhaps, persons below the said power house on the Feather River, or the Sacramento River, would claim a vested right by virtue of the recapture of the waters". Having thus acquired waters partly for irrigation use by the exercise of the power of eminent domain, and continuing to claim title to them after serving their function for the generation of power, it is evident that they must be held for the use of the public for irrigation purposes.

ACTS OF DEFENDANTS THEMSELVES EVIDENCING
PUBLIC UTILITY WATER SERVICE

Complainant contends that the Western Canal Company is not really a mutual corporation, but a mere pretended mutual organization created by and still wholly controlled by the power company,

and that they both have operated as public utilities in the sale and distribution of water for irrigation purposes. It is necessary to review the facts on this feature of the case also somewhat extensively.

Brief reference has already been made to the sale in 1915 of the Feather River Canal Company properties to the Great Western Power Company and the Western Canal Company. It appears that the Power Company, or those connected with that corporation, agreed upon the purchase of these properties in October 1914, and at that time some sort of contract to purchase and escrow agreement was executed. Deeds to the property were not passed until August 1915. In the meantime the Great Western Power Company caused a new corporation, the Western Canal Company, to be organized, and at once entered into several contracts with the latter, arranging fully the contractual relations between them looking toward the disposition by the Power Company through the medium of the Canal Company of all waters released into the Feather River after serving their purpose for the generation of electricity. Having first made these intercorporate agreements, the Power Company interests then exercised their option to purchase the existing canal system and water rights by causing two deeds to be executed therefor. One was made to the Great Western Power Company covering the Norris water rights on the Feather River, and the other was made to the newly organized Western Canal Company covering the canals, rights-of-way, and franchises. Each deed was executed in the names of both the Feather River Canal Company and the Feather River Mutual Water Company by their common officers.

The Western Canal Company was organized as a mutual corporation; that is to say, it was provided in its articles that the purpose was "to supply water for irrigation and domestic use

to the stockholders of said corporation, and only to said stockholders, for use on land owned or being purchased by said stockholders, aggregating approximately two hundred thousand acres situate in the Counties of Butte, Sutter, Glenn and Colusa". In its by-laws it was provided that "from and after the purchase by any stockholder of this corporation of water from this corporation and the use of such water on lands within the area aforesaid which are owned or being purchased by such stockholder, as aforesaid, shares of stock of such stockholder equivalent in number to the number of acres of such land, upon which such water is used, shall become appurtenant to such land". Its by-laws were not, however, recorded in any county within which such lands were situated, as seems to be required by Section 324 of the Civil Code.

It was a condition of the basic agreements between the Great Western Power Company and the Western Canal Company that all of the 200,000 authorized shares of the latter, except 5000 shares to which reference will be made later, should immediately be issued to the Great Western Power Company, although it owned no lands to which said stock could become appurtenant. It was a further requirement under said agreements, however, that, upon demand made by the Canal Company, the Power Company would transfer stock to such landowners as the Canal Company might nominate, for not less than fifteen dollars per share. The Canal Company proceeded at once to enter into stock sale contracts with landowners, although it held no unissued stock for that purpose, and, between 1915 and 1930, did sell or contract to sell a total of 21,713 shares to irrigators, all of which shares were or will be transferred out of the original issue made to the Great Western Power Company. Yet, when so transferred upon the books of the Canal Company, a new condition was imposed thereon to the effect that they shall be appurtenant to the lands of the owners. All stock retained by

the Power Company (now 174,062 shares) has been held by it as a corporate asset and pledged along with its other properties to secure its bond issues.

The purpose of this arrangement will become more clear as other features of the basic contracts between the two corporations are examined. The cash consideration of \$30,923 paid to the two Feather River Companies for their canals and water rights was paid by the Great Western Power Company alone. In addition, the Western Canal Company was to hold 5000 shares of its authorized stock for delivery without charge to those persons who had previously acquired "water rights" in the Feather River Canal Company. Later, upon request made by the officers of the Feather River Company, a total of 4,175 shares of Western Canal Company stock was issued to holders of such "water rights", each share being made appurtenant to particular lands. Every stockholder of the Western Canal Company, other than the Power Company, was required also to execute a water purchase contract, each contract specifying the amount of water which might be received annually and the rate to be paid.

Thus the landowners who desired water for irrigation negotiated nominally with the Western Canal Company. Contracts for the sale of stock and for the delivery of water were made by it alone. But the stock actually sold was the stock belonging to the Great Western Power Company, and the record is clear that the latter corporation determined the price at which such stock should be sold. It was a condition of the basic agreement between them that the price should not be less than fifteen dollars per share. Prices varied in fact from fifteen to forty-five dollars per share. Under other provisions of the contract between them, the rates which the Canal Company might charge for water were fixed. It

was a condition that the Canal Company should never purchase water from any other source. All receipts from the sale of stock went, of course, to the transferor, the Great Western Power Company. All gross receipts from the sale of water also went directly to the Power Company, it making the collections, keeping all records, furnishing office space, and paying all expenses of operation of every kind. The Western Canal Company under the agreement, could demand from the Power Company the delivery of enough water to meet its obligations under the water delivery contracts made with land-owning stockholders, but was not immediately required to pay in return any more annually than the gross water sales actually collected under such contracts. However, it appears to have assumed a contingent liability to the Power Company of \$150,000 annually, a liability which totals to date \$1,769,586.

Although title to the physical canal properties was taken in the name of the Western Canal Company, they were paid for, as seen above, by the Great Western Power Company, and in addition, all improvements to date have been made by the latter only. The investment to date totals \$853,210. Against this investment the Power Company has obtained from sales of Western Canal Company stock issued to it a total of at least \$502,613, and, in addition, has due it under stock purchase agreements the sum of \$39,905. Total receipts from water sales to landowners for the fifteen year period, all collected by the Power Company, are \$1,010,181. Against this account the Power Company has charged \$583,142 for maintenance and operating expense.

Ever since the incorporation of the Western Canal Company, the Power Company has remained in complete control of its affairs. Much evidence was introduced by complainant on this point. Its officers have been also officers or employees of the

Power Company. The relatively small number of shares held by water-using landowners have never been represented at any stockholders' meeting, nor, it is admitted, have such stockholders ever been given notice of such a meeting. Only four stockholders' meetings have been held since incorporation, and those for the purpose chiefly of perpetuating in office the board of directors chosen from the Power Company personnel. The five shares held by the five directors to qualify them for their offices have been endorsed and left with the parent corporation.

It at once becomes apparent that the scheme thus conceived and followed by the Great Western Power Company for the sale and distribution of its water was patterned after the plan adopted at about the same time by the California Development Co. in the Imperial Valley region, and sustained by the Supreme Court of California in the case of Thayer vs. California Development Co. (1912), 164 Cal. 117) I believe, however, that the facts here are clearly distinguishable, and, even without the other clear evidence of the dedication of defendants' property to the public use, that on this third branch of the evidence alone, it is shown that these corporations have operated as public utilities, and not as mutual or private companies.

It may be conceded that this Commission has no jurisdiction over purely mutual water companies. But, with the possible exception of the California Development Co., the organization and purpose of those companies which have been held not to be utilities has been truly mutual, a co-operative endeavor through the medium of a stock company to administer a water system in which each stockholder had a severable interest at the time the mutual organization was created (Hildreth vs. Montecito Water Co. 139 Cal. 22; Stratton vs. Railroad Commission, 186 Cal. 119) Here, new landowning stockholders are added at will, and none have possessed or now possess any private water rights. The defendant

Canal Company did make some of its stock appurtenant to land, as seems to be contemplated by Section 324 of the Civil Code, but such stockholders receive water service by virtue of their separate contracts with the corporation, not because of their ownership in any private water right. And under such water service contracts the charges for water are definitely fixed, a fact wholly inconsistent with the definition of a mutual water company contained in the Act for the Regulation of Water Companies (Stats. 1913, p. 34), which requires that water be delivered to its members at cost. The charges made by a mutual company to its members must be proportional to their ownership (Copeland vs. Fairview Water Co., 165 Cal. 148). But the water-using stockholders in this so-called mutual company own only a fractional part of the total stock issued, yet these same stockholders pay the entire sum due under the contract between their corporation and the Power Company. The major portion of the stock of this corporation is not held by water-using landowners, and is not appurtenant to any land, yet that stock dictates and controls every act of the Canal Company for the benefit and interest of the parent corporation.

Herein lies the distinction to be found in the case of Thayer vs. California Development Co. From the Court's recital of facts in that case it appears that all of the 100,000 shares of authorized stock of the mutual canal company, except 2500 shares, had been sold to water-using landowners. And the Court made the further significant finding that the mutual corporation was not dominated or controlled by the Development Company. Had the facts been otherwise, as in the case before us here, doubtless a different result would have been reached. See Imperial Water Co. No. 5 vs. Holabird, 197 Fed. 4.

From the entire evidence presented concerning the water operations of these defendants, it must be found that the Great Western Power Company of California holds its property and water rights subject to the public use for irrigation and domestic purposes, and that this defendant is primarily responsible for the continuance of that public service. The Western Canal Company is not a mutual water company as defined in the Act for Regulation of Water Companies, and, doubtless, were it standing alone, would not be exempted from the Commission's regulation. It is vested with the legal title to a canal system, a part of which was from the beginning impressed with the public use. But the fact cannot be overlooked that it is wholly a creation of the Power Company, and a device by which the latter has sought to escape its public obligation. The canal Company owns no water rights, and without these its public utility function must be limited to a mere water transporting agency. But even in this respect, it is only a corporate fiction. Its title to the canal system is only a nominal title. The original purchase price, as seen above, was paid by the Power Company, and all additions thereto have been made by the latter. The Power Company holds all water rights, not only those purchased from the old Feather River Company, but others acquired in part by the exercise of the right of eminent domain, and necessarily, therefore, devoted to the public use. Moreover, the water service actually rendered during the past fifteen years must be deemed to have been rendered by the Power Company alone, by reason of its complete domination and control over the property and affairs of its subsidiary corporation.

I am of the opinion, therefore, that the complainant is entitled to the relief for which she prays. The defendant Power Company, by the inheritance of the obligations of its various pre-

decessors and by its own acts and declarations, has undertaken the service of water to a large area surrounding the lands of complainant, and, in fact, her lands at one time received water from the same ditch system. There is no evidence that there is not a large quantity of water available for this use.

There is only one other consideration that needs to be mentioned. Certain water-using stockholders of the Western Canal Company intervened in this matter to protest a finding by the Commission that the service they receive is that of a public utility. They ask the Commission to consider the inequality of their position as large investors in the stock of the Canal Company should the Commission hereafter fix a rate for water use applicable to stockholders and non-stockholders alike. The position in which these stockholders now find themselves cannot, however, affect the Commission's determination of facts in this proceeding. In a proceeding for the fixing of rates, the Commission may consider the equities advanced by every consumer. If there is any doubt as to their rights as stockholders to share in the profits of the utility's operations, that matter is for the civil courts to determine. If equity requires an adjustment of rates to compensate for their contribution to capital, the Commission is no doubt empowered to make such an adjustment (Live Oak Water Users Assn vs. Railroad Commission, 192 Cal. 132).

I find, therefore, that the defendants herein, Western Canal Company and Great Western Power Company of California, own, control and operate their properties and water rights for the furnishing of water for irrigation and domestic uses for compensation and as public utilities within this state, and that said defendant corporations are "water corporations" within the definition and meaning of that term as used in the Public Utilities Act and the Act for the Regulation of Water Companies of the State of California.

I recommend that an appropriate order be entered herein directing the defendants to file tariffs, rules and regulations governing the performance of the service in question.

ORDER ON REHEARING

The complaint in the above entitled matter having been heard by the Commission, and its Opinion and Order No. 23196 rendered thereon on December 19, 1930, dismissing said complaint, and, thereafter, a rehearing having been granted and the matter again submitted for decision; and the Commission now being fully advised, and basing its order on the statement and findings of fact in the foregoing opinion, and good cause appearing;

IT IS HEREBY ORDERED, that the said Order of the Commission, No. 23196 of December 19, 1930, be rescinded and set aside; and

IT IS HEREBY FURTHER ORDERED, that the defendants Great Western Power Company of California and Western Canal Company immediately file with the Commission rates and regulations covering ^{irrigation} ~~water~~ water service within the area in the Sacramento Valley served or heretofore served under their existing canal system, including service to the lands of SARAH E. LUDY, the complainant herein;

IT IS HEREBY FURTHER ORDERED, that the Commission reserve jurisdiction in this matter to make any further order in these premises against either or both of said defendants herein.

This Order shall become effective twenty (20) days

from the date hereof.

The foregoing Opinion and Order on Rehearing are hereby approved and ordered filed as the Opinion and Order on Rehearing of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of December 1931.

C. H. Keating
Leon C. Kelly
W. P. Cunn
W. B. Harris
Fred E. Stewart
Commissioners