KC

ORIGINAL

Decision No. 1635

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

L. E. COLE, et al., Complainants, vs. SOUTH FEATHER LAND and WATER COMPANY, Defendant.	Case No. 558.

W. H. Carlin and J. E. Ebert for complainants.
C. E. McLaughlin for defendant.

THELEN, Commissioner.

OPINION

The complainants are all owners of land in Butte County and present or prospective customers of the defendant's water system. They make certain complaints which will hereinafter be considered in detail.

Defendant was incorporated under the laws of this state on November 25, 1908, for the purpose, among others, of engaging in the business of selling water for compensation as a public utility. By deed dated March 31, 1909, defendant acquired the entire water system of South Feather Water and Union Mining Company, located in the counties of Butte, Yuba and Plumas. This system was constructed during the early 50's principally for mining purposes, but with the decadence of mining in this vicinity the system was gradually converted into an irrigation project. At the present time, defendant has some 70 customers who take water for domestic and irrigation purposes and one customer who is engaged in dredging. The sale of water by defendant for mining purposes has entirely ceased.

180

Defendant's canal head is in Lost Creek, in Section 13, Township 20 North, Range 8 East, in Plumas County. The intakes are in Travers Ravine, Lost Creek, Pinkard Creek, Oroleva Creek, Honcut Creek and Dry Creek. The total length of main and branch canals is some 306,131 ft., or about 58 miles. The principal deliveries of water are in Wyandotte and vicinity and in Bangor and vicinity, in Butte county.

At the time the present owner acquired this system, it was in a dilapidated condition. Flumes were down, ditches were washed out and the system was incapable of giving adequate service without extensive reconstruction. The present owner has gradually been reconstructing the system and has more recently shown such diligence in this respect that complainants at the hearing withdrew the charge that the system is badly in need of repairs.

The hearing in this case was held at Oroville on May 26, 1914. Complainants stated their complaints as follows:

1. Unreasonableness of the rate and the demand for prepayment of the full year's rate in advance.

2. Alleged necessity of paying for a water right before an intending customer can secure water.

3. Inadequacy of supply.

4. Deprivation of water from persons entitled thereto.

I shall consider these complaints in turn.

1. <u>The Rate</u>.

Defendant's charge for water to all customers is 10¢ per miner's inch per 24 hours for twelve months in the year, amounting to $36.50 per miner's inch per year, which sum must be paid in advance. The amount to which any irrigation customer is entitled may be cumulated, so that if a customer is entitled to one inch each day for 30 days, he can take ten inches on each of three days in the month, or, if the requirements of other customers permit, he can take the water more frequently, provided that he does not consume in excess of 30/inches/day during the month. The irrigating

season generally covers a period of about five months. Complainants allege that the rate paid by them, namely $36.50 per miner's inch, is based on 10¢ per miner's inch for each 24 hours/ in the year. They state that they need the water only during certain months of the year and contend that they should not be compelled to pay for the remaining period of the year. This contention goes simply to the method of computing the rate. Defendant is entitled to a rate which, under all the circumstances, is fair to it and to its customers. It makes very little difference whether in stating this rate a small sum per day is multiplied by 365, or a larger sum by a lesser number of days. The real issue is to determine the total rate which should be paid, and we should not permit ourselves to become confused by the different multiplications by which that sum may be ascertained.

While this system was owned by South Feather Water and Union Mining Company, the rate was 10¢ per miner's inch for a 24 hours' actual use. Whenever a customer desired water, he tendered in payment in advance the sum of 10¢ per miner's inch per day for the number of miner's inches desired, and the water was turned on. During 1907, the customers voluntarily paid 12½¢ instead of 10¢ because of considerable losses sustained by the water company. After the present company bought the system, the rate was arbitrarily raised to $36.50 per miner's inch per year, payable in advance. The customers were told that the company needed the money and that if they failed to pay they would receive no water. This was before the Railroad Commission secured its powers under the Public Utilities Act, and the customers of this system had no alternative but to pay the amount demanded or go without water.

In order to determine a fair and reasonable rate to be established for water delivered by defendant, it will be necessary to consider the value of its property, a proper amount to be allowed for depreciation, proper expenditures for operation and maintenance, and the use of water under this system.

Mr. R. W. Hawley, this Commission's hydraulic engineer, and Mr. George S. Nickerson, defendant's engineer, agree in an estimate of $330,186.00 to reproduce this property new and of $300,604.00 as the depreciated reproduction value. Defendant's counsel frankly stated that if the company received a fair return on this value it would "run its customers away" and that the company did not wish to raise its price so high, even if this Commission were willing to do so. The evidence shows that the system was purchased by defendant for the sum of $30,000; that the company proposed to issue 15,000 shares of its stock at 40¢ per share to outside persons to pay for promotion services; that the sum of $967.82 was received by the company from the sale of stock; and that defendant has expended a sum which it is difficult to segregate but which is in the neighborhood of $28,161.01 on capital account since it acquired the property. These sums are:

Initial purchase	$30,000.00
Expenses incidental to purchase	6,967.82
Additional capital expenditures	28,161.01
Total Investment	$65,128.83

As hereinbefore stated, this system was not constructed as an irrigation project, but for the purpose of selling water to the mines. Viewed from the standpoint of an irrigation system, it is clear that the system, when it shall be ~~xxxxxxx~~ constructed to its full efficiency, can irrigate several thousand acres in addition to those now being irrigated. It does not seem equitable to ask the present limited number of consumers to pay a rate which shall yield a return on the entire value of the system. Defendant itself fully concedes this conclusion. It is evident that the value which should be assigned to defendant's property for the purpose of this case will be somewhere between the sum of $330,186.00 and $65,128.83. I find that a fair and reasonable amount to charge under the head of return on the investment to the present customers and those who may be taken on in the near future should not exceed the sum of

$8,000.00 per annum. This sum represents a return of six per cent on $133,333.33, seven per cent on $114,285.72 and eight per cent on $100,000.00.

Using the estimated reproduction cost new as a basis, estimating depreciation on the sinking fund basis, and assuming that moneys in the sinking fund will earn only four per cent interest, the amount which should be set aside annually for the depreciation fund would be $1,424.00.

Referring now to the cost of operation and maintenance, including taxes, I desire to draw attention to defendant's profit and loss statement for the year ending December 31, 1913, as follows:

TABLE I

PROFIT AND LOSS, 1913.

(A) INCOME			
(1) WATER SALES			
(a) Contract,		$5067.21	
(b) Sundry,		2840.37	
(c) Dredgers,		4271.40	$12178.98
(2) WATER RIGHTS			2116.38
TOTAL INCOME FOR 1913			$14295.36
(B) COSTS:			
(1) AUTOMOBILE EXPENSE		361.96	
a- Gas and oil,	$113.88		
b- Repairs,	123.90		
c- Storage,	22.65		
d- Tires,	86.28		
e- Miscellaneous	15.25		
(2) MANAGEMENT:		1757.95	
a- Salary,	1625.00		
b- Expense,	132.95		
(3) OPERATION:		3964.07	
a- Salaries,	3715.00		
b- Supplies,	244.07		
c- Rig hire,	5.00		
(4) GENERAL EXPENSE:		1105.32	
a- Grain,	66.75		
b- Hauling,	28.15		
c- Legal,	194.50		
d- Options,	75.00		
e- Taxes,	662.02		
f- Miscellaneous	78.90		

(5) OFFICE EXPENSE		$901.48	
a- Rent,	$273.00		
b- Phone,	56.16		
c- Salaries,	502.36		
d- Postage,	35.75		
e- Stationery	51.65		
f- Miscellaneous	102.56		
	1021.48		
Less paid by Wyandotte and Mission,	120.00		
(6) INTEREST ON NOTE:		739.70	
(7) RESERVE FOR DEPRECIATION:		5243.33	$14073.81
PROFIT FOR 1913			221.55

This table shows an expense, apart from interest and depreciation reserve, amounting to $8,090.78. The item for depreciation reserve was set aside for the first time in 1913 and is considerably in excess of the defendant's view as to a proper annual amount to be set aside for this purpose. The sum of $8,090.78 clearly includes expenditures properly chargeable to capital account in addition to those chargeable to operation and maintenance. Mr. Hawley testified that $6,350.00 would be a proper annual allowance for operation and maintenance, including taxes, and his testimony stood unshaken. Assuming that this amount is proper for this purpose, the following table shows the revenue which defendant is entitled to earn each year:

TABLE II.

REVENUE TO WHICH DEFENDANT IS ENTITLED.

Return on value of property	$8,000.00
Depreciation	1,424.00
Operation and Maintenance (including taxes)	6,350.00
TOTAL	$15,774.00

Defendant's gross revenue for the year 1913 from the sale of water was as follows:

TABLE III

WATER REVENUE, 1913.

Contract users	$5,067.21
Non-contract users	2,840.37
Dredges	4,271.40
TOTAL REVENUE	$12,178.98

The item of "water rights $2,116.38" shown in Table I is a misnomer. It does not represent payments for water rights, but rather payments by persons with whom defendant contracted to hold water for them and to install certain pipes and ditches. The total revenue from the sale of water in 1913 is apparently below the revenue to which defendant is reasonably entitled.

Before establishing the rate, it becomes necessary to consider the present and prospective use of defendant's water. Defendant's Exhibit No. 6 purports to show the total water delivered in 1913, partly in terms of acres irrigated and partly in terms of miners' inches delivered. The following table contains a summary of this exhibit:

TABLE IV

WATER DATA - 1913.

Contract consumers- acres under contract	- 2521.35	acres
Contract consumers - acres irrigated	- 1037.17	"
Agreements for contracts -	- 976.37	"
Dredges -	- 82 miners' inches	
Non-contract consumers	- 69.08 miners' inches	

The payment in 1913 for water used on contract lands amounted to $5067.21, which sum at the rate of $36.50 per miner's inch, would pay for 139 miner's inches. These figures show an average use of water on contract lands of one miner's inch to 7.5 acres. The amount paid in 1913 for water used by dredges was $4,271.40. At $36.50 per year for one miner's inch, this would indicate that the amount of water used by the dredges was 117

miner's inches instead of 82 as reported by defendant. Apparently there is an error also in the number of miner's inches sold to non-contract users. The sum paid by these users in 1913, as shown on Railroad Commission's Exhibit No. "J", was $2,840.37, which sum divided by $36.50 gives 77.8. I shall assume that this is the correct number of miner's inches sold to non-contract users in 1913.

The following table shows a corrected use of water in 1913, in terms of miner's inches:

TABLE V

WATER USED IN 1913.

Under contract	-	139.00	miner's inches
Non-contract	-	77.8	" "
Dredges	-	117.00	" "
TOTAL	-	333.8	" "

It seems fair to assume that at least this amount of water will be actually used during 1914 and in the years subsequent thereto.

Defendant has in certain cases, especially with the affiliated Wyandotte Land Company, owning land in the vicinity of Wyandotte, contracted to deliver water in excess of the amount now actually used. The company, in consideration for the payment of $20.00 per miner's inch has contracted to hold the desired amount of water and to build certain extensions. The amount of land not now using water as to which such contracts have been made amount to 2,460.55 acres. If this land hereafter takes water at the same ratio as the contract lands now irrigated, 328 miner's inches must be held available by defendant for them. It would seem entirely proper that if these lands are to have the right to call upon the system for water, they should pay their fair proportion of interest on the investment and depreciation or lose their preferential rights. The order herein will so provide.

By adding the miner's inches actually supplied in 1913 to those contracted for but not used, we have a total of 661.8 miner's inches. We are thus confronted with the question of the capacity of the system. Mr. Hornung, defendant's general manager, testified that the safe minimum yield of the system, at the canal headings, is 1200 miner's inches. He testified further that while 430 inches are at present lost in transmission, this loss is extraordinary. In his opinion, a 20 per cent loss would be normal. Hence the system, under his computation, could normally deliver a minimum of 960 miner's inches,- an amount considerably in excess of the demands, present and prospective, of the present contract and non-contract users. It thus appears that by making the necessary improvements this company will be able to take on considerable additional acreage. The testimony shows that a number of people desire to place additional land in cultivation and to take additional water from defendant.

In establishing the rate, I believe it just and reasonable to establish a two-part rate,- one part representing a return on the investment and an allowance for depreciation, to be paid by all lands receiving water or claiming water under contract, and the other part to be paid for the amount actually used under the right established by the first part. I find on the facts of this case that a fair and reasonable rate to be charged by defendant for its water used for domestic and irrigation purposes is the sum of $15.00 per miner's inch per annum to be charged for each miner's inch applied for by non-contract users or covered by contract, whether the water is actually used or not, to be paid in advance at the beginning of the season at a time to be established by defendant in its rules and regulations, plus the sum of 10¢ per miner's inch per twenty-four hours, to be paid for all water actually delivered for use at the times to be established in rules and regulations to be presented by defendant and approved by this Commission. Defendant's rules and regulations should provide that if

the stand-by charge of $15.00 per miner's inch is not paid within a specified time each year, the land affected shall lose any prior or preferred right to water and shall thereafter stand on no better footing than any other land which has never received water from the system or has never had a contract right to receive water.

If the stand-by charge of $15.00 per miner's inch is paid on all water delivered or held in reserve in 1913, the revenue derived from this charge will be $9927.00, an amount somewhat in excess of the sum of the return on the investment and the depreciation.

The dredges use great quantities of water continuously and are entitled to a lower rate than other users. Their rate is not questioned in this proceeding and will remain the same as heretofore until questioned either by the defendant or by the owners of the dredges. Assuming that the revenue from dredges in 1914 will be the same as in 1913, namely $4,271.40, and that the stand-by charge of $15 per miner's inch is included in this amount, the service charge to be paid by the dredges will amount to $2516.00. If the remaining 216.8 miner's inches of water used in 1913 continue to be used during the five months of normal use, the amount paid for service charge would be an average of $15 per miner's inch for the season, or a total of $3,252.00. The total revenue from the service charge would thus be $5,768.00. Adding this amount to the revenue from the stand-by charge yields a total estimated revenue of $15,695.00. With a normal allowance for an increase in business, the revenue produced by the rates herein established will yield a margin above the revenue to which defendant is entitled. This margin may be used to take care of such losses, if any, as may ensue from such lands, if any, as may forfeit their rights to water.

The effect of the rates herein established may be illustrated by the case of the plaintiff Cole. He now pays $36.50 for one miner's inch of water. He testified that in 1904 he used

130 inches of water; in 1905, 180 inches; in 1906, 105 inches; and in 1907, 125 inches. The average use during these years was 135 inches. If he uses this average amount of water henceforth, he will pay as follows:

Stand-by charge	$15.00
Service charge, 135 inches @ 10¢	13.50
Total charge	28.50

On the other hand, land which is demanding that defendant hold water for it to the exclusion of other lands actually desiring water, which land is of considerably greater value by reason of the reservation of the water but is now paying nothing or very little, will henceforth pay its fair stand-by charge or ~~kx~~ lose its position of advantage.

2. WATER RIGHT PAYMENTS.

Complainants allege that owners of new lands desiring water from defendant's system must first pay for a water right. The evidence shows that defendant makes no such charge and that it has been duly informed by its counsel that it has no right to impose any such charge. Mr. Hornung testified that if any of the complainants or any one else desiring water for new land under the system will simply make the usual application, he can secure the water, up to the limit of the defendant's capacity to serve, by simply paying the regular rate at which all consumers secure water.

As hereinbefore stated, the evidence shows that the payments made under the so-called water right contracts at Wyandotte were not made for a water right, but to induce defendant to hold for the owners of the land water not now used by them and to secure the construction by defendant of certain extensions to its system.

3. INADEQUACY OF SUPPLY

Complainants allege that they have not been securing

the amount of water for which they have made payment. The evidence on this point is not satisfactory and not sufficiently positive to warrant an order in this case. Defendant, at the hearing, showed a commendable disposition to meet its obligations and I feel confident that if there is merit in this claim, defendant, now that its attention has been drawn to the matter, will take the necessary steps to remedy the situation if any action is necessary.

4. DEPRIVATION OF WATER FROM PERSONS ENTITLED THERETO.

The evidence supports the claim of complainants that defendant has failed to deliver water to persons who for many years had been served from this system and who demand a continuance of the service from this defendant.

Two of these persons, A. Henrici and Miss Barbara Wenck, live in what is known as the old Constadt Colony. Although they have continuously made application for water to this defendant, and have offered to pay the old rates, they have received no water since May, 1909. Since that time, part of the ditch leading to the Colony has been plowed up by third parties and part of the flumes have been removed by or under the direction of defendant's agents. Defendant's counsel frankly stated that he would advise his client that the company can not deliberately abandon part of its system and refuse further delivery of water to people who by use have acquired a right thereto. Mr. Henrici testified that he still wants the water, although most of his fruit trees have dried up, but that he would pay only the old rate which was in effect before the present company secured the property. Mr. Henrici apparently has not been well advised and does not know that the rate to be established by this Commission will now be the lawful rate, notwithstanding any earlier contract rate, if, indeed, Henrici ever had a contract rate. Defendant will be directed to supply water again to Mr. Henrici and Miss Wenck,

but only after having received application from them under the rates herein established.

The evidence also shows that certain persons residing at Swede's Flat, who formerly received water from defendant's predecessor,have been cast away and that they also have had heavy losses in their fruit trees. They likewise are entitled to a continuance of their former service at the established rates. The Commission is in receipt of a letter dated June 8, 1914, from Mr. George S. Nickerson, defendant's engineer, stating that an arrangement was made subsequent to the hearing herein whereby defendant will now deliver water to these persons at a point mutually agreed upon.

After the statement made by the Commissioner at the hearing, it will not be necessary to remind the defendant again that it can not purchase a water system and then cut off all the unprofitable laterals and deny water to consumers who for years have enjoyed its use from the system. A purchaser of property devoted to a public use takes it subject to all its obligations,- those which are unprofitable as well as those which are profitable.

I submit herewith the following form of order:

ORDER

A public hearing having been held in the above entitled proceeding and the case having been submitted and being now ready for decision,

The Railroad Commission hereby finds as a fact that the existing rates charged for water by defendant public utility are unreasonable in so far as they differ from the rates herein established and that the rates herein established are fair, just and reasonable rates to be charged by defendant.

The Railroad Commission further finds that it is the duty of defendant to deliver water to A. Henrici and Miss Barbara

Wenck on the Constadt Colony tract and to any other former customer on that tract whom defendant refused on demand to continue to serve, provided that such persons agree to pay the rates herein established.

Basing its order on the foregoing findings of fact and on the further findings which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that South Feather Land and Water Company be and the same is hereby ordered to file with this Commission and to make effective as of July 1, 1914, the following rate for water - a charge of $15.00 per miner's inch per annum, which charge shall be made on all water delivered for irrigation and domestic use and also on all water which defendant has contracted or may hereafter contract to reserve for intending users but which may not at the time actually be used for either of said purposes, to which charge shall be added a service charge of 10¢ per miner's inch per twenty-four hours for all water actually delivered by defendant for use. South Feather Land and Water Company shall, within thirty days from the date of this order, prepare and submit to this Commission rules and regulations providing for the payment of said $15.00 charge at the beginning of the irrigation season and for the loss of its position of advantage by any land as to which said payment is not made within a specified time after said date and after written demand therefor by defendant. Said rules and regulations shall also provide for the time of payment of such sums as may be necessary to meet said service charge for water actually delivered. Defendant shall make the necessary adjustments so as to make the rate herein established applicable for the entire year 1914 and shall make such rebates as may be necessary in the case of persons who have already paid for this year's water in advance.

IT IS FURTHER ORDERED that South Feather Land and Water Company be and the same is hereby ordered to deliver, at its own expense, water at the

rates herein established to A. Henrici, Miss Barbara Wenck and any other landowner in the Constadt Tract to whom the defendant has heretofore failed after demand to continue the delivery of water, but only after such person shall have made demand for such water and agreed to pay the rates herein established.

No order is made in the Swede's Flat matter for the reason that the Commission understands that defendant has resumed the delivery of water to the persons residing there as to whom delivery was wrongfully denied.

The rate for water used by the dredges is not in issue in this proceeding and remains as heretofore.

IT IS FURTHER ORDERED that in other respects the complaint in the above entitled proceeding is hereby dismissed.

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 30th day of June, 1914.

H. D. Loveland

Alex Dockweiler

Mark Thelen

Edwin O. Edgerton

Commissioners.