

Decision No. 25736

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
East Side Canal & Irrigation Company,
a corporation, and Stevinson Water
District, a public corporation, for
an order authorizing the sale and
transfer of property.

Application No. 17759.

Fred B. Wood, for East Side Canal and
Irrigation Company.
Norris J. Burke, for Stevinson Water
District.
Edson Abel, for California Farm Bureau
Federation, Merced County Farm Bureau,
and certain individual consumers,
Protestants.

BY THE COMMISSION:

O P I N I O N

East Side Canal and Irrigation Company, a corporation engaged in the business of distributing and selling water for irrigation purposes in the vicinity of Stevinson, Merced County, asks authority to transfer its property to the Stevinson Water District, a public corporation, which joins in the application.

Public hearings in this proceeding were held before Examiner Satterwhite at Merced and Turlock.

STEVINSON IRRIGATION DISTRICT.

The evidence shows that the Stevinson Water District was organized and its boundaries fixed and established in 1928 pursuant to the provisions of the California Water District Act. The area included by the District is located along the Merced

and San Joaquin Rivers in Merced and Stanislaus Counties and, as now constituted, includes 7,689 acres of land, practically all of which is in the ownership of James J. Stevinson, a corporation. All of the capital stock of the 3 H Securities Company, a corporation, with the possible exception of certain shares qualifying directors, is owned or controlled by members, through birth or marriage, of the family of the late Col. James J. Stevinson, and this company owns one-half of the stock in said James J. Stevinson, a corporation, and all of the stock of applicant East Side Canal and Irrigation Company, less directors' shares respectively. The other half of the Stevinson Corporation stock is owned by the above mentioned members of the Stevinson family. In addition to the present District acreage of 7,689, the Stevinson Corporation, 3 H Securities Company and certain members of the Stevinson family have duly filed petitions requesting the District to extend its boundaries to include an additional 2,171 acres owned by said petitioners and located in various scattered parts of the original Stevinson Colony which is served by applicant utility. There is a possibility of the inclusion within the District of other lands owned by members of the Stevinson family or their allied corporate interests. In comparison with the above total of 9,860 acres now embraced within the District and to be admitted and which are owned or controlled by the Stevinson family interests, the remaining utility consumers, not identified with said interests and owning a total of 3,577 acres of land in Stevinson Colony, representing 178 independent water users, have refused to have their lands included within the District.

The water rights claimed by the District are as follows:

1. The right to pump 80 cubic feet of water per second from the Merced River acquired from the Stevinson Corporation.
2. The right to 24,000 acre feet, less 2,400 acre feet, per annum during the months of April to September, inclusive, from the returned or drainage waters emanating from the Merced Irrigation District, purchased from the Stevinson Corporation which acquired it through stipulated court decree entered in settlement of water right litigation between said Corporation and said District.
3. Water filings of 174.65 cubic feet per second on Bear Creek.
4. Water filings of 36.55 cubic feet per second on Baldwin Slough.

The total claimed water resources of the Stevinson Water District are 291.20 cubic feet per second from stream appropriations and 21,600 acre feet per annum returned water from the Merced Irrigation District. The Water District at present owns no canals or ditches and has no physical properties whatsoever other than pumping equipment valued at seventy-five hundred dollars (\$7,500), although it proposes to acquire at some future time ten miles, more or less, of canals owned by the Stevinson Corporation and, perhaps, construct an independent transmission canal if it is not possible to acquire the company property. It is now proposed to consolidate the properties and water rights of the East Side Canal and Irrigation Company with those of the Stevinson Water District. This transfer, however, is most vigorously opposed by the independent utility consumers.

EAST SIDE CANAL AND IRRIGATION COMPANY.

The East Side Canal and Irrigation Company diverts water from the San Joaquin River directly and also from Sand and Mariposa

Sloughs which carry flood waters of the San Joaquin River and from Bear, Duck and Deadman's Creeks and from certain other so-called drains and spillways which also are intercepted by its canals. The company operates a main canal approximately twenty-two miles in length and thirty-six miles, more or less, of distribution laterals or canals. The primary or preferred service area of this utility entitled to prior service rights as established by this Commission in its Decision No. 22222, (1) dated March 18, 1930, 34 C.R.C. 465, comprises 13,895 acres, of which 3,097 acres owned or controlled by the Stevinson interests are already in the District or have petitioned to be admitted. There are 7,862 acres now entitled to preferred utility service under the above mentioned Decision No. 22222. The total acreage of lands in the preferred service area irrigated by the company during the four-year period ending in 1931 is as follows:

1928	-	2,784	acres
1929	-	3,518	acres
1930	-	3,427	acres
1931	-	2,172	acres

The utility claims an adjudicated water right to appropriate and divert at its headworks on the San Joaquin River seven-eighths of 281 cubic feet of water per second (or 246 cubic feet per second) as against down-stream riparian owners, and also claims the right to divert all waters flowing in the above mentioned

(1) Service area of this utility was also established and/or modified in and by the following decisions: Decision No. 1391, dated March 31, 1914, 4 C.R.C. 597; Decision No. 1755, dated August 27, 1914, 5 C.R.C. 289; and Decision No. 20016, dated July 9, 1928, 32 C.R.C. 110.

creeks, sloughs, drains and spillways intercepted by its Main Canal. Although these intercepted waters have been appropriated and used by the utility for a great number of years, nevertheless in July, 1931, it filed thereon to the extent of 160 cubic feet per second. There is a very obvious conflict over the actual ownership of the major useful portion of this intercepted water which is also actually claimed through court decree, contract, or otherwise by the Stevinson Corporation or by the District as its successor in interest.

VALUATION.

On behalf of applicants A.A. Blakesley, consulting engineer, presented a report valuing the various properties involved herein and outlining the District's proposed operating methods. He appraised the properties as follows:

Stevinson Water District:

1. Water Rights-----	\$316,032	
2. Physical Properties-----	<u>7,500</u>	\$323,532

East Side Canal and Irrigation Company:

1. Water Rights-----	\$226,890	
2. Physical Properties-----	<u>162,001</u>	<u>388,891</u>

Total combined value as of July, 1932-----\$712,423

The consideration for the acquisition of the company's properties is set out as seventy-five thousand dollars (\$75,000).

Vigorous protest against the granting of this transfer was made by 178 consumers of the canal company who represented, with two exceptions, every irrigator for the year 1931 within the preferred service area excepting members of the Stevinson family or their renters, lessees, employees or those identified

in some similar manner with the family's affiliated corporate interests and, in addition thereto, represent also certain landholders who did not irrigate during 1931. These protestant consumers own 3,577 acres in the preferred service area, of which they irrigated 1,427 acres out of a total of 2,172 served in 1931, admittedly a very dry year and one of serious water shortage on this utility canal system. The protests are made upon the following grounds:

1. The available water supply is inadequate to serve additional lands.
2. The transfer will result in a prohibitive charge to protestant consumers under the District's operations.
3. The transfer is unnecessary to enable the District to properly operate.
4. The Commission should not withdraw its protection over the consumers in view of their past experience with the interests in control of the utility.
5. The transfer is not in the public interest.

To fully comprehend the situation presented here, it should be explained at the outset that the Stevinson Water District is neither a Water Storage District nor an Irrigation District and requires no approval from or by the State Engineer as to feasibility or economic advisability as do these latter two types of organization. Furthermore, the voting power of the Water District is not based upon the individual but upon each dollar of assessed value of the land as determined by the District's own assessor, subject, however, to review by county authorities. It is obvious, therefore, that in instances where the overwhelming land ownership and land value are in the complete

control of one individual or one organized group, firm or corporation, as here, the small and independent landowners with five to twenty-acre parcels of land have no practicable power or ability to oppose or protect themselves against any policy adopted by the District. In this particular case, the total value of all lands owned by the 178 protesting utility consumers, even if included within the District, could never hope to approach but a very minor fraction of the worth of the vast holdings controlled by the Stevinson interests. It is for this reason that these protesting consumers feel that once the Railroad Commission relinquishes jurisdiction over their irrigation service they will be wholly without adequate safeguards for their water service rights.

The District plan proposes to limit the water supply of those utility lands remaining outside the District solely to such sources as the District concedes are utility water rights and to which it lays no claim to priority, excepting that it will permit said lands to use such surplus or increment, if any, in the intercepted waters flowing in the above mentioned streams and water courses which are in excess of the 24,000 acre feet contributed by the Merced Irrigation District. This places the main reliance of outside consumers for future water upon the San Joaquin River right and, in spite of the testimony of the District's engineer to the effect that there is an adequate water supply available for all lands under the District plan, this appears to be actually so only if all lands, both within and without, were served upon a uniform basis under a system operated as a single unit. The files and records of this Commission accepted in evidence in this proceeding are replete with findings and substantiated complaints to the effect that the utility's diversions from the San Joaquin River are not now and for a great number of years last past have

never been sufficient for any reasonable and dependable service during the later and most vital and important periods of the irrigation season. (2) Past experience, as repeatedly shown by the testimony of the utility water users, clearly indicates that only by use of the intercepted drainage waters including the 24,000 acre feet claimed by the District has it ever been possible to give a continuous and sufficient service throughout the season and that even with all such waters the utility area has at times suffered from lack of water in years other than those abnormally dry. It should be noted that there is considerable duplication to the claims and filings of the District and the utility to and on certain waters now used by the latter; as a matter of fact, there are a great number of court cases now pending involving

(2) "The primary cause of inadequate supply of water by this system is the apparent impossibility of the owners and operators obtaining a constant and sufficient supply of water from the San Joaquin River. This river varies greatly in the quantity of water carried in its channel, and is subject to rapid and considerable increases and decreases in the bulk of its stream, not only from year to year, but during intervals in each season. The evidence clearly establishes the fact that defendant, through its officers and attorneys, has made every effort to obtain the largest amount of water from this river for its canal, but it has to contend not only with the physical conditions of the river and its water supply, but also with numerous and determined onslaughts upon its right to take water from the river by others, who repeatedly for the past fifteen years have attempted by every sort of legal and other device to take a part or all of the water claimed by defendant from this river." (4 C.R.C. 597, 598.)

"We are under the necessity in this case of fixing a flat rate because of the impossibility at this time of determining the quantity of water heretofore used, or which will hereafter be used, by the various consumers, and the condition of the supply of water is such as to necessitate rapid distribution when water is available." (4 C.R.C. 597, 606.)

"It should be clearly understood that any irrigation system operating with such limited storage facilities as this is subject to a considerable uncertainty of water supply resulting from the fluctuations in rainfall and stream flow from year to year***." (25 C.R.C. 626, 628.)

such waters. The evidence presented is so conflicting that it is not sufficient to convince this Commission that under the scheme proposed those consumers remaining outside will be insured a proper water supply throughout the season. This is especially confusing when consideration is given to the fact that there is nothing to prevent this District from very materially increasing its acreage at any time in the future it may seem fit.

The District has agreed that it will never charge those present utility consumers who remain outside its boundaries in excess of a rate based on a fair return upon that portion of its investment reasonably allocable to that specific service over and above the just and proper costs of operation and maintenance including depreciation. The lowest probable rate for this outside service suggested by the District's engineer is higher than the utility rate now in effect. When it is considered that in fixing the present rate for utility service the question of fair return on physical properties not only was disregarded but so, likewise, was ignored the matter of return upon water right value (which applicants appraise herein at two hundred twenty-six thousand eight hundred ninety dollars (\$226,890)), it is evident that a future rate determined upon the basis proposed by the District must necessarily be prohibitive and would provide an ever-present ability on the part of the District at any time it should so desire to force all outside consumers to abandon service through sheer inability to pay imposed tariffs. Under the plan promulgated by the District there can be no doubt whatsoever but that all consumers electing to remain outside its boundaries will receive a service inferior

to that at present provided and at a rate higher than now paid. In view of the testimony of practically all so-called independent or protesting water users to the effect that they cannot now operate at a profit under present rates and cannot possibly afford to pay more, it is clear that, as long as present conditions of agricultural distress prevail, the transfer proposed by applicants herein can prove of no benefit whatsoever to the outside utility consumers as far as assured and adequate water supply, service and rates are concerned. In spite of the fact that the resolution of the District's Board of Directors concerning future rates is, as they allege, designed to insure outside consumers a reasonable safeguard as to future water charges, nevertheless the nationally existing depressed economic situation entirely nullifies whatever advantages such a proposal normally might embrace.

The District at present has no collecting and transmission aqueducts to intercept and transport to its lands the waters which it claims to own and/or seeks to acquire from this utility and which arise from the Merced Irrigation District from the above mentioned water courses and from the San Joaquin River. It is for this reason, among others, that it wishes to acquire the utility Main Canal. This canal, however, is not wholly vital or essential to the future operation of the District as the evidence shows that a new ditch, which would serve the purpose of diverting all waters now claimed by the District, could be constructed at a cost of not exceeding sixty-three thousand dollars (\$63,000). Should this transfer then not be permitted, it is clear that the Stevinson Water District is still in a position to transport its claimed waters at a cost not exceeding the stated consideration for the

purchase of this utility canal system.

The record herein indicates that under the existing circumstances and conditions the proposal offered in this instance is not commendable from an economic standpoint, is unnecessary and can prove of benefit to practically no one other than its proponents. The existing utility system is already operating and a going concern and it is apparent that proper and more economical arrangements can be adopted for the greater benefit of all concerned by providing for service through the utility to Stevinson District lands and/or for the transportation of its private waters, if desired, justly protected by the Railroad Commission under uniform and non-discriminatory rules, regulations and rates.

The application will therefore be denied without prejudice with the suggestion that some serious effort be made by applicants to work out a possible plan along lines above mentioned, in aid of which the Commission's staff will be made available upon request of any or all of the interested parties.

O R D E R

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

Good cause therefor appearing,

IT IS HEREBY ORDERED that the above entitled proceeding

be and it is hereby denied without prejudice.

Dated at San Francisco, California, this 13th day
of March, 1933.

A. C. ...

Leon ...

M. A. ...

M. B. ...

Nathan ...

Commissioners.