

Decision No. 25280

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
C.W. Clarke Co., a corporation, for
an order fixing just, reasonable,
and non-discriminatory rates for
water.

Application No. 17784.

ORIGINAL

Athearn, Chandler & Farmer
and Frank R. Devlin,
by A.E. Chandler, for applicant.

Hardin Barry, for applicant.

A.K. Wylie, for the consumers.

BY THE COMMISSION:

O P I N I O N

The C.W. Clarke Company, a corporation, owns what is known as the Ash Creek Drainage Canal in Big Valley in Lassen and Modoc Counties, California, through and by means of which it furnishes water to ten consumers for irrigation purposes and stock water on lands aggregating five hundred and ninety-five (595) acres. In this proceeding the company asks for an order fixing fair and proper rates to be charged for this service.

Applicant alleges that by a judgment of the Supreme Court of California, in the case of Babcock vs. C.W. Clarke Co. (213 Cal. 389), rendered the fifteenth day of August, 1931, petitioner has been held to be a public utility in the operation of its Ash Creek Drainage Canal; that petitioner has been supplying its consumers with water for irrigation purposes and for stock use

at a rate of one dollar (\$1.00) per acre per season, which rate has not produced sufficient annual income in the past years to return even the expenses incurred for the maintenance and operation of the canal, and for this reason said petitioner claims that the present rate is unreasonable and non-compensatory.

A public hearing in this proceeding was held at Alturas before Examiner Johnson and the matter was submitted on briefs.

The C.W. Clarke Company, in conjunction with other extensive land holdings devoted to ranching and cattle-raising, owns a tract of forty-nine hundred (4,900) acres, more or less, in Big Valley, into and through which run the natural channels of Ash Creek, a tributary of the Pit River. A large portion of this tract is converted into a swamp from the overflow and runoff of Ash Creek and for many years has been utilized by applicant for raising hay and pasturage for stock. The natural flow of the creek kept these lands too wet to permit the cutting of the natural grasses for hay and, in order to remedy this condition and dry it up during the haying season, a diversion canal to by-pass the water was constructed in 1897 from a headgate in Ash Creek, extending above the swamp and overflow line across lands not riparian to either Ash Creek or Big Valley Swamp to the Pit River, a distance of nine and one-half (9½) miles. On or about July 29, 1898, Fredk. Cox and C.W. Clarke recorded a notice of appropriation to a flow in Ash Creek of seven thousand (7,000) miner's inches measured under a four-inch pressure. Applicant herein has succeeded to the rights and interests of Cox and Clarke in connection with the operation of its canal or ditch system.

It appears that service of water to consumers from this

drainage canal for irrigation of their lands began in 1899 and the charge made therefor was one dollar (\$1.00) per acre per season. This irrigation service was provided without interruption until 1924, when it was discontinued and the company refused to deliver any more water from Ash Creek through the canal. Thereupon, the consumers and protestants herein sought relief through an action brought in the Superior Court of Modoc County, entitled A. Babcock, et al, Plaintiffs, vs. C.W. Clarke Co., a corporation, et al, Defendants, and a judgment in the consumers' favor was entered on June 17, 1929, (Judgment No. 2789) affirmed by the Supreme Court of California (213 Cal. 389). The judgment of the Court decreed that five hundred and ninety-five (595) miner's inches of water from Ash Creek have been dedicated to public use for the irrigation of certain specifically described lands of ten named consumers, aggregating five hundred and ninety-five (595) acres; fixed the respective apportionments thereof; and determined also the periods during which the waters should be delivered to the users. A summary of the consumers' allotments as decreed in said judgment of the Superior Court is set out below.

: Name of Consumer :	: Acres :	: Area : Water Deliveries ordered by Court :				: Total :	
		: entitled : Stock Water :		: Irrigation Water (Continuous Flow) :			: Seasonal : Delivery :
		: to Service :	: Continuous :	: June 20 :	: Aug. 1 :	: Sept. 1 :	
		: by the :	: Flow :	: to :	: to :	: to :	
		: Court :	: Entire Year :	: July 5 :	: Aug. 16 :	: Sept. 16 :	: Miner's : Miner's : Miner's : Miner's : Miner's :
		: Decree :	: Miner's :	: Miner's :	: Miner's :	: Miner's :	
: Name of Consumer :	: Acres :	: Inches * :	: Inches :	: Inches :	: Inches :	: Inches :	: Inch Days :
Andrew Babcock	100	5	-	100	100	3,000	
Martin E. Babcock	80	5	-	80	80	2,400	
L.A. & E.G. Babcock	70	5	-	70	70	2,100	
Alfred Babcock	80	5	-	80	80	2,400	
Mattie E. Watson	60	5	60	60	60	2,700	
Chas. M. Leonard	20	5	20	20	20	900	
E. Weigand	60	5	60	60	60	2,700	
John P. Miller	75	5	75	75	75	3,375	
H.C. Watson	25	5	25	25	25	1,125	
A.E. Brunselmier	25	5	25	25	25	1,125	
Totals	595	50	265	595	595	21,825	

* Court Decree fixes miner's inch as measured under a 4-inch pressure which is equivalent to 50 miner's inches, equaling one (1) cubic foot per second.

In compliance with the judgment of the court, the C.W. Clarke Company resumed delivery of irrigation service from the canal to its consumers on or about July 1, 1929, substantially in accordance with the above entitlements.

The evidence indicates that for a great number of years prior to 1929, when service of water to the consumers was resumed under said court decree, applicant had done very little maintenance and repair work on the canal and its structures. As a result, most of the original wooden structures are so badly deteriorated that replacements will soon be necessary and the canal itself has accumulated considerable silt, weed and tule growth with the result that its carrying capacity is largely reduced and now is urgently in need of a thorough cleaning and rehabilitation. In this connection applicant submitted an estimate of three thousand dollars (\$3,000) for cleaning and overhauling the canal and about nine thousand dollars (\$9,000) for the complete replacement of the existing wooden structures, based mainly on concrete construction, assuming, however, that the expenditures necessary for this rehabilitation work would probably be spread over the period of the next ten years.

Applicant submitted a detailed appraisal showing a total of thirty-two thousand seven hundred and fifty-four dollars (\$32,754) for the estimated cost of the used and useful properties devoted to the public use, including twenty thousand dollars (\$20,000) for water rights and allowing for the existing wooden structures only their present depreciated value. The Commission's engineers, following a field inspection of the system and of applicant's available records, accepted the above appraisal with the exception of the items of twenty thousand dollars (\$20,000)

for water rights and three hundred dollars (\$300) for interest during construction and, accordingly, submitted a total value of twelve thousand four hundred and fifty-four dollars (\$12,454) for the purpose of this proceeding. Although a determination of water right value will not be necessary for the decision in this proceeding, it should be pointed out, nevertheless, that only five hundred and ninety-five (595) miner's inches were declared by the court decree to be dedicated to the public use out of a total filing of seven thousand (7,000) inches of the flow of Ash Creek.

Prior to July, 1929, no book accounts were kept by the Clarke Company segregating the expenditures chargeable to the operations of this utility from the general expenses incurred for all of its ranch operations.

A tabulation of the maintenance and operation expenses of this utility for the past two years (1930 and 1931) as compiled from the book accounts follows.

MAINTENANCE AND OPERATION EXPENSES

I t e m	1930	1931
Services of company manager and engineer and expenses	\$ 65.69	\$ 428.36
Superintendence ($\frac{1}{2}$ salary of ranch superintendent plus expenses)	434.24	500.86
Operating labor, patrolling canal, etc. (ditch tender)	1,323.00	1,515.00
Miscellaneous expense on canal (auto expense of ditch tender)	114.18	112.74
Repairs to canal (material and labor)	207.22	98.78
Salary of office clerk (bookkeeping, billing, etc.)	50.00	50.00
General office expense	5.00	5.00
General law expense	-	199.00
Taxes	3.27	3.79
Total	\$2,202.60	\$2,913.53

000

The above total operating expenses are exclusive of a depreciation allowance and average about twenty-five hundred dollars (\$2,500) per year. It is noted that the only full-time employee of this utility under present operating methods is the ditch tender whose salary since October, 1931, has been one hundred dollars (\$100) per month. As mentioned above, this drainage canal was constructed primarily to enable applicant to utilize its forty-nine hundred (4,900) acres of swamp land for grazing and for hay-cropping purposes. The dual character of the use of the canal by applicant still persists in conjunction with the public utility irrigation service. The evidence clearly shows that in a series of dry years the company can use beneficially on its swamp land practically all of the flow of Ash Creek not required to be diverted through the canal for public use and in wet years must and still does take full advantage thereof for the necessary drainage of the tract. In either case, it is of prime and fundamental importance to applicant's private ranch operations that the canal be maintained in a reasonably serviceable condition. A careful consideration of the evidence clearly indicates that at least one-half of the annual operation expenses should properly be contributed by applicant for the benefits derived through this canal in its local ranch business.

Mr. L.K. Jordan, General Manager and Chief Engineer for the Clarke Company and also Manager of the North Fork Ditch Company, which is a public utility irrigation system operating in the vicinity of Fair Oaks in Sacramento County, testified that it will be absolutely necessary to spend in the neighborhood of twelve thousand dollars (\$12,000) for the replacement of structures and reconstruction of certain portions of the canal. This estimate

is based upon the installation of modern concrete head-works and check-gates and also numerous bridges, waste-ways and delivery-gates. Mr. Jordan's estimate furthermore contemplates the maintenance and operation of this system along the same lines that would be found necessary in a large irrigation district or a public utility system serving a vast acreage. Under such circumstances these recommendations might be given serious consideration in this instance. It should be pointed out most emphatically that ever since the construction of this project in 1897 this company has spent little or nothing for maintenance and repairs other than for occasional and sporadic cleaning of portions of the canal, a large part of which cleaning was actually done by the consumers themselves. It would be ridiculous for applicant to attempt to erect costly concrete structures in a location where the swampy nature of the ground would make the question of proper foundations therefor a most serious problem. The consumers of this utility use less than one thousand (1,000) acre feet of water per year on their total holdings of five hundred and ninety-five (595) acres. The entire service to consumers under present operating methods is but forty-five (45) days per season for irrigation water. The territory served is in the extreme northern section of the state in Lassen and Modoc Counties where the growing season is short and limited in crops mainly to hay and forage. It is wholly unnecessary, as well as impracticable, to operate this small ditch system serving but ten consumers (exclusive of applicant's properties) with the same type of highly-developed organization that is necessary in the large foothill and valley irrigation systems supplying thousands of acres throughout a very large part of each year. The owners of this ditch have never attempted so to do in the past and need not do so now in order to provide a reasonable

service to the existing consumers. The evidence clearly shows that the operation of this canal does not now reasonably require the continuous supervision of one man throughout the entire year any more than such supervision has been necessary in the past. The mere fact that a concern finds itself to be operating a public utility as the result of a court decree does not warrant it in immediately saddling the future operation thereof with unnecessary refinements in organization and management, together with heavy overhead expenses, especially so when none of these has been found either necessary or practicable in the past.

The maximum annual revenue obtainable from the consumers at present served by this utility at the rate charged of one dollar (\$1.00) per acre irrigated is five hundred ninety-five dollars (\$595) and the revenue actually collected for the 1930 water deliveries totalled five hundred twenty-five dollars (\$525) and for 1931 totalled only thirty dollars (\$30). The present public utility delivery of water from this canal is confined to the specific allotments of ten consumers as decreed by the court. The evidence shows that applicant apparently has no intention of extending this public utility service to supply other lands in the future. There can be therefore no expectation of increased revenue from new consumers at present. However, it is apparent that, in spite of the dual nature of this ditch system, applicant must receive a greater revenue from the service rendered its consumers if it is to be able to continue to provide a reasonable class of service. To base a rate upon a full return on the investment, including water right value, will result in a rate which would instantly prohibit the further use of the waters for agricultural purposes. Applicant has stated that it does not desire at this time the establishment of a

rate upon such a basis. In view of this and the general conditions outlined above, the following schedule of rates will be established which we believe will not be beyond the ability of the consumers to pay and will at the same time fairly reimburse the company in its operation of the canal provided such operation is conducted in a reasonable and practical manner.

Certain parcels of land containing approximately three hundred and thirty (330) acres, all of which are now owned by members of the Babcock family, under the said judgment were not given water for the first irrigation during the period June 20th to July 5th, inclusive. It appears that these tracts of land have in the past received the early irrigation during this time from other and private sources. Under such circumstances it would be neither fair nor equitable to charge these lands the same flat rate per acre as charged those consumers receiving the full three irrigations per season. Although the allocation of water deliveries to the lands owned by the Babcocks under the present fixed methods would amount to but two-thirds of the deliveries allocated to the other users, yet the company is not able to make a corresponding reduction thereby in its operating expenses. For this reason the rate to be established for service to be rendered to the Babcocks' lands cannot be directly reduced in the same proportion.

The order of the Superior Court of Modoc County definitely fixed and determined the times and dates of water deliveries to consumers. As this Commission also has jurisdiction over such matters, it should be understood that, in the event any changes are considered necessary therein in the interest of better service, such as rotation of deliveries and matters of a similar nature,

the Railroad Commission will entertain changes therein which may be considered proper, such changes to be set forth in the rules and regulations of the utility, provided they are mutually acceptable to the consumers and the utility,

O R D E R

C.W. Clarke Company, a corporation, having made application for authority to increase its rates, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully informed in the premises,

It is hereby found as a fact that the rates now charged by the C.W. Clarke Company, a corporation, for water supplied its consumers, in so far as they differ from the rates herein established, are unjust and unreasonable and 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 further statements of fact contained in the Opinion which precedes this Order,

IT IS HEREBY ORDERED that the C.W. Clarke Company, a corporation, be and it is hereby authorized and directed to file with the Railroad Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged for all water supplied to its consumers subsequent to the thirty-first day of December, 1932.

RATE SCHEDULE

For all water delivered for irrigation purposes,
including stock water entitlement, when the seasonal
delivery is made for a 45-day period, per acre ir-
rigated per season-----\$2.00

For all water delivered for irrigation purposes,
including stock water entitlement, when the seasonal
delivery is made for a 30-day period, per acre
irrigated per season-----\$1.75

Irrigation deliveries shall be based on a
flow of one miner's inch per acre irrigated
for the certain seasonal delivery periods
and entitlements as decreed in the Judg-
ment No. 2789 entered in the Superior Court
of Modoc County.

Payments of the charges under the rate shall
be made in accordance with the provisions in
the rules and regulations in effect.

(The miner's inch referred to above shall be
equivalent to one fiftieth (1/50) of one
cubic foot of water per second.)

IT IS HEREBY FURTHER ORDERED THAT the C.W. Clarke Com-
pany, a corporation, be and it is hereby directed to file with
this Commission, within thirty (30) days from the date of this
Order, rules and regulations governing relations with its con-
sumers, said rules and regulations to become effective upon their
acceptance for filing by the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that the C.W. Clarke Com-
pany, a corporation, be and it is hereby directed to file with
this Commission, within thirty (30) days from the date of this
Order, four copies of a map or sketch to be attached to the rules
and regulations of this utility, upon which map or sketch shall
be delineated the tracts of land to which public utility service
of this canal system has been dedicated as decreed by order of
the Superior Court in and for the County of Modoc, in its Judgment

No. 2789 issued the seventeenth day of June, 1929, and each such tract shall also have indicated thereupon the acreage which is entitled to water service from the utility canal system under the terms and provisions of said judgment.

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 24th day of October, 1932.

O. C. Leamy

Leon Swindell

W. J. Lee

W. B. Harris

Paul C. Stewart
Commissioners.