

Decision No. 25875

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM BAKER,
Complainant,
vs.
KERN ISLAND CANAL COMPANY,
a corporation,
Defendant.

ORIGINAL

Case No. 3253.

F.A. Chamberlain, for complainant.

McCutchen, Olney, Mannon & Greene,
by Carl I. Wheat, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding William Baker whose land is located on a canal known as the Castro Ditch and who is a consumer of the Kern Island Canal Company which furnishes water for agricultural irrigation purposes in Kern County in and south of the City of Bakersfield asks the Commission to order the company to assume possession and control of the Castro Ditch and deliver water directly to his and to all other consumers' lands served thereby.

Complainant alleges that the company has threatened to discontinue irrigation service to his land if the Castro Ditch is not kept clean and that, while the company's Rule 4 of its rules and regulations provides for the refusal of service to consumers supplied through private laterals or ditches not owned by the company which are not kept in reasonable condition for the transporta-

tion of water without undue seepage losses, nevertheless, by reason of the involved ownership of the said Castro Ditch, the consumers cannot take care of it themselves.

Defendant company in its answer generally denies the allegation that complainant has or any of its consumers on the Castro Ditch have any difficulty in obtaining irrigation service and alleges that these consumers and their predecessors in interest have used this ditch continuously for thirty years last past and alleges further that, if defendant be compelled to acquire and operate this particular private lateral, it may be compelled likewise to purchase or otherwise acquire a vast number of other privately-owned laterals which will result in placing an unfair and unwarranted burden upon it.

A public hearing in this proceeding was held before Examiner Satterwhite at Bakersfield.

Complainant and seven other water users who are also landowners on the Castro Ditch testified that notice was given them by defendant company that irrigation service would be refused if the ditch was not properly cleaned, as provided in Rule 4 of its rules and regulations. (1)

Complainants contend that this ditch should not be considered a consumer's lateral as it is owned by certain individuals who also own interests in the Castro water right and that among said interests or share-owners defendant's holding company, Kern County Canal and Water Company, owns twenty-nine seventy-seconds (29/72nds) of said Castro right and should therefore have no difficulty in taking over the operation of the entire canal.

(1) For convenience complainant and the seven other consumers hereafter will be referred to as "complainants."

According to the evidence, the Castro Ditch was constructed during or about the year 1870 and originally diverted water directly from the Kern River from a point in Section 26, Township 29 South, Range 27 East and distributed said waters to lands lying immediately to the south thereof. At the present time water is delivered to the Castro Ditch from either the Carrier Canal or the Stine Extension Canal. The ditch runs a distance of approximately four miles to Section 13, Township 30 South, Range 27 East and has the second right to diversion on the Kern River to the extent of twenty (20) cubic feet per second, immediately following the right of the Kern Island Canal Company to the diversion of the first three hundred (300) cubic feet per second flowing in said river. At the present time the Castro water right serves approximately eleven hundred (1,100) acres of lands entitled to use thereof, which acreage is distributed among a large number of owners. It appears that the lands now owned by complainants herein were at one time entitled to water under the Castro right but were acquired by one Lloyd Tevis and resold with an exchanged right to obtain water from the Kern Island Canal Company. Under operating conditions, while complainants are consumers of the Kern Island Canal Company, they are better enabled to obtain irrigation service to their lands with Kern Island waters diverted by said canal company but delivered through the Castro Ditch. Complainants contend that the fact that their lands lie at the extreme southerly or lower end of the Castro Ditch, together with the fact that the Castro and Kern Island waters are co-mingled, has resulted in inadequate and interrupted service and innumerable disputes arising mainly from alleged interference with their water deliveries by the holders of Castro rights located upon the upper stretches of the ditch. Apparently, there is no

zanjero in control of this particular service rendered by and through the Castro Ditch. Neither the Castro right holders nor complainants have appointed any one to look after their respective interests. Defendant company assumes no further jurisdiction or control than the diversion of water into the main headgate of the Castro Canal at its source. Complainants herein demand that the Kern Island Canal Company assume possession and control of that portion of the Castro Ditch from which they obtain service and assume the responsibility of delivering water directly to each water user.

It appears that Kern Island Canal Company does not own or control any portion of this canal. The record herein indicates that the ownership lies in those holders of shares in the Castro water right. Complainants have no ownership in or title to said canal other than such as may have been acquired by reason of long-continued use over a period of approximately thirty years. The Kern County Canal and Water Company is the owner of all of the shares of capital stock in the defendant company except those shares qualifying directors. Said Kern County Canal and Water Company owns an undivided twenty-nine seventy-seconds (29/72nds) of the Castro water right. According to the evidence and testimony presented in this proceeding, the Castro Ditch has been maintained, the ditch cleaned and structures repaired by all water users receiving water therefrom. This has been the custom for approximately thirty years last past. The same is also true of the use and general location of the point of measurement of water to complainants. During the year 1931, the ditch had become so foul and overgrown with weeds and various vegetation that it was practically impossible to deliver any substantial amount of water to the users, which condition resulted in notice being given to consumers by defendant that it could no longer continue

deliveries to them unless measures were taken to place the canal in proper operating condition. Authority for such refusal is contained in the above referred to Rule 4 of the Rules and Regulations of the Kern Island Canal Company. This season (1932) deliveries have been made through the Castro Ditch which has been cleaned by some parties unknown.

Defendant presented testimony in its behalf to the effect that neither the defendant nor said Kern County Canal and Water Company nor the Kern County Land Company, which is the owner of all the capital stock of said Kern County Canal and Water Company except shares qualifying directors, now own any lands whatsoever along the Castro Ditch, nor have any of said companies for many years last past used any waters arising under the Castro right for the irrigation or use on lands owned or controlled by any of them. At one time Castro water was used on lands owned by the Kern County Land Company lying near and adjacent to the City of Bakersfield, which lands, however, have long since been subdivided and sold off into residential and similar properties. Defendant further claims that neither has it at any time during the past thirty-two years ever assumed control or possession of the Castro Ditch nor has it ever cleaned or operated it. The record indicates that on the Kern Island system the company owns and operates approximately seventy miles of main canals and laterals and delivers water to consumers through an additional two hundred and thirty miles of privately-owned secondary laterals and canals. The parent company, Kern County Land Company, owns

approximately forty per cent (40%) of the lands irrigated under the Kern Island system and also owns and maintains seventy-four per cent (74%) of the above referred to private laterals.

There has been some difficulty in the past at various times over the proper maintenance of Castro Ditch and the distribution of water through it, yet it is evident that with a reasonable spirit of cooperation among the water users practically all of the disadvantages of the dual capacity of operation can be eliminated. The alleged interference by Castro right holders in the waters diverted by defendant for use of the complainants may be eliminated entirely, should complainants so desire, by the construction of a separate and independent ditch which, according to the evidence submitted herein, would cost in the neighborhood of four hundred dollars (\$400) for the necessary structures and, in addition, would require the digging of a ditch which, however, could be done by the water users themselves. We are of the opinion that we would not be justified in requiring the defendant herein to make the expenditure necessary for this duplicate facility. This complaint therefore should be dismissed.

Footnote: The company was not particularly antagonistic to the granting of this request for reasons perfectly apparent. Should it be approved by the Commission in this case, there could be no logical reason advanced why the cleaning obligations with attendant expense should not be extended to cover all non-utility-owned laterals. As the Kern County Land Company, which controls the defendant utility is by far the largest owner of such laterals, the adoption of the policy advocated by complainants would greatly advantage the land company while prejudicing independent consumers of the water company.

O R D E R

The above entitled complaint having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises, and other good cause appearing; now, therefore,

IT IS HEREBY ORDERED that the complaint herein be and it is hereby dismissed.

Dated at San Francisco, California, this 29th
day of February, 1933.

C. L. Loney
Leon Whitely
W. A. Linn
W. B. Linn
W. B. Linn
Commissioners.