Decision No. 1452

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

Decision No. 1452

In the Matter of the Application of SANTA CLARA WATER AND IRRIGATING COMPANY for an order authorizing an increase in rates.

Application No. 136.

Hiatt & Selby for applicant.
Don G. Bowker for Theo. A. Kelsey and other users of water of the Farmers' Ditch.
George E. Farrand, T.O. Toland and L. W. Andrews for Thermal Belt Water Company and Limoneira Company.

ESHLEMAN, Commissioner.

O P I N I O N .

On June 18, 1913, Commissioner Edgerton presented his opinion in this case, which opinion was approved by the Commission, reopening the case with a view to determining for the purposes of this case the status of the 200 inches of water delivered to the so-called Olive Lands through the ditches of the applicant. At the subsequent hearing the attorneys for the Thermal Belt Water Company again brought to the attention of the Commission their views to the effect that the 200 inches of water sold to the Thermal Belt Water Company are not subject to the jurisdiction of this Commission in a rate fixing inquiry and introduced evidence on this point. Likewise evidence was introduced in accordance with the re-submission of the case tending to show the status of the 200 inches of water delivered upon the Olive Lands.

It is well to review all of the salient facts which tend to have a bearing upon the relationship which exists between the applicant here and the users of the 200 inches of water delivered to the stockholders of the Thermal Belt Water Company and the 200 inches of water delivered upon the Olive Lands.

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The Santa Clara Water and Irrigating Company controls two separate and distinct systems for irrigation; one called the Farmers' Ditch and Irrigating Company, lying upon the north side of the Santa Clara River; and the other called the Santa Clara Water and Irrigating Company serving lands upon the south side of the Santa Clara River. Briefly the history of these properties is as follows:

In 1871, some seventeen settlers appropriated and diverted an amount of water, the quantity of which is in dispute, at a point about 1½ miles above the present Town of Santa Paula in the County of Ventura, for use upon the north side of the Santa Clara River. The ditch through which this water was diverted is now known as the Farmers' Ditch, and was formerly controlled by the Farmers' Ditch and Irrigating Company. About 1872, settlers on the south side of the River formed the Santa Clara Water and Irrigating Company and diverted water from the Santa Clara River at a point about 8 miles below the former diversion for use on the south side of the River. At the present time all of the property is owned by the applicant, the Santa Clara Water and Irrigating Company, but for the purposes of the present proceeding it is unnecessary to follow further the water on the south side of the River.

In the year 1896 the Farmers' Ditch was owned by one Addison Lisle who caused to be incorporated the Keystone Mining, Manufacturing, Land and Power Company, which became the owner of this ditch; and this company leased the Farmers' Ditch to a man by the name of Nichols in 1896 who operated the ditch under lease for two or three years. Nichols claims that at this time he was only diverting through this ditch and delivering to consumers between 400 and 500 inches, which indicates that not nearly the 1500 inches which is claimed to have been appropriated originally before 1879 was being put to beneficial uses up to 1896.

In 1898, a Mrs. Harrold, who together with her children, for whom she was guardian, was the owner of "Olive Lands", a tract of some 2600 acres lying northwest of andabove the terminus of the Farmers' Ditch, purchased all of the stock of the Keystone Mining, Manufacturing, Land and Power Company thereby securing through stock ownership in this corporation control of the Farmers' Ditch.

On June 3, 1898, the Keystone Mining, Manufacturing, Land and Power Company entered into a contract with the Thermal Belt Land Company for 200 inches of water. In that contract is the following recital:

> "That, WHEREAS, said Keystone Mining, Manufacturing, Land and Power Company has claimed and guaranteed, and does hereby claim and guarantee to said party of the second part, that it is the owner, in the possession and entitled to the possession of that certain water system and ditch known as the 'Farmers' Water Ditch' commencing from and derived and taken out of the Santa Clara River at a point therein or thereon distant about one and one-half miles east of the town of Santa Paula, and running and extending thence westerly upon and across lands, the fee of which is owned by Casner, Morgan and Barker, through and by means of dam, ditch and flume to the north bank of said Santa Clara River, and thence through and by means of ditches and flumes westerly through the south portion of the town of Santa Paula in said Ventura County, to and past the Pumping Plant of said party of the second part;
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> "And, WHEREAS, said Keystone Mining, Manufacturing, Land and Power Company has claimed and asserted and does hereby claim and assert to said party of the second part that it is the owner of and has the right to divert and is now diverting out of and from said Santa Clara River at least fifteen hundred (1500) inches of the water thereof, measured under a four inch pressure, by means of and through its said dams, flumes and ditches, and is distributing the same;
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> "And WHEREAS, said J. B. Harris, W. M. Ramsey and Robert Darling are a majority of the Board of Directors of said Keystone Mining, Manufacturing, Land and Power Company;
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> "NOW, THEREFORE, said parties of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, to each of them in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the rents herein specified to be paid by said party of the second part, have granted, demised and let and by these presents do grant, demise and let unto said party of the second part, its successors and assigns, so much and such quantity of said waters which said Keystone Mining, Manufacturing, Land and Power Company claims to own and to have the right to divert from said Santa Clara River through and by means of said 'Farmers' Water Ditch', as aforesaid, as will when diverted and conducted and carried through and by means of said dams, ditches and flumes of said 'Farmers' Water Ditch' water system, produce,

yield and furnish a continuous flow of two hundred (200) miner's inches of said water, at the Pumping Plant of said party of the second part, which shall be the point or place of measurement of said water and for the diversion thereof by said party of the second part from said water system of said Keystone Mining, Manufacturing, Land and Power Company and into the water system of the party of the second part the location of which said pumping plant or station is particularly described as follows, to wit:

"Situate on the north bank of said 'Farmers' Water Ditch' at a point or place distant seventy (70) feet more or less Westerly from the West line of Barkla Street, in said Town of Santa Paula;

"Together with the right to have said water diverted from said river and conducted by means of and through the dams, works, ditches, flumes, and conduits constituting said water works of said Keystone Mining, Manufacturing, Land and Power Company, to and into said Pumping Plant of said party of the second part; together, also, with such use of said dams, ditches, flumes and other works of said water system of said Keystone Mining, Manufacturing, Land and Power Company as may be necessary for the diverting and conducting of said water, as aforesaid, from said Santa Clara River through said works to and into said Pumping Plant and water system of said party of the second part;

"TO HAVE AND TO HOLD, the said water and the said rights and uses and the incidents and appurtenances thereof unto said party of the second part, its successors and assigns for and during the period of the irrigating seasons or years commencing with the date of these presents and ending with the first day of November, 1907, at and for the yearly rentals or sums of Four Hundred and Seventy-five Dollars ($475.) for the irrigation season or year ending November 1st, 1898, and Four Hundred and Fifty Dollars ($450) for each and every of the irrigation seasons or years commencing with the season or year which shall end on November 1st, 1899, and ending with the irrigation season or year which shall end on the first day of November 1907, which said annual rental or sum shall be due and payable from said party of the second part on the first day of November next succeeding the irrigation season or year for which rental shall have accrued.

"And said parties of the first part further covenant and agree to and with the said party of the second part, that they shall and will on or before the first day of April of each year during said term, by said dams, ditches and flumes or other adequate dams, ditches or flumes take out of or cause to be diverted and taken out of said Santa Clara River and conduct or cause to be conducted through said flumes and ditches to and into the said Pumping Plant of the party of the second part the said waters hereby granted, demised and let to the party of the second part, and that they will keep and maintain or cause to be kept and maintained said dams, ditches and flumes in such condition and repair during each and all of the irrigation seasons or years of said term so that the same shall divert, conduct and carry from said Santa Clara River ample water to produce, yield and furnish said two hundred (200) inches of water to and for said party of the second part at its said Pumping Plant and so that said Keystone Mining, Manufacturing, Land & Power Company shall be enabled to supply any and all demands of other parties, if any, for water

from said system, whose demands may in any manner infringe or be in conflict with the rights of said party of the second part under these presents.

"And party of the second part covenants and agrees that in case parties of the first part do so divert and take out of said Santa Clara River and conduct to and into said Pumping Plant and there maintain at a constant flow the waters hereby granted, demised and let to it at all the times and in all respects as herein provided, that it, the said party of the second part, shall not and will not interfere with or participate in the diversion of and conducting of said water to and into said Pumping Plant, nor with the management, construction, maintenance, care, or operation of said dams, ditches, flumes or other works of said 'Farmers' Water Ditch', water system.

"And it is further mutually covenanted and agreed that in case parties of the first part do not so divert and take out of said Santa Clara River and conduct to and into said Pumping Plant and there maintain at a constant flow the waters hereby granted, demised and let to the party of the second part at all times and in the manner and in all respects as herein provided, then party of the second part shall have the right and parties of the first part hereby grant to it the right at the cost and expense of said parties of the first part, by proper and adequate means, to divert out of said Santa Clara River and conduct to and into said Pumping Plant and there maintain at a constant flow (as herein provided) said water hereby granted, demised and let to party of the second part; and parties of the first part hereby agree to repay to and reimburse party of the second part for all monies expended by it in performing said work.

"It is further covenanted and agreed that the party of the second part shall not and will not reject any waters so conveyed to it by the parties of the first part in compliance with their covenants herein contained because such waters may have been procured from the Santa Paula Creek or may be a mixture of waters procured by them from Santa Paula Creek with the waters of the Santa Clara River.

"The parties of the first part hereby grant to the party of the second part the right to, at any and all times during the continuance of the term hereby created, turn back into said 'Farmers' Water Ditch' water system, from its said pumping plant, so much of the water hereby granted, demised and let unto it (to the extent of the whole thereof) as it may desire; and parties of the first part hereby agree that they will at any and all times receive at and from said Pumping Plant, conduct away and take care of, and in all respects be responsible after all and singular the waters so turned back into said 'Farmers' Water Ditch' by said party of the second part;

"And it is further covenanted and agreed that parties of the first part shall take and may use all of the water so turned back into said 'Farmers' Water Ditch' by party of the second part at its said pumping plant.

"It is further covenanted and agreed that all water diverted hereunder from said 'Farmers' Water Ditch' by or for party of the second part shall be conducted to and into said pumping plant of said party of the second part.

"It is further covenanted and agreed that parties of the first part may, at all reasonable and seasonable times, when party of the second part is operating its pumping plant, have access to the indicator in said pumping plant of said party of the second part.

"And said parties of the first part do hereby covenant and agree to and with the party of the second part that they and each of them will establish and defend, at their own proper cost and expense, the title, possession and enjoyment of the waters, rights and privileges hereby granted, demised and let unto said party of the second part against the claim or claims and infringements of all persons, associations and corporations whomsoever, and that for this purpose they will at their own proper cost and expense prosecute suits in a court or courts of competent jurisdiction against any and all persons, associations and corporations who shall divert or attempt to divert said waters of said Santa Clara River away from the restraining dams, ditches, flumes and works of said 'Farmers' Water Ditch' system or in any other manner interfere with the free and full use and enjoyment of the waters, right and privileges hereby granted, demised and let unto party of the second part, and for the purposes aforesaid that said parties of the first part and each of them shall and will at all times at their own proper cost and expense furnish ample bonds or undertakings for the security, in all proper cases from the appropriate tribunal or court, injunction or injunctions for the restraining of all persons, associations or corporations, who may in any manner interfere with, or attempt to deprive said party of the second part of any of the waters, rights or privileges hereby granted, demised and let unto it, and that said parties of the first part will in all proper cases, at their own proper cost and expense, furnish and give all bonds or undertakings necessary or proper to be given to secure from any court, in which any suit may be pending, the purpose or effect of which shall be in any manner to interfere with or deprive said party of the second part, of the waters, rights and privileges hereby granted to it, the appropriate order or orders for the dissolution, modification or refusal of any injunction or injunctions."

This contract was to run for ten years, the consideration to be $475.00 for the first year and $450.00 for each succeeding year, with the provision that it could be rescinded by either party on one year's notice; and on November 1, 1902, the contract was terminated by notice from the Keystone Mining, Manufacturing, Land and Power Company. ~~Following this~~ on June 23, 1902, the Thermal Belt Water Company leased 200 inches of water from Clarise H. Ramsey for one year, agreeing to deliver 75 inches to her for 90 days and pay 5¢ per inch for surplus. On September 1, 1903, the Thermal Belt Water Company entered into its present contract with the Farmers' Ditch Irrigating Company which, by its terms, is to extend until October 31, 1942, for the consideration of $800.00 per year.

Mr. Teague, vice-president and general manager of the Thermal Belt Water Company, testifies that they made their first contract for water from the Farmers' Ditch with Mr. Nichols, and it is in evidence that the first payment of $475.00 which was to be made for the first year's supply under the contract with the company which owned the ditch was paid to Mr. Nichols.

After the securing of the 200 inches of water for the Thermal Belt Water Company an additional contract for 100 inches was entered into, the Thermal Belt Water Company to transfer said 100 inches to the end of its pipe line to be used by Mrs. Harrold (who subsequently married one Ramsey and will be hereafter referred to as Mrs. Ramsey) on the Olive Lands; thus making at this time 200 inches under the so-called Nichols contract, as referred to by Mr. Teague, and 100 inches additional which went to the Olive Lands.

On the 8th day of March, 1899, the Keystone Mining, Manufacturing, Land and Power Company transferred all of its property for a consideration of $5,000.00 to the Farmers' Ditch Irrigating Company. The property described in the conveyance is as follows:

> "The Farmers' Water Ditch together with all and singular the water rights of every kind and nature belonging to said corporation wheresoever situated, and particularly the right to divert and use a portion of the waters of the Santa Clara River, in the County of Ventura, State of California, and the overflow and surplus of Santa Paula Creek in said county. And all ditches and laterals and all flumes and water-ways and conduits and rights of way and privileges in anywise belonging to said Keystone Mining, Manufacturing, Land and Power Company and in any way appurtenant to said ditch or ditches and said water rights."

The purposes for which the Farmers' Ditch Irrigating Company was formed are set out in its Articles of Incorporation as follows:

> "That the purposes for which it is formed are to purchase, hold, sell, lease, convey, use, mortgage, manage, control, operate and in every way deal with water, water rights, franchises, ditches, laterals, pipes, dams and conduits, water pumping plants and all other property, lands and rights of way incident or appurtenant thereto.
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> "To divert, take, convey, have, buy, sell, use, distribute, supply, lease, contract, pump and have pumped water for any and all beneficial uses and erect, construct and maintain water works of every kind and nature and water pumping plants.

"To make, accept, execute, deliver, assign and receive by assignment contracts, deeds, conveyances and leases of, for and concerning water, water rights, ditches, flumes, dams and conduits and their necessary and convenient incidents and appurtenances."

All but three shares of the stock of this company was held by Mrs. Ramsey.

On the 4th day of June, 1898, Clarise H. Harrold, afterwards Mrs. Ramsey, entered into an agreement with the Thermal Belt Water Company wherein it is recited that Mrs. Harrold has leased of the Keystone Mining, Manufacturing, Land and Power Company a continuous flow of 100 miner's inches of water during a term at least equal in duration to the term of the contract here referred to, which contract runs to the 1st day of November, 1907. And it is provided in such contract between Mrs. Harrold and the Thermal Belt Water Company that the latter company shall pump the 100 miner's inches of water from the Farmers' Ditch to the Olive Lands. It is provided that Mrs. Harrold shall deliver at the pumping plant of the Thermal Belt Water Company sufficient water to furnish the 100 inches and that the Thermal Belt Water Company shall pump the same according to the terms of agreement, and shall receive 30 cents per miner's inch of water for 24 hours for each and every miner's inch of water which the Thermal Belt Water Company shall pump. It is further provided in this agreement, as follows:

"And it is mutually understood and agreed by and between the parties hereto in consideration of the premises that said party of the second part (Thermal Belt Water Company) shall have the right in fulfillment of its covenants herein, to pump and transmit or otherwise furnish and deliver to said party of the first part (Mrs.Harrold) said water derived and taken from the Santa Clara River or water derived or procured by said party of the second part from the Santa Paula Creek or other source; provided any or all other water furnished shall be of equally good quality for irrigating purposes as the waters of the Santa Clara River, and that the water from two or more sources may be mingled together and transmitted by the party of the second part through its said pipe line system and delivered to the party of the first part at the western terminus of its pipe line in fulfillment of this contract."

On the 23rd day of June, 1902, a second contract was entered into between Clarise H. Ramsey and the Thermal Belt Water

Company reciting that Clarise H. Ramsey had leased of the Farmers' Ditch Irrigating Company a continuous flow of 200 miner's inches of water. This contract was similar to the contract just referred to and constituted a pumping agreement between Mrs. Ramsey and the Thermal Belt Water Company.

On the 9th day of December, 1901, an agreement was entered into between Farmers' Ditch Irrigating Company and Clarise H. Ramsey, wherein it is agreed that the Farmers' Ditch Irrigating Company:

> "Doth by these presents grant, demise and let unto the party of the second part (Clarise H. Ramsey), her heirs and assigns, a continuous flow of 200 miner's inches of water during the irrigating season of each year of the term of this contract of lease, delivered at any point designated by the said party of the second part on this company's main water ditch, as the same is at present constructed or as the same may hereafter be constructed during the term hereof.
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> "To have and to hold the same unto the said party of the second part, her heirs or assigns, for and during the period of the irrigating seasons of the years commencing with the date of these presents and ending with the 9th day of December, 1911, at and for the yearly rental and sum of Two Hundred ($200.00) Dollars, said rental payable annually on or before the 1st day of November of each year."

the water to be used on certain described lands, which it is understood were what is known as the Olive Lands. The company obligated itself to use all due diligence in keeping its system in repair and delivering the water to the pumping plant of the second party. The contract in question is made and accepted by Mrs. Ramsey subject to the contract between the Farmers' Ditch Irrigating Company and the Thermal Belt Water Company.

On the 3rd day of December, 1913, Mrs. Ramsey sold and surrendered up to the Farmers' Ditch Irrigating Company the aforementioned lease.

On September 1, 1904, the Farmers' Ditch Irrigating Company entered into an agreement with Leopolda Schiappa Pietra, wherein there was conveyed to Schiappa Pietra all of the water ditches, water rights and property belonging to the Farmers' Ditch Irrigating Company, known and generally called Farmers' Ditch, and Farmers' Ditch water right and water rights:

"Being all of the water and water rights and claims to water and water rights of said party of the first part (Farmers' Ditch Irrigating Company) howsoever and whensoever acquired of, in and to the waters of the Santa Clara River and of its branches, sloughs and tributaries and of, in and to the waters of the Santa Paula Creek, its branches, sloughs and tributaries, and any and all right and rights of the party of the first part to divert water out of and from said streams and any and all right and rights of the party of the first part to use, own, sell, rent, distribute and otherwise dispose of, handle and enjoy said water and water rights, together with all and singular the head-works, dams, ditches, lateral ditches, flumes and other conduits of every kind, character and description, and any and all works, easements, franchises, rights of way and privileges belonging to or in anywise incident, appendant or appurtenant to said ditch and water and water rights or used with or to divert, conduct or distribute said waters; the property hereinabove described including all and singular the property and rights conveyed to the party of the first part by the Keystone Mining, Manufacturing, Land and Power Company .....and any and all other water, water rights, rights of way and easements which may have been acquired by the party of the first part since the date of the deed last aforesaid; excepting and reserving, subject to the terms, covenants and conditions herein contained, unto the party of the first part, its successors and assigns forever, out of and from the water and water rights and other property above described such a quantity of water of the waters of the Santa Clara River that when the same shall be diverted by means of the dams and head-works herein mentioned and shall be conducted from said Santa Clara River by means of the water ditch, ditches, conduits and flumes herein mentioned to the pumping station situated in the northwest corner of subdivision 18 of the Rancho Santa Paula y Saticoy, and hereinafter more particularly described, it shall produce or measure 200 inches of water at said pumping station, and the right to divert said amount of water hereby excepted and reserved from said Santa Clara River; also excepting and reserving a right of way and easement in, along and through the water ditch and dams, head-works, conduits, ditches and flumes and over and along the rights of way above described, to divert said quantity of excepted and reserved water from said Santa Clara River and to convey and conduct the same or any part thereof from said point of diversion to said pumping station, together with a right of way and easement in said ditches, flumes and conduits herein mentioned for conveying whenever necessary the waste or surplus of and the waste or surplus incident to the handling of the water hereby excepted and reserved, from said pumping station to the place where the main ditch or conduit of the water system above described crosses or shall cross the place usually called the 'Wheeler Canon' or 'Todd Baranca';.....

"The party of the first part does for itself, its successors and assigns, forever hereby covenant and agree to and with the party of the second part, his heirs and assigns forever, that the 200 inches of water herein excepted and reserved by and to the party of the first part and to its successors and assigns shall and may be used and sold, leased or rented for irrigation, domestic and stock purposes and for other lawful uses and purposes by the party of the first part, its successors and assigns, for use upon, but not elsewhere than upon the following lands:"

Here follows a description of what are known as the Olive Lands and certain portions of the Limonetra Ranch. Then follow covenants to

the effect that the grantee, Schiappa Pietra, shall maintain the system and deliver the water, and if such is not done the party of the first part, the grantor, may do so at the expense of the grantee.

It is further agreed that the existence of the contract between the Farmers' Ditch Irrigating Company and the Thermal Belt Water Company, of the 1st day of September, 1903, be recognized and that all rentals, rights and advantages secured to the party of the first part are granted, sold and assigned and transferred to the party of the second part. The party of the second part undertakes to perform the obligations of the party of the first part, to the Thermal Belt Water Company. It is further agreed that the lease of the Farmers' Ditch Irrigating Company with Clarise H. Ramsey of December 9, 1901, expiring on the 9th day of December, 1911, shall continue to be held and the burdens and responsibilities thereof shall continue to be assumed and borne by the party of the first part. And the party of the first part covenants to save harmless Schiappa Pietra, the party of the second part, from any and all of the conditions and provisions contained in said lease. Apparently the ~~only~~ consideration given by Schiappa Pietra for the transfer was $33,000, the obligations assumed by him being the continued delivery of the water and the payment of the $33,000, and in return he received the rent of $800.00 per year from the water sold to Thermal Belt Water Company and all the other water of the system.

On the 15th day of April, 1905, Schiappa Pietra conveyed all of the property theretofore acquired from the Farmers' Ditch Irrigating Company to the Santa Clara Water and Irrigating Company for the sum of $33,995. The same reservation was made in this conveyance from Schiappa Pietra to the applicant herein as was made in the conveyance to Schiappa Pietra.

I have thus traced the contracts affecting the two supplies of water from the time they were in the control of Nichols down to

1905 when they went into the control of the applicant herein. The 200 inches of Thermal Belt water was delivered first by Nichols, then by the Keystone Mining, Manufacturing, Land and Power Company from June 3, 1898 to November 1, 1902; then by Clarise H. Ramsey from the water she held under her lease from the Keystone Mining, Manufacturing, Land and Power Company to September 1, 1903; and from September 1, 1903 to September 21, 1904 by the Farmers' Ditch Irrigating Company; and thereafter by Schiappa Pietra under the recognition of the contract of the Farmers' Ditch Irrigating Company in his agreement with that company of September 21, 1904, up to April 15, 1905; and thereafter, under the recognition of the agreement of the Farmers' Ditch Irrigating Company by the present applicant down to the prezent day.

The 200 inches for the Olive Lands were, according to the oral evidence, partly delivered from 1898 through the instrumentality of the Thermal Belt Water Company and its pumping system up to 1903, but in December, 1901, the written agreement was entered into between Farmers' Ditch Irrigating Company and Clarise H. Ramsey for the delivery of the 200 inches of water. After 1903, Mrs. Ramsey put in her own pumping plant and the water was delivered directly to her by the Farmers' Ditch Irrigating Company and pumped by her to her lands thereafter until the Schiappa Pietra agreement in 1904, when the reservation took place, and thereafter up to 1905 the water was delivered through the Farmers' Ditch under the control of Schiappa Pietra, and since April, 1905, the water has been similarly delivered through the ditches under the control of the applicant, Santa Clara Water and Irrigating Company.

Under these facts, which are adduced from the contracts themselves and not what is said concerning the contracts, what is the status, first, of the water secured from the applicant by the Thermal Belt Water Company; and, second, of the water received through the applicant's ditches for the use on Olive Lands?

After the former hearing Mr. Commissioner Edgerton held, and the Commission approved his decision, that the 200 inches of water delivered to the Thermal Belt Water Company was water received from a public utility and hence subject to the jurisdiction of this Commission. After a very careful study of the contracts and the evidence taken subsequent to the former hearing, I am confirmed in that view. Never at any time has there been any assertion by any one that this water is owned by the Thermal Belt Water Company. The fact that the Thermal Belt Water Company is a mutual company makes no difference. This mutual company secures the water as a consumer from a public service water company and pays therefor $800 per annum, and has a contract for such water up to 1942 at such rate. It is difficult for me to see how it can be urged that this company stands in any different position than John Doe or Richard Roe or any one else who receives a lesser quantity of water from this company, except that the Thermal Belt Water Company has a contract fixing its rate for a ~~the~~ term of years. I believe that the contract fixing the rate for this water is neither binding nor is the limitation as to the length of time binding, and it is my view that the Thermal Belt Water Company has a permanent right to receive this water at the payment of the annual rates, and that no one has authority to deprive it of this water at the present time or at the expiration of its contract. The effect of a contract similar to this was discussed in the Murray case, 2 Cal. R.R. Dec. 464. By all of the recitals in the contracts, and by all of the acts of the parties up to the present time, it is made to appear that even the parties themselves considered this water in the control of the public service water company owning the Farmers' Ditch. But regardless of the contention of the contracting parties, the relationship here existing is a relationship imposed by operation of law and not of this contract.

Therefore, I am of the opinion that the water sold to the Thermal Belt Water Company and delivered to its pumping plant is water for which a rate may be fixed by this Commission if the conditions

warrant.

Second: <u>The 200 inches of water delivered to the Olive Lands.</u>

It is very strenuously contended by the attorneys for the Limoneira Company, which receives this water, that it was devoted to private use by a new appropriation made by the Ramseys in 1898. They reach this conclusion by assuming the position that because Mrs. Ramsey was the principal and almost the sole stockholder in the Keystone Mining, Manufacturing, Land and Power Company, which they call the "technical holder of the title", that the act of the corporation was her act. Of course, no such position is tenable. A corporation is an entity in itself, and one owning all of the stock of a corporation is no more the owner of the property of the corporation than is a person who is not a stockholder of such corporation. Nor does the fact that a stockholder owns all of the stock change this condition. But it appears clearly from the contracts herein reviewed and from all the evidence in the case, that no one up to the time of the Schiappa Pietra reservation ever treated the water delivered to Olive Lands as anything but water in the control of and distributed by the Keystone Mining, Manufacturing, Land and Power Company, and subsequently the Farmers' Ditch Irrigating Company.

There is a hint in the argument that because appropriation was made through the Farmers' Ditch prior to 1879 that the water is not subject to regulation. This is not asserted strongly, however, but the position of the Limoneira Company, which now receives this water, directly rebuts such an assumption, for in order to make this appear a private appropriation it must be made to appear that after the Ramseys secured control of the ditch through purchase of the stock of the Keystone Mining, Manufacturing, Land and Power Company, they enlarged the ditch and made a new appropriation, which it is urged was a private appropriation, for the benefit of the Olive Lands, and this appropriation upon which this claim is based was made somewhere around 1898, according to the contention of the

company. It plainly appears, however, that up to 1898 a comparatively small quantity of water was passing through the ditch, and that none of this water was being delivered to Olive Lands. Therefore the water delivered to Olive Lands must be considered as subject to the constitutional provision of 1879.

But there is nowhere any support for the contention appearing throughout the very able brief of the attorneys for this company that either the Keystone Mining, Manufacturing, Land and Power Company or the Farmers' Ditch Irrigating Company was the "technical holder of title" for Mrs. Ramsey or her successor, the Limoneira Company. On the 9th day of December, 1901, in the contract between Farmers' Ditch Irrigating Company and Mrs. Ramsey the assertion of ownership is made by the Farmers' Ditch Company, and it is agreed to deliver the water upon the Olive Lands for her use for $200 per annum, and that lease was not surrendered up by Mrs. Ramsey until the 3rd day of December, 1913; and at the time of the purchase of the ditch by Leopolda Schiappa Pietra this lease was in full force and effect. And therefore if anything has been done to make this water a private appropriation it was done by the arrangement between the Farmers' Ditch Irrigating Company and Leopolda Schiappa Pietra. In that instrument, heretofore referred to, all of the property of the Farmers' Ditch Irrigating Company, both acquired from the Keystone Mining, Manufacturing, Land and Power Company and all subsequently acquired, is conveyed to Schiappa Pietra,

> "Excepting and reserving, subject to the terms, covenants and conditions herein contained, unto the party of the first part (Farmers' Ditch Irrigating Company), its successors and assigns forever, out of and from the water and water rights and other property above described such a quantity of water of the waters of the Santa Clara River that when the same shall be diverted by means of the dams and head-works herein mentioned and shall be conducted from said Santa Clara River by means of the water ditch, ditches, conduits and flumes herein mentioned to the pumping station situated in the northwest corner of subdivision 18 of the Rancho Santa Paula y Saticoy, and hereinafter more particularly described, it shall produce or measure 200 inches of water at said pumping station, and the right to divert said amount of water hereby excepted and reserved from said Santa Clara River; also excepting and reserving a right of way and easement in, along and through the water ditch and dams, head-works, conduits, ditches and flumes and over and along the rights of

way above described, to divert said quantity of water excepted and reserved, water from said Santa Clara River, and to convey and conduct the same or any part thereof from said point of diversion to said pumping station."

Subsequently in the agreement it is provided that the 200 inches of water excepted and reserved by the Farmers' Ditch Irrigating Company "shall and may be used and sold, leased or rented for irrigation, domestic and stock purposes and for other lawful uses and purposes by the party of the first part (Farmers' Ditch Irrigation Company), its successors and assigns for use upon but not elsewhere than upon" the Olive Lands.

Schiappa Pietra by this conveyance presumably became a public utility, and certainly the Farmers' Ditch Irrigating Company likewise remained a public utility but merely with the power to deliver 200 inches of water upon certain described lands. By accepting these conditions, as, of course, would have to be done if they were valid in the first place, in the subsequent conveyance from Schiappa Pietra to the Santa Clara Water and Irrigating Company, and by substituting in the place of Schiappa Pietra the applicant herein, we have apparently two public utilities using the same facilities; the applicant delivering to all the other consumers except one, and the Farmers' Ditch Irrigating Company delivering to that one alone; and then by securing the stock of the Farmers' Ditch Irrigating Company the Limoneira Company assumes to eliminate the public use because it has brought about a condition where a public utility has but one consumer and that consumer a land company which owns all of the stock of the public utility.

There can be no question that the attempted reservation comes squarely within the provisions of the Leavitt case. If the Thermal Belt Water Company could do likewise and all of the consumers but a very few follow suit, we would have a condition wherein these very few consumers would be required to maintain the ditches, attend to the diversion of the water, pay all of the expenses and perform the service for the other consumers at no cost to the latter.

In my opinion this reservation cannot affect the public use of this water, but that a difficult legal complication is presented admits of no doubt. These conditions confront us: Farmers' Ditch Irrigating Company is in control in 1904 of certain water appropriated and being distributed for public use within the County of Ventura. At that time it receives a payment of $33,000 and in addition imposes a perpetual burden upon the system of delivering water to it free. A pretty good arrangement one would think, particularly when the consideration went from and not to the utility accepting the burden. Of course the payment by Schiappa Pietra was his own affair, but the burdening of the system with the necessity of delivering free water perpetually to this consumer is neither the affair of the parties to this contract nor the present owner, but of the public. The books of this company show that in the seven years prior to 1912 its receipts are only half of its expenditures, not considering any fixed charges. Plainly if this reservation is good the other consumers must pay more money or the Santa Clara Water and Irrigating Company ultimately go out of business with the net result that whoever receives the business thereafter must proceed to raise the rates or in turn go out of business. When actual cost of operation is twice as heavy as the receipts no one can carry on the business. And the public service on the north side of the river, if not assisted from rates on the south side of the river, must permanently fail, unless the other consumers of water pay more than they should be required to pay. I realize that under ordinary circumstances the Santa Clara Water and Irrigating Company, applicant herein, should not be heard to complain of a condition which existed when it voluntarily assumed control of this property. But there are conditions when the repudiation of a contract is justified, and particularly is this the case with reference to contracts of public utilities working to the detriment of the consumers who are not parties thereto.

What became of the water leased to Mrs. Ramsey, the title to which was so assiduously traced by the parties hereto? It would appear that in the shuffle this water was lost sight of, and inasmuch as Mrs. Ramsey was not at all a party to the contract between Schiappa Pietra and the Farmers' Ditch Irrigating Company it would further appear that she was not at all bound thereby. Nor could it be said that the 200 inches of water reserved by the two parties to this contract was the same water to which Mrs. Ramsey had a lease, and when it further appears that this lease was not cancelled until 1913 we must conclude that if a reservation was made at all it was made of water which the Farmers' Ditch Irrigating Company did not have, for the purchaser, Schiappa Pietra assumes the obligation to continue the delivery of water to the Thermal Belt Water Company and of course by operation of law must continue to deliver water to the other patrons; and we are left a situation where with but 200 inches remaining rights are asserted in 400 inches, namely, the 200 inches leased to Mrs. Ramsey and the 200 inches [redacted] sought to be reserved. Of course I am not losing sight of the fact that there was shuttlecocking back and forth between Mrs. Ramsey and Farmers' Ditch Irrigating Company, and apparently the parties hereto dealt with this corporate entity the same as though it were synonymous with Mrs. Ramsey, but as a matter of law of course it was not, and there was nothing as a matter of law which was the subject of the reservation here attempted to be made unless it can be presumed that some one else waived rights which they did not legally waive.

It is my opinion then that from a strict legal construction of these contracts the Farmers' Ditch Irrigating Company parted with everything it had to Schiappa Pietra, except perhaps the right of way to convey water which it did not possess. For it did not own the lease of Mrs. Ramsey and that lease remained in effect to 1913, and if these leases mean anything Mrs. Ramsey had a right to that amount of water and all of the other water was appropriated to other uses. Therefore the attempted reservation, from a strict construction of law,

become abortive, and although the Farmers' Ditch and Irrigating Company would remain a public utility with the necessity of delivering water under this agreement to certain lands, if such necessity can be produced by such an agreement, yet it had no water legally left in its control with which to do as it had obligated itself to do.

It will be contended by the Limoneira Company that the provision in the conveyance to Schiappa Pietra wherein the Farmers' Ditch Irrigating Company covenants to protect Schiappa Pietra from any liability under the lease to Mrs. Ramsey, brings about an identity between the water attempted to be reserved to the Farmers' Ditch Irrigating Company and the water covered by the lease of Mrs. Ramsey. A little analysis, however, it seems to me will show this position to be untenable. Schiappa Pietra had no water and he conveyed nothing but on the contrary accepted by conveyance certain property. Therefore, he could confer no right upon the Farmers' Ditch Irrigating Company to any water because he had none, and whatever right, if any, was reserved to the Farmers' Ditch Irrigating Company was a right which it already had. The whole theory of the Limoneira Company is that it has water privately appropriated on the Olive Lands by reason of the ownership of this water by Mrs. Ramsey. Such being the case, if these leases to water mean anything, the net result of the arrangement with Schiappa Pietra in conjunction with the lease to Mrs. Ramsey is that Mrs. Ramsey owns 200 inches of water which she had theretofore owned. If, however, Mrs. Ramsey, as the contracts clearly show and as the recitals of herself and all the other parties in the contracts recognize, was a mere consumer from a public service water company-the Farmers' Ditch Irrigating Company-which company was the mere distributor of the water and she the user thereof under an annual rental, then no arrangement could disturb this relationship and change her status from a user of water appropriated to a public use to a private appropriator of water. Under every possible construction of the contracts and every tenable position of the parties hereto, Mrs. Ramsey would have lost

the right to use this water on Olive Lands at the expiration of her lease unless by operation of law she would have a right to enforce a continuance of the supply at the expiration of her lease at lawful rates, and the burden of continuing the delivery of this water after that time, if it must be delivered thereafter, would be upon the Farmers' Ditch Irrigating Company and its facilities, and the obligation of this user of water would be to pay a rate which would compensate the owner of these facilities for the service and cover the expense of the delivery. How then by the mere ipse dixit of the public utility, Farmers' Ditch Irrigating Company, the burden of payment and of maintaining the facilities necessary wherewith to make the delivery can be dispensed with on the part of Mrs. Ramsey, or the owner of the land to which the water is supplied, is beyond my power to comprehend. Furthermore, by the Schiappa Pietra conveyance itself it is provided that the Farmers' Ditch Irrigating Company may distribute this water for hire upon the Olive Lands. If there were any right at all derived through contract to the delivery of this particular 200 inches of water to the Olive Lands at the time of the conveyance to Schiappa Pietra, that right was the result of and derived from the lease to Mrs. Ramsey. If, on the other hand, the right to have the water delivered to Olive Lands was imposed by law and not by contract, then it was a right existent independent of the contract between Schiappa Pietra and Farmers' Ditch Irrigating Company. Either Mrs. Ramsey did or did not have the right to have this water delivered upon Olive Lands at the time of this conveyance. If she did the conveyance could not affect her right. If she did not, the mere conveyance could not accord to her that right, nor in fact accord to the Farmers' Ditch Irrigating Company the right to put one drop of this water upon Olive Lands. If she did have the right and it was a right imposed by contract, the conveyance to Schiappa Pietra could not affect it. If she did have a right and it was a right imposed by law growing out of the fact that water had theretofore been delivered to her land by a public

utility with the attendant legal necessity to continue such delivery, that right carried with it the correlative duty as a patron of a public utility to pay a reasonable sum for the water and to maintain the facilities wherewith the water was delivered. If we take either horn of the dilemma we are driven to the conclusion that the attempted reservation neither added to nor subtracted from whatever right then existed to have water delivered upon Olive Lands.

Much has been said in the brief filed on behalf of the Limoneira Company and the Thermal Belt Water Company about the devotion of water to public use and the failure in this instance of this company so to devote the water being received by these two companies. I am afraid the very able attorneys for these companies fail to see the necessary result of their argument. Neither the Thermal Belt lands nor the Olive Lands are riparian to the Santa Clara River, and admittedly do not receive any water by reason of riparian ownership. The only alternative method of securing a supply of water is by appropriation either to a public use by a public service company or to a private use upon lands owned by the appropriator. The history of this ditch and this water shows that it has always, up to the Schiappa Pietra conveyance, been delivered to the public under the flow of the ditch and the pumping station of these two companies for hire, and in every instance for a defined term of years at the expiration of which term, if the contract alone confers the right, the right would terminate. Accepting this theory, no permanent right existed,up to the Schiappa Pietra conveyance, to any of this water upon any land. How, otherwise, then could a right be by appropriation be acquired upon any of this land? None of it was owned by the agency delivering the water, such agency was admittedly a public utility and the successor to its facilities is before this Commission now in that capacity. The only permanent right, therefore, which could be secured to this water, under all the circumstances of this case, is the right which results from the delivery of water by a public service water company to certain lands and the legal inability there-

after of such public service water company to discontinue such a delivery. I am of the opinion that this water cannot be withdrawn either from the Thermal Belt Water Company or from the Olive Lands but that this result follows from the devotion of the water to public use and its application by the agency in control of such public use to these specified lands. In other words, the permanency of a right to water is just as much assured to the user of water from a public utility water company as it is to a private appropriator of water upon his own land, and the only difference is that the appropriation through the instrumentality of a public utility water company carries with it the attendant duty on the part of the user to pay the rate, which rate shall pay for the cost of delivery and interest upon the investment. In a private appropriation the user of the water must make these expenditures directly. In other words, it is impossible for any one to get water either through a public or private appropriation except by paying the expense of getting it upon the land, which expense is an annual expense covered by the annual rates paid to a public utility or the annual expenditure made by the private appropriator of water in order to insure the continuance of his supply. In the present case we find an attempt on the part of the Limoneira Company to relieve itself of paying for all time this charge which is necessary under any kind of appropriation which can be made. But in order to accomplish this result it advances the novel plea that the taking from this ditch at almost the end of the system of the applicant is the same as taking directly from the Santa Clara River. If the Limoneira Company had owned riparian lands and had secured the water by reason of ownership of riparian lands, or if it itself had made an appropriation upon the Olive Lands instead of taking water from a ditch which furnishes an entire community, then I could quite readily agree with the contention of counsel that the devotion to the public use must clearly appear. But where we have a situation that the only way the water could be secured to the use of these lands originally was by a devotion to public

to public use and by occupying the relationship of consumer from a public service water company, it readily appears that it does not lie in the mouth of the owner of Olive Lands to urge that there was not a devotion to public use, because admittedly originally this corporation never did own the water.

The only way, as said by Mr. Justice Henshaw in the case of Leavitt vs. Lassen Irrigation Company, in the clearest and ablest opinion on the question of the relationship between a public service water company and its consumers that, in my opinion, has ever been rendered by our Supreme Court, the Olive Lands could have acquired a private water right is on the theory that the appropriator of water "made an appropriation of waters for the public use of sale, rental, and distribution under the constitution of 1879; that by means of the same canal and ditches he made a private appropriation of waters for use upon his individual land, and that when he came to sell his irrigating system he withheld from the sale the waters so privately appropriated." But, as I have pointed out carefully from the contracts and as the evidence abundantly discloses, no such thing was ever done, and at no time was there any assertion by any one that these waters were appropriated by any agency excepting the Keystone Mining, Manufacturing, Land and Power Company and the Farmers' Ditch Irrigating Company; and never, up to the time of the Schiappa Pietra conveyance, was there the remotest indication that any one considered that these waters were appropriated by any one except the corporation controlling the same. In contemplation of this state of facts the following language from the Leavitt decision is particularly appropriate:

> "Treating Leavitt's appropriation as being wholly and entirely for public use he, the owner of the system, was but an instrumentality for the distribution of the waters which he gathered to such members of the public as might apply for them and pay to him the legal charge for the service that he rendered. As the agent of such public use, he had no power whatsoever to reserve to himself for his private purposes any part of this water. If he could reserve a part, he could reserve all, and thus, by his ipse dixit, convert a public use into private ownership, or , if he could reserve a part for himself, he could with equal authority give away parts of the

supply to others"(as is here sought to be done) "and by this method destroy what the constitution itself has declared shall forever remain a public use."

I have tried to point out in detail just why the public is interested in this attempted reservation, and when I come to analyze the conditions of this Company this will the more readily appear. It is sufficient to say, however, that those in control of water devoted, as this water is, to public use may not be permitted to withdraw a portion of such water and apply it to their private uses and burden the system wherewith the water is appropriated with the necessity of delivering this water free to them and with the corresponding necessity that the other consumers in the end must pay a proportionately high/amount for the maintenance of and earning upon the system than they should be required to pay. For it certainly follows that in the end all of the expense of performing a service must be paid for by someone else the service will not be performed; and if the Limoneira ranch may be relieved from the necessity of paying its pro rata of the expense of this system then ultimately the other consumers must assume its burden or the system will not be operated.

In 1904, Mrs. Ramsey sold the Olive Lands to the Limoneira Company, and that company also purchased the stock of the Farmers' Ditch Irrigating Company. In 1905, the property acquired by Leopolda Schiappa Pietra under the conveyance which has been discussed herein at length, was transferred in toto to the Santa Clara Water and Irrigating Company, which is the applicant herein. At this time the capital stock of the Santa Clara Water and Irrigating Company was increased to $250,000. In February, 1906, $100,000 of 6% gold bonds were issued. In 1907 the applicant constructed what is known as the Springville division, which consisted of about five miles of 36-inch concrete pipe line. Its cost is stated to have been $79,373.47. The purpose of the construction of this Springville division was to open up and develop lands in what is

known locally as the Springville Section; but for some reason not disclosed in the evidence, this project was never completed. It was testified that only about 400 acres were irrigated under this division, of which 300 acres belong to the heirs of Schiappa Pietra and could have been irrigated if the pipe line had not been built, thus leaving only about 100 acres properly served by this division itself.

As previously indicated, the Farmers' Ditch diverts water about 1¼ miles above Santa Paula. This diversion is affected by means of temporary brush dams placed in the wide sandy bed of the stream, and which are swept out by the floods and renewed as occasion requires. The length of the canal is approximately six miles. It is a simple earthen structure with certain timber flumes and other facilities. In applicant's Exhibit "A" a statement is made of what is called investment in this division, which is arrived at by taking the cost of this division to the company as sold to it by Schiappa Pietra in 1905 at $33,995, which is the price paid to Schiappa Pietra, to which has been added so-called improvements and other items including deficiencies, which bring this investment to $70,058.28.

As previously stated, the Santa Clara Water and Irrigating Company's system diverts water on the south side of the River about eight miles below the point of diversion of the Farmers' Ditch system. This division also diverts water from the Santa Clara River through a temporary brush dam which has to be replaced each time following large floods. The company claims that Messrs. Lippincott and Storrow valued this division in 1902 and found the value to be $81,800. This is given in applicant's Exhibit "E". On page 60 of the transcript, however, the statement is made by a representative of the company to the effect that the approximate value of this division is $60,000. Starting with the valuation, as given in Exhibit "E", of $81,800 in 1902, the company arrives at a so-called investment of $269,390.19 as of January 1, 1912. This investment includes the cost of invest-

ment of the Springville division, which according to its statement amounted to $79,373.47. We, therefore, have as a so-called investment, under the applicant's statement of the case, the following:

Farmers' division	$ 70,058.26
Santa Clara and Springville divisions	269,390.19
Total Investment	$ 339,448.45

Taking into consideration the deduction already called attention to in the transcript, we would have a total investment of $309,312.15. In Applicant's Exhibit "B", it is stated that of the total investment of January 1, 1912, $26,405.89 was due to deficiencies.

The data presented by the company is in such shape that it is utterly impossible to say whether the so-called investment in these properties is legitimate. The burden being upon the applicant in a case such as this to justify its increase in rates, we could dismiss the matter for failure ~~in~~ of proof on the part of the applicant. However, it is my desire, if possible, because of the financial condition of this company and the length of time during which this case has been pending, to give some relief if it is possible under the evidence. In the brief presented by Mr. Don G. Bowker, attorney for the consumers, he states that subsequent to the hearing he had an engineer estimate the reproduction cost of the property of the Farmers' division. This was found by the engineer to be $20,322.05. This, of course, is not a matter of evidence, but inasmuch as under a strict construction of the evidence this case can be dismissed, I deem it not inappropriate to refer to this statement.

The company presents a statement showing the annual cost of the operation and maintenance of the different divisions, and also its annual receipts. These are tabulated for the years 1905 to 1911, as follows:

ANNUAL COST OF OPERATION AND MAINTENANCE AND ANNUAL RECEIPTS

	Farmers Division		Santa Clara and Springville Division.		T o t a l	
Year	Cost Maintenance and operation	Receipts	Cost Maintenance and operation	Receipts	Cost Maintenance and operation	Receipts
1905	2265.75	1204.05	2126.13	5067.18	6391.88	6271.23
1906	2275.49	1816.06	6055.29	6870.16	8330.78	8686.22
1907	2176.48	1297.50	4844.43	5196.56	7020.91	6494.06
1908	5775.83	1655.56	4789.08	8513.16	10564.91	10168.72
1909	2187.35	1128.23	6737.08	6979.07	8924.43	8107.30
1910	2907.75	2737.73	6101.72	9444.16	9009.29	12181.89
1911	4683.54	1668.18	7396.39	6606.21	12079.93	8274.39
	22272.19	11507.31	38050.12	48676.50	62322.13	60183.81

From this statement, accepting it as correct, it will appear that the cost of maintenance and operation alone, without any consideration of earning upon the investment, of the Farmers' division, which is affected by the Thermal Belt contract and the reservation to the Limoneira Company, is, in these seven years, just a little less than double the receipts therefrom, and that in these years there was lost more than $10,000 to the company in the operation of this division. Inasmuch as the two divisions of the company are on opposite sides of the River, it should be easy to apportion the expense, and, of course, the revenue may be directly apportioned. On the other hand, the Santa Clara and Springville divisions show a net earning during these seven years of a little more than $10,000. Taking the two systems combined, an operating loss of a little over $2,000 is shown for these years.

The testimony shows that from the gross receipts, as indicated, there has been rebated to the Schiappa Pietra heirs certain sums annually. This was done because of the fact that on November 10, 1871, 100 acres of land, designated by lot number and now the

property of the Pietra heirs, was granted free water in exchange for certain rights of way. As these heirs own large tracts of land irrigated under the system, it has been customary to collect from them the total charge for water furnished and then rebate later in accordance with the pro rated volumes. As a consequence the gross water receipts as shown above are not the net receipts by the amount of such rebates. The amount of rebate for the years covered in the above table appears to have been $5,160.69, which would make the net receipts $55,023.12.

The rates from which the above receipts are derived vary with the class of the crop and the time of the year water is used, but are either 10 or 20 cents per miner's day inch. The table shows much variation in the annual returns. This is due to the fact that with the classes of crop irrigated but little water is required in some years, and this amount will to a certain extent vary with the rainfall. It is, of course, understood that the above receipts include the $800.00 per annum paid by the Thermal Belt Water Company. So far as can be learned the acreage irrigated has been practically constant during the past few years.

The application of the company requests that a uniform rate of 25 cents per day inch be granted by the Commission. If this rate were granted and a charge was made to the Thermal Belt Water Company at this rate for the amount of water actually used and also for the 200 inches free water to the Limoneira Company, the following receipts would be returned, such receipts being based on the average use of water from 1905 to 1911, inclusive. The amount used by the Limoneira Company is not given definitely, but it is stated that approximately 1200 acres of land are irrigated and it is assumed that the duty of water is 1.50 acre feet. The volume used is approximated in this assumption:

Farmers system	7235 day inches @ 25¢.....	$ 1,809.00
Santa Clara Division,	46242 day inches @ 25¢.....	11,560.00
200 inches to Limoneira company for use on 1200 acres at a 1.50 acre feet duty,	45000 inches @ 25¢.....	11,250.00
Thermal Belt Water Company,	9300 day inches @25¢.....	2,324.00
	Total.....	$ 26,943.00

The average cost of maintenance and operation of the entire system, as stated by the company, is $8,903.00. Consequently, if the rate asked for were allowed and applied to all its users, there would remain a surplus of $18,040.00 after paying operating and maintenance charges. The operation and maintenance charges reported by the company appear to include the cost for certain replacements and renewals, and consequently depreciation is to a certain extent covered in these charges. If it be considered, as is undoubtedly true, that the depreciation of the more perishable structures, and consequently the larger portion of the entire depreciation item, is covered in the maintenance and operation charges reported, it is probable that the balance of the annual depreciation charge will not exceed 2% upon any value which may be placed upon the property.

If it be assumed that the interest which should be received upon the value of the property be 6%, this, with the remaining depreciation, would make 8% all told. The annual surplus of $18,040.00 which would result from the application of the 25 cent rate would support a value of $225,500 at this per cent.

As I have already stated, this company has not maintained the burden of showing the value of its property and the application might be dismissed on that ground. It is the opinion of the engineers of this Commission, from a superficial inspection, that the property is not nearly of the value urged by the company under its investment theory. While not pretending to be an authoritative statement, but certainly worthy of as much weight as the evidence presented by the company on this point, the engineers of the Commission give it as their opinion that the property is not worth in excess of $100,000.00.

As I have said several times, I do not pretend to suggest that either this statement or that of Mr. Bowker is evidence, and they would not be considered in an attack upon the rates of this company, but the company,having itself elected to apply to this Commission for an increase in rates, has upon it the burden of establishing the value of its property and it has not done so. However, it has established that it is getting nothing on its investment, and not even on the average making operating expenses, and rates should be imposed which will at least go as far as to relieve the evident necessities of this company. It is my opinion that a uniform rate should apply to all of the smaller consumers, and that a rate should be fixed somewhat less for the wholesale consumers per unit used because of the fact that larger quantities are used and the water is taken directly from the main ditch of the company by the pumping station of these two large users.

I recommend that for the present a uniform rate of 20¢ per miner's day inch be applied to all of the consumers other than the Thermal Belt Water Company and the Limoneira Company, and that a flat rate of $2,000.00 per year be for the time being imposed upon each of these companies, until in a subsequent application, if it desires, this company shall present to the Commission all of the facts which ~~xxxx~~ are necessary in order for this matter to be finally concluded.

I recommend no order with reference to the water delivered to the Schiappa Pietra heirs because there is not sufficient in the evidence upon which to base an order, but in a subsequent proceeding this also should be considered.

The attorneys for the Thermal Belt Water Company and the Limoneira Company have strenuously objected to this Commission's making any inquiry concerning them at all and the water used by these companies, on the ground that this Commission has no jurisdiction to act and that by proceeding to act we are in effect passing upon our own jurisdiction. Of course, this Commission is aware of

the fact that its determination of its own jurisdiction is not conclusive, and while even under these circumstances it is my opinion that the Commission would be empowered to find the facts and the Supreme Court pass upon these facts as found, still, as is customary in all cases where it is sought to review the decision of this Commission, we will assist in presenting all of the evidence to the higher court which was presented to this Commission in this inquiry. As a matter of fact, however, no finding has or should be made with reference to the status of any of the consumers from this company other than a direction to this company to collect rates from all of the consumers who, in the opinion of this Commission, should be required to pay rates, because if we do not do so we will be sanctioning what to my mind appears to be a very gross discrimination, and this Commission has the power and is required by law to see that discriminations are not practiced.

I submit the following order:

O R D E R .

SANTA CLARA WATER AND IRRIGATING COMPANY having applied to this Commission for an order authorizing an increase in rates, and a hearing having been held and being fully apprised in the premises,

THE COMMISSION HEREBY FINDS AS A FACT that the rates now charged by the applicant herein are not sufficient rates to be charged; and

THE COMMISSION FURTHER FINDS AS A FACT that a rate of at least 20¢ per miner's day inch is a just and reasonable rate and not an exorbitant rate to be charged to all consumers other than the Thermal Belt Water Company and the Limoneira Company for use upon the so-called Olive Lands described herein; and

THE COMMISSION FURTHER FINDS AS A FACT that a flat rate of $2,000 per year is a rate not too high to be charged to the Thermal Belt Water Company and the Limoneira Company, and that such

rate is not exorbitant for the service performed by these companies.

And basing this order on the foregoing findings of fact,

IT IS HEREBY ORDERED that the following rates be and they are established to be charged by the applicant herein:

Two thousand dollars ($2,000) per annum to the Thermal Belt Water Company to be paid May 1st of each and every year.

Two thousand dollars ($2,000) per annum to the Limoneira Company for water delivered to that company other than the water received by it through the Thermal Belt Water Company, to be paid May 1st of each and every year.

To all other consumers twenty (20) cents per miner's day inch, payable in the manner and in accordance with the rules now in force with reference to the present rates collected from such consumers.

The rates herein prescribed and established to apply for the irrigation season of 1914, and thereafter until further order.

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 22nd day of April, 1914.

John M. Eshleman

H. D. Loveland

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.