Decision No. 25593

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

California Farm Bureau Federation, Merced County Farm Bureau, Joe Steiner, Sam Wainwright, A.M. Clark, L.J. Jacobson and S.A. Walker, Complainants, vs. East Side Canal and Irrigation Company, Defendant.	ORIGINAL Case No. 3138.

Edson Abel, for Complainants.
Fred B. Wood, for Defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding, a group of consumers who are joined by the state and local county farm bureau organizations asks the Commission to require East Side Canal and Irrigation Company, a corporation which serves water for irrigation purposes in the vicinity of Stevinson, in Merced County, to provide adequate and non-discriminatory service and to amend its rules and regulations relating to charges and service. The complainants allege that the present rules and regulations are unjust and unreasonable in that full payment of rates is required before water is delivered and that the service rendered in the past has been inadequate and discriminatory. By way of answer, defendant denies generally all essential and pertinent allegations of the complaint.

Hearings in this proceeding were held before Examiner

Satterwhite at Merced and at Turlock.

East Side Canal and Irrigation Company supplies water for agricultural irrigation purposes to a tract of land known as the Stevinson Colony and in the immediate vicinity thereof. The Colony originally was subdivided and sold off in tracts of from five to twenty acres in 1902 by James J. Stevinson, a corporation. The capital stock of the East Side Canal and Irrigation Company is owned by the 3 H Securities Company, a corporation, the stock in which is owned and/or controlled practically exclusively by members of the family of or the heirs to the estate of the late Colonel James J. Stevinson. The lands of the Colony lie along, between and adjacent to the San Joaquin and Merced Rivers. The water supply originally was obtained by direct diversion from the San Joaquin River at a point approximately fifteen miles above the eastern boundary of the irrigated lands. At the present, the major portion of the water supply is obtained by intercepting drainage and other waters wasted or spilled by the Merced Irrigation District. This company has been before the Commission in a number of proceedings and for this reason detailed explanation of its operations and history will not be repeated herein. For this information reference is made to Decision No. 22222 (34 C.R.C. 465) and Decision No. 1391 (4 C.R.C. 597).

The main allegations of complaint on the part of the consumers naturally fall under the following classifications and will therefore be discussed in that order.

1. Inadequate water service:

   (a) Refunds for failure to deliver sufficient water.

2. Unreasonableness of payment of entire irrigation charge at beginning of year.

(a) Change in irrigation season.

3. Failure of company to maintain and operate all laterals as heretofore ordered by the Commission.

4. Discrimination in water deliveries.

5. Practice of company in not eliminating unirrigated portions of lands in billing total acreage served.

1. INADEQUATE SERVICE.

Although one of the major causes of complaint in this proceeding is based upon inadequate and insufficient water deliveries by defendant, it is conceded by all parties concerned that this deficiency was confined almost exclusively to the year 1931 and that, as to 1932, the service was reasonably sufficient. First of all, the consumers complain that in 1931 the company was not properly prepared to provide water in the early part of the season and in fact did not commence beneficial deliveries until well into the month of April and that, furthermore, it was derelict in its duties and obligations in not taking proper measures to divert and impound early spring run-off, resulting in a substantial loss of water together with consequent severe damage to crops.

The evidence shows that the year 1931 was one of the driest years in the history of this state and while there is no doubt that in its management defendant was guilty of unfortunate misjudgment in losing a considerable amount of winter or early spring stream flow by not being prepared to divert it at the proper time, yet, when it is considered that this utility always runs the serious risk of having large sections of its canals washed out in the early months by attempting to capture this water, it can not be considered entirely culpable. The main canal intercepting many small creeks and sloughs in its length of

fifteen miles from headworks to service area must be carefully watched during winter storms so that the usual heavy run-off from such sources will be by-passed to prevent injury and damage to the main transmission canal banks and structures. For this reason each year the waste-ways are left open until this danger may be considered fairly past. During the winter of 1931-32, however, the anticipated heavy discharge from these streams and water courses did not occur.

During the year 1931 no water was delivered by the company from the San Joaquin River except to lands of Miller and Lux, Inc., situated near the diversion weir of the main canal and leased by one Cantrell, supplied under agreement with defendant, which service will be referred to later on in this Opinion. The only sources available for delivery to the consumers therefore were those intercepted waters arising, by reason of the dry year, principally from the waste or drainage waters of the Merced Irrigation District and as this District was also short of water and late in its own deliveries, the amounts available from this source were not only delayed in arriving but were so meager as to be insufficient to provide a proper head of water for efficient deliveries to complainants, resulting in the necessity of proration. The seriousness of the drought becoming apparent early in the season, several conferences were held by and between representatives of the consumers, the California Farm Bureau Federation, the company and the Commission's staff, culminating in agreement to eliminate further attempts to irrigate grain lands as beyond hope of saving and concentrating deliveries on the other and more permanent crops by running all water down each canal in rotation. Naturally those served last suffered most, but necessarily this was unavoidable.

Most consumers received two irrigations, while a few obtained but one. Under the existing conditions the methods adopted were to the best interests of all concerned.

(a) Refunds.

Those consumers receiving two runs of water during the season were charged the full annual rate while all those who obtained but one were given a refund or a credit by the company of one dollar ($1.00) per acre on future service, the full rate for regular service being two dollars ($2.00) and two dollars and seventy-five cents ($2.75) per acre, according to location. Practically no one, as far as the record discloses, received more than two irrigations during the year. Considering the circumstances and the continued expenses of operation, the attitude and action of the defendant in the granting of refunds cannot properly be called unfair.

2. PAYMENT IN ADVANCE OF SERVICE.

The present schedule of rates charged by the company requires full payment on February 1st of each irrigation season for all water applied for. While ordinarily the consumers have not objected in the past to this arrangement, yet they have all testified that, by reason of the present disastrously low price levels of farm products, they are no longer financially able to comply with the above provision in the rate schedule and ask that it be modified to permit payment in two installments. Although the company protested against this proposed change, principally upon the grounds of increased operating costs and possible difficulties in collection of second payments, it agreed to the proposition if considered advisable by the Commission. The evidence shows that the additional expenses incurred by this modification will be nominal and, as this same method of installment payment has been

followed satisfactorily for many years in a great number of irrigation systems, it should work no material hardship on the utility. As this request appears to be reasonable and necessary at this time, the rate schedule accordingly will be ordered amended to provide for payment of one installment on the first day of February and the balance on the first day of July.

(a) Change in Irrigation Season.

During the season of 1931 there was an insistent demand on the part of many consumers for water early in the spring by reason of the dearth of winter rains, which service the utility was not prepared to furnish. While it is obvious that this company faces the perplexing dilemma of frequently having but little demand for early water during wet years and experiencing difficulty in providing early water in abnormally dry periods, yet it is apparent that the general farming operations in this area under normal or average conditions reasonably require that the company should be prepared to furnish and deliver water by the first of March of each irrigation season to all consumers requiring service at that time. Readiness to serve on this date should place no unreasonable burden or hardship on defendant, but is in fact a fair duty and obligation owing to its consumers in the public interest.

3. FAILURE OF COMPANY TO MAINTAIN AND OPERATE ALL LATERAL CANALS.

Defendant was criticized for its alleged failure to take control of, operate, clean and maintain a large number, or sections of distribution canals or ditches which, it is contended, is in violation of Paragraph 1 of Decision No. 22222, issued on March 18,

1930, as a result of an investigation upon the Commission's own motion into the rules, regulations, practices, etc., of defendant. The paragraph referred to is set out below.

"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 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." (34 C.R.C. 465, 471.)

Prior to the issuance of the above Order, the major part of the water distribution to consumers was handled through five so-called Ditch Associations, being in the nature of co-operative or mutual organizations of the water users of the several groups of distribution canal systems diverting from the main canal. As increasing friction and misunderstandings between the utility and these associations had reached the point where proper and economical service was no longer possible under this method of dual operation, the Commission directed the company to "acquire control and possession of all lateral distribution canals supplying water for irrigation purposes to its consumers" and "to take over the entire distribution of water throughout the area supplied by it." Although the utility in most instances complied with the above requests with gratifying alacrity, yet in many instances it failed or neglected so to do with the result that several consumers were severely discriminated against by being put to considerable expense to prepare ditches to obtain service. This was justified by defendant upon the ground that a "lateral" should be con-

sidered as a ditch or canal provided with a "spillway," yet, nevertheless, the record is replete with a surprising number of instances wherein the company did not consistently follow this novel interpretation but actually assumed control of, operated and maintained several ditches or laterals not provided with such wasteways or spillways. The intent of the Commission's Order is perfectly clear and obvious. It was based upon the urgent necessity of eliminating the former dual operating responsibility and placing it solely and entirely upon the utility. Under the circumstances peculiar to this system, this makes it necessary and essential that water be delivered by the utility to the lands of each consumer. This should be done unless and until some unforeseen contingency should arise in the future which would make such a requirement unreasonable and unfair. It should, of course, be understood that it is not contemplated that the utility should maintain and operate individual consumer's field ditches which are provided with various outlet boxes or individual field gates.

Defendant therefore will be expected, without unreasonable delay, to complete the fulfillment of the terms and provisions of the above mentioned Paragraph 1 of the Order in Decision No. 22222 in accordance with the interpretation thereof as herein given.

4. DISCRIMINATION.

Complainants contend that during the season of 1931 defendant utility was guilty of providing a preferential service to one Fred Cantrell and also to lands of the Stevinson Corporation and to lands owned and/or controlled by certain of the officials or stockholders of said corporation. As to the service

supplied to lands leased by Cantrell from Miller and Lux, Inc., it is sufficient to state that such water as was delivered, amounting to one irrigation, was made available primarily as a matter of accommodation by permitting the use of the main canal as a conveyance or transporting medium for water which could not have been acquired and made available to the company's regular consumers. This water in 1931 was pumped by him out of the canal and paid for under the regular rates of the utility, subject to the refunds as heretofore mentioned. It is clear that this particular service could not be fairly considered in the light of an unfair discrimination against the users in the Stevinson Colony.

There is nothing in the record to substantiate the allegations of complainants that the company granted preferential treatment in 1931 to lands of the Stevinson Corporation or to lands owned or controlled by those having an interest therein, or the heirs of the late Colonel James J. Stevinson. On the contrary and in due fairness it should be stated that the evidence does show that in several instances such lands entitled to service from this defendant either relinquished their requests for utility service and secured water by pumping from the Merced River or else abandoned irrigation entirely for the season. Considering the unprecedented shortage of water which affected this section of the state during 1931, there can be no doubt but that the above acts resulted in providing more water for the Colony consumers than otherwise would have been available had such lands insisted upon their prorated entitlements to the utility supply.

5. CHARGES FOR PORTIONS OF LANDS UNIRRIGATED.

Considerable dissatisfaction was expressed over the

general custom of the company in not excluding in the billed acreage the unirrigated areas taken up by buildings, roads, corrals, etc. Apparently this has been the practice of the utility for many years, arising out of the fact that in the original Stevinson Colony the parcels were subdivided into twenty-acre "lots" but sold off in full lots, "half lots" (ten acres) and "quarter lots" (five acres). Where these lots or fractional lots were again subdivided by the purchasers, however, such re-subdivided portions or parcels were generally billed at their actual acreage, although less than five acres. It is contrary to the general practice approved by this Commission to permit the charging for lands either not irrigated or non-irrigable.(1) Hereafter in billing consumers for acreage served, the defendant will be expected and required to charge only for acreage actually irrigated, which contemplates exclusion of areas occupied by buildings, roadways, corrals and similar fixtures, not using water. It is, of course, understood that irrigation service may be demanded upon less than "quarter lots" or so-called five-acre tracts except possibly in such a case, if any should arise, where by so doing there would result a patent and unreasonable waste of water or an abuse of service privileges amounting to an unfair discrimination.

O R D E R

Complaint having been filed as entitled above, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

(1) High portions of lands which cannot be irrigated from regular supply. In such cases, no charge therefor has been made by defendant.

IT IS HEREBY ORDERED as follows:

1. That East Side Canal and Irrigation Company, a corporation, be and it is hereby directed to file with this Commission, within ten (10) days from the date of this Order, the following amendment to its existing schedule of rates and its rules and regulations providing for the payment of irrigation charges as follows:

   a. For all general irrigation service, other than for rice, rendered consumers directly from the Main Canal and the Collier Extension of the same, two dollars ($2.00) per acre per season, one dollar ($1.00) per acre thereof payable on or before February first and one dollar ($1.00) per acre thereof payable on or before July first of the same year.

   b. For all general irrigation service, other than for rice, rendered consumers through lateral distribution canals maintained, controlled and/or operated by the East Side Canal and Irrigation Company, two dollars and seventy-five cents ($2.75) per acre per season, one dollar and fifty cents ($1.50) per acre thereof payable on or before February first and one dollar and twenty-five cents ($1.25) per acre thereof payable on or before July first of the same year.

   c. For all rice irrigation service rendered consumers through lateral distribution canals maintained, controlled and/or operated by the East Side Canal and Irrigation Company, eight dollars ($8.00) per acre per year, three dollars ($3.00) per acre thereof to be payable on or before February first and five dollars ($5.00) per acre thereof to be payable on or before July first of the same year.

   d. For all rice irrigation service rendered consumers directly from the Main Canal and the Collier Extension of the same, seven dollars and twenty-five cents ($7.25) per acre per year, two dollars and fifty cents ($2.50) per acre thereof to be payable on or before February first and four dollars and seventy-five cents ($4.75) per acre thereof to be payable on or before July first of the same year.

IT IS HEREBY FURTHER ORDERED that for the irrigation

season of 1933 only and unless otherwise and hereafter ordered by this Commission, the initial installments for irrigation service, as above provided, shall be considered due and payable on or before the first day of March.

IT IS HEREBY FURTHER ORDERED that in all other respects this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 30th day of January, 1933.

Commissioners.