

Decision No. 1361

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of Excelsior Water and Mining Company, for an order authorizing and permitting a change in the rates and charges for water furnished and services rendered by it in the counties of Nevada and Yuba, State of California.)
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) Application No. 934
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Fred Searls and Geo. S. Wickerson for applicant
W. H. Carlin for protestants.

GORDON, Commissioner.

O P I N I O N

The application of the Excelsior Water and Mining Company recites that they are in the business of furnishing water for irrigation purposes in the Counties of Nevada and Yuba; that they irrigated during the past season approximately 1785 acres. They allege that they have an available water supply of 2000 inches, or 50 cubic feet per second; and that with necessary extensions and improvements they would be able to furnish water to approximately 5000 acres of land.

Applicant is now furnishing water for irrigation at the following rates and charges, to-wit:

\$6.00 per acre for water used on alfalfa or other meadows where the amount of land irrigated by a single user is less than 5 acres.

\$5.00 per acre for water used on alfalfa or other meadows where the amount of land irrigated by one user is 5 acres or more.

\$3.00 per acre for water used on orchards.

It is alleged in the application that the company has been furnishing to its water users excessive amounts of water, resulting in a great waste and loss to the applicant, and that every attempt to prevail upon the consumers to become more conservative in their use of water has met with strong opposition.

It is stated in the application that the value of the water system, consisting of dams, reservoirs, flumes, pipe lines, ditches, tunnels, buildings and other property, all used and useful for public utility purposes, is \$348,047; that the original cost to the applicant was approximately \$525,000; that the total expense in operation and maintenance during the year 1913 was \$15,896, with total receipts of \$11,527.

It is stated that the expenditure of approximately \$60,000 would be necessary to enable the company to reach and supply 5000 acres of land.

Applicant prays that a fair and reasonable rate would be as follows:

A minimum charge per acre per year for the use of sufficient water to cover said acre of land one foot in depth (or 20 miners inch days) said minimum to be \$4.00 per acre or its equivalent for less than one acre, said minimum to be paid on or before April 1st of each year.

For the use of each 10 miners inch days additional (or sufficient water to cover one acre 6 inches in depth) an additional charge of \$1.25 payable on or before November 1st of each year.

The company also asks approval of the Railroad Commission of a schedule of rules and regulations presented with the application for consideration.

An investigation of the system was made by the hydraulic engineer of the Commission and a valuation of the system prepared in conjunction with Geo. S. Nickerson, engineer.

for the applicant. Public hearings were held in Nevada City on March 10th and 11th, at which time all matters in connection with these conditions were thoroughly canvassed.

This company's system had its inception in the construction of the Rough and Ready Ditch at Nevada City about 1850. The two ditches in which the greatest expenditures were involved are the China Ditch, alleged to have been built in 1851, and the Excelsior Ditch, built in 1861. It was conceded by applicant that these ditches were originally constructed for hydraulic and placer mining purposes. In all, about 130 miles of ditch are now used in the irrigation service of this company.

The water supplying this system is diverted from the South Fork of the Yuba River, Deer Creek, Squirrel Creek and a number of smaller tributaries of these streams.

In regard to the water supply available in the hands of this company no definite records of continuous measurements were presented and none appear to be available. However, no doubt was cast upon the adequacy of the supply at the hearing, and it is assumed that the water supply is within the power of this company to control to the extent claimed, i.e. a minimum seasonal flow of 2000 inches, or 50 cubic feet per second. Both the engineer for the applicant and the hydraulic engineer of the Commission testified that in their belief the ditches of the system had recently been used to practically their full capacity and that this capacity would be in excess of the minimum amount above mentioned.

The reproduction value of the system was agreed upon by these two engineers to be \$512,721. No claim was made by the applicant for a valuation of water rights or other intangible assets. The present value of the system, without depreciating the earth work or other structural features having no measurable deterioration, was agreed upon by the two engineers testifying as \$453,240. The engineer for the Commission testified that he had not computed any depreciation for these certain structural

features because depreciation by obsolescence and supersession may, and undoubtedly is existent, but it is not subject to measurement strictly as such. He also testified that as a measure of the proportion of the reproduction cost of the ditches of this system reduced to that part suitable for the present uses, he would reduce the earth work reproduction value by 40%, being a measure of the value of these ditches to the irrigation system and their limited use for mining purposes. The total earth work reproduction cost being \$341,090, a reduction of 40 per cent would be \$136,455. This reduces the otherwise present value of \$453,240 to \$316,785. Such present value is the final testimony of the hydraulic engineer, of the Commission as the value applicable in fixing the rates of this company for irrigation purposes. It was further testified that this reduction in the total reproduction cost would make the reasonable building cost for irrigation purposes \$376,266. Considering this sum applicable to 5000 acres the cost per acre would be \$75, whereas if the total reproduction cost of the system as it stands were charged, it would be \$102 per acre. It was testified by the Commission's hydraulic engineer that the former amount might be considered a reasonable cost per acre under all conditions, while the latter sum would probably be considered prohibitive in comparison with similar projects.

The annual depreciation agreed upon by both engineers testifying was \$3,691. The attorneys for applicant and the attorney for the protestants stipulated that the valuations presented, with the exception of the reduction of earth work value as proposed by the hydraulic engineer of the Commission, be accepted.

The cost of maintenance and operation of the system was put in evidence by the company in the form of statements of receipts and expenditures for several past seasons. However,

these statements are admitted to include expenditures properly chargeable to depreciation. Inasmuch as applicant has other large interests in this locality considerable testimony was introduced in an endeavor to fix upon the proper segregation of the time and duties of various employees of the company who spend a portion of their time in connection with the irrigation system, and also a portion of their time in looking after private interests of the company. It is apparent that a determination of what has been spent by this company in the past cannot be accepted as a measure of what should be the expense applicable to the irrigation of 5000 acres of land and the attendant requirement of more efficient management. Under this head I will, therefore, consider \$13,500 per annum to be a reasonable amount for maintenance and operation.

I believe the necessary annual returns to applicant should be approximately as follows:

Interest estimated at 6% on \$316,785	\$19,000
Annual depreciation of timber structures etc.	3,691
Maintenance and operation	<u>13,500</u>
Total	\$36,500

Applicant presented exhibits showing that in the last several years returns from water used for mining purposes ranged between \$5,000 and \$8,000 annually, having been reduced gradually to the lower sum, which it did not quite reach in 1913. I will assume that returns from water used for mining in the future will not exceed \$6,191 per annum, leaving \$30,000 to be obtained annually from the irrigation use on 5000 acres of land, for which the water supply would not be reduced by use in mining.

With the foregoing assumptions full returns to this company will require an average payment per acre per year of \$6.00.

At the rates applied for by this company this would provide the land with 36 miner's inch days per acre at the average

payment of 16-2/3 cents per miner's inch day.

The question then arises as to whether this quantity of water will or will not be sufficient for use on the lands benefited, and whether the price is prohibitive to ^{the} consumers. Persistent attempt was made at the hearing to obtain from employees of the company and from consumers, definite information as to the amounts of water that have actually been used in the past. However, it appeared to be impossible to determine anything definite beyond the fact that water had undoubtedly been wasted by both the consumers and the company.

In my opinion the amount of water available in the hands of this company is sufficient for decidedly more land than the 1785 acres irrigated during the last season, and that the excess amount of water above what was actually necessary for the present acreage should undoubtedly be conserved for the benefit of the community at large.

Witnesses for the company reiterated that it was impossible under the present form of flat rate to obtain a more conservative use of water and to provide from the available supply any certain amount of water for additional lands. These witnesses alleged that while certain consumers paid for a small acreage they would actually obtain benefit from the water for a much larger acreage at lower levels.

Witnesses for protestants alleged a considerable waste of water by the company itself, but could not definitely controvert the testimony of the company in regard to their own method of use. Both the company and the consumers seem to be so lacking in the knowledge essential to a proper use of water that it is my opinion that the rate should provide for payment by amounts of water used and that measurements should be established for at least one season in order to adequately test what may best be accomplished in this community for the good of all concerned. It is also my opinion that some obligation should be placed upon the consumer in the

form of a guarantee to the company, to prevent the waste of water and to warrant continuance of service. I, therefore, recommend that the rates which this company asks authority to put into effect be established with the full understanding that such rates shall be subject to revision after a full season's thorough trial if found unsatisfactory or unreasonable.

I also desire it to be distinctly understood that in extending service to any lands for which water service has not been fully provided for in the past, that the lands of present consumers should first be fully protected in their right to obtain water, and make payment as hereinafter provided; and that should the present consumers not desire immediate service of water upon their lands that then the company may extend service to the reasonable limit of its capacity to other lands; and that in placing water on lands not now served no preference shall be given to any particular owners of land.

It is impossible with the very indefinite data available to state the amounts of water necessary for use in this particular community. Water use data in other communities where there is better knowledge is not directly applicable here. Therefore, it seems to me that it is essential that during this coming season actual measurement of water be made in order that the data then available may be used as a guide to the Commission should the rate fixed be found impracticable.

Testimony was produced at the hearing which makes it appear to me that two feet of water in depth applied on the land would probably be sufficient, with proper cultivation, to raise the average of crops common in foothill regions. It is well known that orchards would probably require somewhat less water and alfalfa somewhat more, but opinions on the subject must await further evidence.

With the exception of some minor changes, I recommend that the rules and regulations presented by applicant be put into

effect. In recommending approval of these rules and regulations I wish it to be understood that I limit the approval of such rules to this specific case, being influenced by the conditions here prevailing.

I submit herewith the following form of order:

O R D E R

The Excelsior Water and Mining Company of Smartsville, California, having applied to this Commission for permission to change its rates and charges for water furnished and services rendered by it in the counties of Nevada and Yuba, State of California, and for the approval of certain rules and regulations attached to its application and marked Exhibit "D", and the Commission having carefully investigated the matters concerned and a public hearing having been held in Nevada City,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the applicant, Excelsior Water and Mining Company be and it hereby is authorized to establish the following charges for water for irrigation purposes:

A minimum charge per acre per annum of \$4.00 for the use of sufficient water to cover one acre of land one foot in depth, equal to 20 miner's inch days, and for less than one acre a proportionate rate.

For the use of additional water at the rate of \$1.25 for 10 miner's inch days, or sufficient water to cover one acre six inches in depth.

(The words "miner's inch" wherever used herein, mean $\frac{1}{40}$ of a second foot of water, or a flow of water equal to 2160 cubic feet in every 24 hours.)

This minimum charge to be due and payable on or before April 1st of each year, and the charge for excess amounts to be due and payable on or before November 1st of each year.

IT IS HEREBY FURTHER ORDERED that applicant, at its own expense, install measuring and delivery boxes at the point of delivery to each consumers land.

IT IS HEREBY FURTHER ORDERED that permission and authority be given applicant to put into effect the following rules and regulations:

1. No person shall place any obstructions or dam in any ditch belonging to the company.
2. The gates shall be regulated by the ditch tenders or the foreman, under the direction of the general manager of the company and no tampering nor interference with the gates by any of the water users will be allowed. Persons tampering or interfering with any of the gates of the company will be dealt with according to law.
3. The points where water is measured and delivered to water users, shall be restricted to gates and outlets in the company's ditches and canals.
4. Water shall be turned out of main or lateral ditches of the company for each water user at one or more gates at the option of the ditch foreman.
5. The manager of the company, or the foreman by permission of the manager, may grant permission to irrigators from time to time, to alter or change gates, but such permission will be personal only and for a specific time.
6. In the event that any water user has appropriated or used more water than his share at any irrigation, such amount of water shall be taken away from him at his next turn or time for irrigation.
7. It shall be allowed to irrigators to exchange time upon due notice given, provided such exchange is arranged for by due notice to the ditch tender on said irrigators ditch.
8. In case an irrigator is not ready for water when his turn comes according to the schedule, he cannot have water until his turn comes again, or until all of the other irrigators on his ditch are supplied, then he may be served with a larger quantity to compensate for the time lost, if there is sufficient water to give him the increased amount.
9. If a ditch tender fails or neglects to turn out water at the scheduled time and in proper amount, the water user will confer a favor on the company by promptly notifying the office of such failure or neglect.
10. The application of a water consumer for water for irrigation, stating the acreage for which he desires service during the coming season, must be filed with the company on or before April 1st of each year, excepting that provided the full 5000 acres does not

demand water before that time the company may allow such arrangement at a later date.

11. Non payment of water bills payable in advance after demand by the company or its agents shall be considered sufficient reason for not supplying water to water users, and should a consumer not pay the bills due for excess water used, payment may be demanded in advance for use during the following season, the amount to be based upon past use.
12. Requests for excess amounts shall be made three days in advance of the schedules run of water.
13. The company shall give precedence in the right to obtain water to all consumers who have used water in the past, in the estimation of the areas of land upon which they desire to pay for and receive water service.

IT IS HEREBY FURTHER ORDERED that in granting permission to the Excelsior Water and Mining Company to establish the foregoing rules and regulations, it is especially understood that the approval of the Commission of these rules and regulations is based upon the conditions surrounding this application, and it is not to be considered as establishing any principle to be followed in other applications or cases.

IT IS HEREBY FURTHER ORDERED that the above rules and regulations may be changed and amended from time to time by the Excelsior Water and Mining Company, but that the approval of this Commission must be obtained before such amendments or changes shall become effective.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California:

Dated at San Francisco, California, this 19th day of March, 1914.

Alfred Gordon
Wm. Thelin
Edwin D. Edgerton

Commissioners.