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Decision No. ✓

ORIGINAL

Decision No. 1321

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Commission's investigation on its own initiative of the rates and practices of the Eastside Canal and Irrigation Company.) Case No. 309

F. J. Solinsky and Walter D. Cole, representing Eastside Canal and Irrigation Company.

EDGERTON and GORDON, Commissioners.

O P I N I O N

The case of W. D. Adams vs. the Eastside Canal and Irrigation Company, No. 298, and the case entitled "In the matter of the investigation on the Commission's own initiative of the rates and practices of the Eastside Canal and Irrigation Company", No. 309, were consolidated for hearing, and by agreement of all parties all of the evidence introduced in each case was made applicable in the consideration and the decision of each and both of these cases.

In addition to the formal complaint filed by Adams, the Commission was in receipt of a large number of informal complaints by consumers of the defendant company, and in order to adequately consider the relations of this company to its consumers, it was deemed wise by the Commission that a comprehensive inquiry be had into all of the rates, rules and regulations, practices and facilities of the company, and to this end the Commission proceeded on its own initiative.

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The complaints against this company may be summarized as follows:

1. Inadequate water supply to consumers.

2. Discriminatory and unfair distribution of water as between consumers.

3. Discriminatory, unfair and unreasonable rates charged consumers.

4. Unfair practice on the part of the company in compelling consumers to maintain, repair and operate lateral ditches.

5. Unfair, unjust and unreasonable practice of the company in the failure to properly conserve water conveyed through its ditches and to obtain for its consumers all available water.

6. Unfair, unjust and unreasonable practices in the operation of its plant and system.

7. Unjust, unreasonable and unfair practice in delivering water to a larger amount of land than its system could properly supply, resulting in an undue diminution of the supply of water to each consumer.

8. Threatened delivery of water to additional land, which would result in still further diminishing the supply of present consumers.

These complaints will be considered in their order, as above, and will be followed by consideration of the valuation of the plant of defendant, fixed by its engineers and the valuation fixed by the engineers of this Commission.

The testimony, we believe, establishes beyond controversy that at least during certain years there has been delivered to consumers a wholly inadequate water supply. Particularly is this true of the year 1912, but this year was an unusually dry one and we do not believe should be taken as a typical year by which to judge irrigation systems in this State.

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 con-

siderable 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 15 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. The defendant has made a determined fight against every such attempt, and as a result has been put to a great expense in maintaining its water supply. As an example of this, we cite the testimony of Mr. James F. Peck, who has acted for it as attorney in all of these controversies for 15 years. He testified that the agreed compensation for his services in these matters was $300,000, $30,000 of which had been paid and $270,000 of which was represented by the promissory note of defendant. Incidentally, attention is called to a statement made by Mr. Peck, given while on the witness stand, which will be discussed more fully later, to the effect that notwithstanding these 15 years of litigation the defendant is no more secure in its right to take water from the San Joaquin River than at the beginning, and that constant additional forays were being made against it in the courts and it could be reasonably anticipated that such attacks would continue.

We hold, therefore, that the defendant must be exonerated from any charge that it has not adequately and faithfully protected or attempted to protect its supply of water.

As to the water supplied its consumers we are satisfied from the evidence that the practices of the company have led to some of the consumers at times being deprived of water or unduly cut down in their supply. For instance, it has been shown that at times when water was refused to consumers, large areas of land owned

by the same parties who own this water system have been flooded with water, notwithstanding that such areas of land were not under cultivation, but were permitted to grow wild grasses. Also we think it established that because of the lack of a proper system of regulating distribution in and from the laterals, some consumers have not received water at times and in amounts otherwise available.

The main ditch or canal of defendant runs through and irrigates at present about 10,000 acres of land, 3,000 acres of which are on a higher level than the remaining 7,000 acres. The result is that when water is low in the canal the high lands are deprived of water and the low lands are supplied. It was not shown, however, to be possible to alter this condition so as to place the high and the low lands upon an equality in this respect.

At one time three miles of the east wall of the main canal was washed away and the water from the canal ran into a depression in the land which was given the name of Bloss Lake or Bloss Reservoir. This wall has never been replaced and the water from the canal has been allowed to run into the depression until it has filled, when the water in the canal resumes its course. Naturally, when the level of the water in the canal falls, the water from this lake runs back into the canal, but usually at such a level as to be unavailable to the high land, but available to the low land. Complainants located on some of the high land contend that if this wall were replaced or rebuilt their supply of water would be increased and on the other hand, defendant contends that this lake forms a storage of water of benefit to the low lands and that to do away with it by replacing the wall of the canal would result in the waste of water otherwise impounded in this canal and usable on the low land and which water would be wasted and not used on the high land if the wall was replaced.

We are not convinced from the evidence that Bloss Lake constitutes a storage of much value to any of the lands. How-

ever, it is not apparent how the replacing of this canal wall would materially benefit the high lands because at the time that Bloss Lake fills with water there is a sufficient supply of water in the canal to irrigate the high lands and probably the water which runs into the Bloss Lake would otherwise waste. Later, however, a certain amount of water is continuously consumed by evaporation, transpiration and seepage losses from Bloss Reservoir. These losses will continue through at least a portion of the period of insufficient supply preceding final draining when water service is discontinued for the season to the high lands and the canal drained to its lowest level for use on the low lands beyond.

This canal system was originally built by James J. Stevinson and John W. Mitchell and was installed for the purpose of irrigating land owned by these two parties. Subsequently John W. Mitchell transferred all of his interest in the canal property to Stevinson and Stevinson later conveyed his interest to defendant. By agreement or adjudication of the courts, water from this canal system was apportioned to the land through which it ran. The land owned by Stevinson was conveyed by him to a corporation known as the James J. Stevinson Corporation, and the owners of this land company and the owners of defendant have been at all times and practically now are the same people.

The Stevinson Corporation sold under contract approximately 8407 acres of land and under an agreement between it and the Canal Company, defendant herein, the Stevinson Company agreed with the purchaser of the land that upon the carrying out of the terms of the contract by the purchaser, the Canal Company would convey to him a water right, and from the time of entering into the contract the purchaser was to pay the canal company $1.00 per acre per annum in advance for the amount of water specified in the so-called water right.

The testimony shows that the Stevinson Corporation added to the price of the land sold under the contracts as aforesaid, the sum of $25 per acre for this so-called water right.

Some of the users of water under this system obtained their land from owners other than the Stevinson Company and hence obtained no water right or contract. These people, however, have been furnished with water by defendant and because they have no contract for water and have paid the Stevinson Company no money for water privileges, they were and are being charged $5.00 per acre per year for the irrigation of alfalfa, $2.00 per acre per year for natural grasses, and $3.00 per acre per year for other character of irrigation.

Defendant contends that the outstanding contracts for the delivery of water wherein is fixed the rate and the conditions under which water will be delivered are valid and binding contracts and which must stand against any power of the Commission to change any of the conditions therein set out. This Commission has held squarely against this contention, first in the case of the application of Murray and Fletcher, No. 118, Decision No. 536, and in subsequent decisions affirmative thereof, wherein it was decided that regardless of the conditions under which, and the time when such contracts were made, the power of the State, acting through the Commission, is paramount in respect to those matters set out in the Public Utilities Act wherein the powers of the Railroad Commission over the rates, practices, rules and regulations, service and facilities of public utilities are prescribed.

Under the provisions of the Public Utilities Act, if this Commission fixes rates to be charged its consumers by defendant for the delivery of water, such rates must be reasonable and must not be discriminatory.

On the facts of this case we find that all consumers in a like class should be placed upon a level, and this notwithstanding

that there has been a great disparity in the payments in the past by consumers for the privilege of obtaining water. This may at first glance appear to be a hardship and an injustice to those who paid for these so-called water contracts as compared with those who have paid nothing and have no contracts and yet have received and will receive water. But when it is considered that in all probability the James J. Stevinson Corporation would have added this price of a water right to the price of its land had it not made this charge for water contracts, it becomes apparent that in all probability the present owners of land originally purchased from the Stevinson Corporation have paid no greater sum because of their obtaining these water contracts than they would have otherwise paid.

The Stevinson Corporation at its own expense, constructed the laterals leading from the main ditch of defendant and has always and does now maintain and operate these laterals at its own expense. As far as the evidence shows, no conveyance has ever been made of these laterals by the Stevinson Corporation.

This Commission has held in the case of J. A. Andrew Francsioni et al vs. The Soledad Land and Water Company, that it is to the best interest of all concerned that laterals and other distributaries should be maintained and operated by the company operating and maintaining the main ditch or canal system, and the reasoning in that case applies here, perhaps with added force. The testimony shows beyond controversy that serious injustice has been done some of the consumers because of the lack of unified control and management of laterals which has resulted in the haphazard taking of water. The man located on a lateral nearest to the main ditch has the first opportunity to take water and we cannot rely upon the justice of an irrigator so favorably

located to take only so much water as he is justly entitled to. Experience shows that having the opportunity, consumers will first consult their own needs, rather than place themselves voluntarily upon an entirely even basis with other consumers less favorably located on the lateral. We think, therefore, that defendant should acquire, control, operate and maintain all of the laterals and distributaries connected with its system except those located on the land of consumers, used solely for his purposes.

Of course, in this event, defendant is entitled to such rates as will fairly compensate it for this service which involves a fair return on the property used therefor. We have been given to understand that defendant can and will acquire these laterals from the Stevinson Corporation if the Commission so orders.

A large part of the complaints against the operation of this plant arise through the operation of the laterals and distributaries. These laterals and distributaries are now owned and operated by the Stevinson Land Corporation and the ownership and operation thereof by the Canal Company under rules and regulations set out in the order herein will, in our judgment, largely eliminate the cause of these complaints.

We find that defendant has been furnishing water for irrigation purposes to the purchasers of land from the Stevinson Corporation and to owners of certain other lands, and in addition has at times furnished water to a large area of land owned by the Stevinson Corporation used for the growing of wild grasses for stock purposes. It is clear from the evidence that there is not sufficient water available in the system of defendant to regularly and fully supply all of this land with water, and we believe that the land used only for growing wild grasses should receive no greater use of water than has been accorded it in the past. The testimony of defendant's witnesses was that this last mentioned

land was only furnished with water after all other consumers had been adequately supplied. This, we think, forms the basis for a proper and just rule; that the consumers of water under this system who have and are now regularly using the water for irrigation purposes shall first receive an adequate supply of water and that any surplus over such adequate supply may be supplied to this grass land.

It is impossible upon the evidence, however, to definitely separate the land which has been regularly irrigated for crops and the land which has been occasionally irrigated with surplus water for wild grasses. We can, however, from the evidence separate and define that land which has never received irrigation except with surplus water for grass land, and while this separation may leave within the area which may receive regular irrigation some land which has occasionally received only irrigation for grass lands, it is impossible to make a closer segregation. We recommend, therefore, that the order herein include provision for the regular irrigation of the land within the smaller specified area and the land within the larger specified area to receive water for irrigation purposes only when the land within the smaller area has been fully supplied, and that defendant be ordered not to supply any new or additional consumers outside of both of these areas without the further order of this Commission.

Heretofore there has been rendered a decree of the Superior Court of Merced County, providing for the use of certain of the waters flowing in defendant's canal on certain lands adjacent to said canal and the order herein with relation to restricting the use of water should be made subject to such decree.

In fixing reasonable rates to be charged by defendant for the delivery of water, consideration must be given, of course, to the value of the property used in serving consumers. The company, through its engineers, presents in evidence a complete

inventory and appraisal of the property claimed by defendant to be used and useful in this service, and the engineers of this Commission have presented in evidence an inventory and appraisal.

In addition to the property inventoried by the company's engineers, defendant claims that it is entitled to a return upon the value of its right to take water from the San Joaquin River.

Only meagre evidence was introduced on the question of the value of water rights and while we find a very able argument presented in the exhaustive brief of F. J. Solinsky and W. D. Cole, attorneys for defendant, on this subject, we believe that the evidence as a whole is such as to obviate the necessity of determining in this case the extremely important question, as yet undecided by this Commission, of whether or not public utility water companies in this State are entitled to return upon the alleged value of water rights.

The evidence introduced by defendant shows that it has not an undisturbed and undisputed right to the use of any definite amount of water from the San Joaquin River, its only source of supply.

There has been litigation over defendant's water rights covering a period of 15 years and the testimony of Mr. James F. Peck, attorney for defendant in this litigation, is that the water rights of defendant are no more secure now than they were at the beginning of this litigation. Furthermore, the amount of water available to defendant from the San Joaquin River varies enormously from year to year and it is utterly impossible from the evidence introduced in this case to determine the amount of water upon which we are asked to fix a value. Under these circumstances, we deem it impossible to intelligently discuss the question of the value of water rights and we, therefore, make no finding on the value of water rights. Rather we find on the value of the water system as a whole under all the evidence introduced in this case.

By way of illustrating the alleged value of its water

rights, defendant shows that for 15 years it has been engaged almost constantly in defending its right to take water from the San Joaquin River against attacks made in the courts. This litigation has proven enormously costly to defendant. Testimony shows that this company has agreed to pay its attorney, Mr. James F. Peck for his services in this litigation, $300,000, $30,000 of which has been paid, the rest being evidenced by promissory notes given him by the company.

Mr. Peck testified at the hearing that notwithstanding this 15 years of litigation, constant attacks in the courts were being made against the company's water rights, and it could be reasonably anticipated that such attacks would continue. Notwithstanding the enormous comparative sum expended and contracted to be expended by defendant in protecting its water rights apparently it is no more free now than at the beginning from such attacks. The attorney's fees alone amount to more than is claimed by defendant to be the entire physical value of the water system.

We do not believe that defendant should be allowed to take from the consumers reimbursements for these enormous expenditures. We do not question the good faith of defendant in defending its water rights, nor do we propose to pass upon the question of the reasonableness of the attorney's fees paid. However, we think that consumers can justly be charged only with such property the title and possession of which may be maintained at reasonable expense. Even though it be determined that water rights as such have a value upon which consumers should pay a return, still such water rights so to be valued should be stable and not enormously costly to maintain.

We believe that at least this much responsibility in this regard rests upon the public utility. That it produce property at reasonable cost and reasonably secure as to title and possession and that if it do less than this, its must be the loss. The consumer has a right when he purchases land under a water system to

assume that the owners of such system have used reasonable prudence and foresight in designing and establishing the property. It is unreasonable to thrust the responsibility of determining complicated and difficult questions of title upon the consumer so that it could be said that once he becomes a consumer he does so with notice that the property of the company may become costly by reason of litigation and disturbance of its title. On the other hand, the utility has every opportunity and should make careful investigation before it launches the enterprise.

By this we do not mean to say that reasonable expense for maintaining and protecting title to property should not be allowed because, of course, this Commission will expect a utility to protect its property on behalf of the consumers and itself, and of course realizes that the cost of such reasonable protection must be borne by the consumers where a reasonable return only is allowed the utility.

Our regret at the losses which may be suffered by the utility in this case because of the above finding is somewhat softened by the fact which is apparent from the testimony that the water system was established primarily, not for the purpose of profit from the delivery of water but for the purpose of adding to the value of the land owned by the promoters of the water system. Having the opportunity to place such value as they saw fit upon the land they could well afford to take chances on the cost of maintaining the title to their water as it is easily possible that prospective profits on the sale of land might absorb their losses in protecting their water. Further, Mr. Peck testified that the price of the property under this system owned by the Stevinson Corporation designedly included the cost of the water plant. Hence it may be possible that notwithstanding the enormous expenditures made by defendant in protecting its property its entire venture may prove profitable.

The present value of the physical properties now operated by defendant fixed by its engineers is $148,042, and the value fixed by the engineers of this Commission for this property is $110,764. The present value of the laterals and distributaries which it is found can and will be owned and operated by defendant, as fixed by the engineers of this Commission, is $58,500.

The evidence shows that this irrigating plant was built of a size sufficient to irrigate approximately 50,000 acres of land, and the land which has been irrigated is about 11,000 acres.

We believe it to be unjust to charge against consumers the total value of a system built of a size largely in excess of that which would be required to serve them and also largely in excess of a size adequate to convey the quantity of water available. We shall, therefore, consider a return upon the value of this plant reasonably used in the service of the present consumers, and also reasonably necessary to convey the amount of water available.

Without indulging in a detailed discussion of the differences in values between the engineers of the defendant and the engineers of this Commission, we find that the fair present value of the property used and to be used in the service of the present consumers is $110,000; annual depreciation $1,050; annual expense of maintenance and operation $9,300; interest at 6 per cent per annum $6,600, total $16,950.

Based on the above we find that a reasonable rate to be charged by defendant for the service of water to its consumers is $1.50 per acre per year.

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.

We submit herewith the following form of order:

O R D E R

The Railroad Commission of the State of California having on its own initiative called into question the rates and practices of the Eastside Canal and Irrigation Company and an investigation having been made and a hearing having been duly held, and the Commission being fully apprised in the premises,

IT IS HEREBY FOUND AS A FACT:

1. That the present rates, practices, rules and regulations of the Eastside Canal and Irrigation Company for the distribution of water to its consumers are unreasonable and unjust.

2. That all of the following described land is within the area irrigated and properly irrigable from the system of defendant and is entitled to irrigation under the rules and regulations herein prescribed.

In Township 7 South, Range 10 East, M.D.M.

All of sections 7, 8, 9, 10, 14, 15, 16, 17, 18, 22, 23, 24 and 25.

The S W ¼ of Section 3, and that portion of the N W ¼ of said Section 3 that lies South of the Merced River.

The W ½ and the S E ¼ of Section 11, and such portion of the N E ¼ of said section 11 as lies South and West of the ditch known as the "Adams Lateral".

That portion of the S W ¼ of Section 12 that lies South and West of said "Adams Lateral".

The S W ¼ of Section 13, and those portions of the N W ¼, the N E ¼ and the S E ¼ of said Section 13 that lie South and West of said "Adams Lateral".

The N E ¼ of Section 19, and lot 5 situated in the N E ¼ of the N E ¼ of said Section 19.

The N ½ of Section 20.

The N ½ and the N ½ of the S E ¼ of Section 21.

The N E ¼ and the N E ¼ of the N W ¼ of Section 26.

And the following parcels of land all situated in Township

7 South, Range 9 East, M D B & M, described as follows:

Section 1.

The N ½, the S E ¼ and the N ½ of the S W ¼, and the S E ¼ of the S W ¼, Section 12.

The N ½ of the N E ¼, and the S E ¼ of the N E ¼, and the E ½ of the N E ¼ of the S E ¼, Section 13.

All of Sections 4, 5 and 6 that lie South of the Merced River.

And that portion of the E ½ of Section 5 that lies South of the Merced River.

3. That all of the following described land is within the area heretofore occasionally irrigated with surplus water after the lands situated in the area described in the preceding paragraph have been irrigated and is entitled to irrigation with the surplus water left after the needs of the consumers whose lands are situated in the area described in paragraph 2 have been supplied:

All lands in Township 7 South, Ranges 9 and 10 East, M D M not described in the preceding paragraph and lying north and east of the San Joaquin River and east of the Merced River.

4. That the Eastside Canal and Irrigation Company has reached the limit of its capacity to supply water in serving the land described in paragraphs 2 and 3, and that no further consumers of water can be supplied from the system of said company without injuriously withdrawing the supply wholly or in part from those lands now being served by said company.

5. That reasonable and just rates and reasonable and just rules and regulations and practices by the Eastside Canal and Irrigation Company for the service of water to its consumers are the rates, rules and regulations, and practices specifically set out in the order following.

Basing its order upon the foregoing findings of fact and the further findings of fact set out in the opinion preceding this order,

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA:

1. That within a period of twenty days from the date of this order, the Eastside Canal and Irrigation Company take over and operate all the lateral ditches and distributaries connected with its water system by and through which water is conveyed from its main canals to the land of consumers, and which are now, or claimed to be in the ownership of the James J. Stevinson Corporation.

2. That the Eastside Canal and Irrigation Company shall serve water for irrigation purposes to all those lands described in paragraph 2 of the findings of fact herein.

3. That said company may serve water to those lands described in paragraph 3 of the findings herein after the needs of the consumers located on the land described in paragraph 2 of the findings herein have been supplied.

4. That said Eastside Canal and Irrigation Company shall not furnish water to any new or additional consumers located outside of the areas described in paragraphs 2 and 3 of the findings herein without the further order of this Commission.

5. Immediately upon taking over the laterals and distributaries as provided in paragraph 1 of this order, the Eastside Canal and Irrigation Company shall file with this Commission a schedule of rates and rules and regulations and practices for the distribution of water to its consumers as follows:

The Rates to be charged by the Eastside Canal and Irrigation Company shall be $1.50 per acre per year, payable on or before February 1st for use during the ensuing season.

RULE 1

GENERAL STATEMENT.

The East Side Canal and Irrigation Company will provide and operate and maintain diversion works, the Main Canal, branch canals and laterals with the appurtenant structures necessary for the distribution of water to all consumers except where laterals and structures have been constructed and are claimed by individuals or associations of individuals.

The Company, however, maintains the right to supervise delivery to all individuals from whom it exacts payment and will require that all distributaries not under its direct control shall be in proper condition for the distribution of water.

RULE II

METHODS OF DISTRIBUTION.

(a) A "pro rata" distribution of water implies simultaneous delivery of water at the established point on the system for each and every consumer in the proportion of the total amount available according to the individuals' right and desire to receive, as fixed by acreage, payment or otherwise. This may be applied to the main canal in its distribution to principal divisions and laterals or to the entire system.

(b) "Rotation" shall mean the delivery of water in larger heads than would be available under a pro rata distribution on a part of the system at a time, serving laterals and individuals in turn; the aim being to deliver to each consumer ultimately as exactly a proportion of the supply available as by "pro rating".

RULE III

PROTECTION OF SUPPLY.

The Company will endeavor at all times to divert all water legally within its right and available into its main manal, to the limit of the aggregate demands upon it and will use every endeavor to protect the water supply and transmit the same in proper proportional amounts to consumers.

RULE IV

DISTRIBUTION OF SUPPLY.

(a) Full Supply: When sufficient water is available for all demands it will be distributed at all division points and turn-outs to branch canals, laterals and individual consumers in a proportional part of the total flow available, allowing for seepage loss; this proportion being based upon the acreage for which payment has been made and the particular service applied for.

When the Company has fully supplied all demands within the area described in paragraph 2 of the findings herein, excess water may be served to the lands described in paragraph 3 of the findings herein.

(b) Partial Supply: When the supply available is between that sufficient to supply demands, as above stated, and about 75% of such amount, water will be pro rated between the principal distributing ditches, but will be rotated between individual consumers and to smaller laterals.

(c) Short Supply: When the supply available is under about 50% of that sufficient to fully supply demands the Company will rotate to main ditches as well. So far as possible a forecast will be made of the available water supply and rotation between main ditches shall be so planned as to provide a full head in each ditch during the period of flow, which period will be varied in accordance with the amount of the total flow available. As many as may be of the branch canals will be filled simultaneously and the flow will be continued for as long a period as possible with a probability of providing a ratable service to all parts of the system during the ensuing season.

RULE V.

The Company will establish schedules based upon the applications for water and payments made; and during the portion of the season when rotation has become essential for the best

use of the water available it will give notice to its consumers, by reasonable methods, of the time of beginning and ending their use of water. Such publication of notice of rotation periods shall be made not less than two days before the beginning of the period, except in case of emergency, when the best endeavor will be made by the Company to spread the necessary information.

RULE VI

SEQUENCE OF ROTATION.

The order in which ditches and consumers will be served will be established by the Company and, provided it has not been possible, due to fluctuation of the water supply available, to give each consumer a ratable service in any one season, precedence will be given those who have received a deficient supply, during the following season.

RULE VII

ROTATION DELIVERY TO INDIVIDUALS.

Between individual users along the main canal of the Company, and on minor distributaries where each individual may use the full flow, delivery of water shall always be by rotation, commencing generally at the farther end of such laterals. On these laterals water will be delivered to consumers, in turn, the length of time being in accordance with the acreage paid for modified by demand and use. The rate at which water is supplied shall be limited to 4 cubic feet for 24 hours to each 20 acres. When rotation has been resorted to in delivery to the main branches the length of time shall be reduced proportionately; but the endeavor will always be to deliver a sufficient head for the most beneficial use.

RULE VIII

DEVIATION FROM SCHEDULE.

Deviation from established schedules will be allowed when the efficiency of the system is not impaired and only by previous

arrangement with the Superintendent of the Canal Company and all water users who may be inconvenienced; similarly an irrigator not ready to use water in his turn may exchange time with another.

RULE IX

CREDIT FOR NON-USE.

When a water user has not taken advantage of the supply available during any period, nor exchanged with another, he may be supplied during following periods, providing no other user is inconvenienced.

RULE X

CONTROL OF SYSTEM.

The canals, ditches and appurtenant structures, which it is the duty of the Company to maintain and operate, are under the exclusive control of the Company employees. The Superintendent will give full instructions to ditch tenders in regard to all changes to be made in the flow of water. Any other person tampering with any such property or changing the arrangement of gates or flash-boards in any turn-out, check, drop or other structure of the Canal Company is trespassing and will be dealt with according to law.

The Superintendent, however, may grant special permission to irrigators to alter flash-boards or gates, which permission should be in writing or by message; later substantiated by written communication; and will be for a specific time, only. Further it may be arranged that a number of users on a lateral shall change the gates in compliance with the established schedule.

RULE XI

DEDUCTION FOR OVER-SUPPLY.

If any person shall have been found, through his own or any other unauthorized person's act, to have obtained more than his ratable supply of water the amount above his proper supply

shall be deducted from later runs to compensate other consumers.

RULE XII

UNIT OF MEASUREMENT.

The unit of measurement of flow will be the cubic foot per second of time; and of quantity the acre foot, the amount sufficient to cover an acre one foot deep.

RULE XIII

MAINTENANCE AND RECORDS.

The Company will establish Gaging Stations, and other methods of measurement, at suitable points on the main and branch canals and laterals in sufficient number to arrive at a close approximation of the amounts of water delivered at all points upon the system of the Company. Records will be kept of the amount of flow passing such points daily or oftener and from such records the amount of water delivered to individuals will be determined and carried to totals by months; and each interested party will be informed, on request, of the amount of water which he has received.

Where it is reasonable to do so, measurements will be made at the point of delivery to individual consumers.

RULE XIV.

SUPERINTENDENT AND DITCH TENDERS.

The Superintendent of the Canal System will establish the schedules which will be followed in the delivery of water to consumers and will establish the points and methods of measurement of water, obtaining approval of said matters from the Railroad Commission.

There will be a sufficient number of ditch tenders employed to adequately patrol the entire system operating and shall visit at least once daily practically every point on the system where water is running. It will be their duty to follow, strictly,

the instructions of the Superintendent in the delivery of water to the various consumers, to make gage and weir readings at the established measuring points, to guard and care for the property of the Company, to assist in the distribution of water, to see that water is not wasted and to report to the Company Superintendent any dereliction or tresspasses on the part of consumers.

COMPLAINTS.

Complaints or special requests should be made in writing and addressed to the local office of the company.

RULE XV.

RELATION BETWEEN COMPANY AND CONSUMERS.

All officials of the Company are instructed to aid the water users in every manner and to courteously and respectfully consider all criticisms and suggestions. The Company will meet with the desires of each consumer in so far as it can do so with justice to all interested parties.

RULE XVI.

The failure of any consumer to pay the water rate in advance as herein provided, shall exonerate the company from any delivery of water to him during the year of the failure to so pay the rate.

The order herein made shall be subject to the decree or decrees of the Superior Court of Merced County, heretofore made, wherein water taken by defendant herein from the San Joaquin River is allotted to certain specified land.

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 31st day of March, 1914.

H. D. Loveland

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.