

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

L. E. COLE, et al.,

Complainants,

vs.

SOUTH FEATHER LAND AND
WATER COMPANY,

Defendant.

ORIGINAL

Case No. 558.

Decision No. 2118

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

THELLEN, Commissioner.

OPINION ON REHEARING.

This is an application on behalf of South Feather Land and Water Company for rehearing on this Commission's decision of June 30, 1914, in the above entitled proceeding. Evidence has been taken, argument presented and briefs filed. The parties entered into the usual stipulation that in case the Commission should be of the opinion that a rehearing should be granted, the evidence and argument taken on this application shall be deemed to be the evidence and argument which would have been presented if a rehearing were granted. This procedure avoids the necessity of a second hearing.

The Water Company's principal contention is that the rates established by this Commission will not yield the revenue to which this Commission found the Water Company to be entitled. The rate so established is a charge of \$15.00 per miner's inch per annum on all water delivered for irrigation and domestic use, and also on all water which the Water Company 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

is added a service charge of 10 cents per miner's inch per twenty-four hours for all water actually delivered by the Water Company for use.

This form of rate was based on the supposition that there were contracts outstanding under which the landowners agreed to pay for water held for them for future use. It now appears, however, that this is not the case. The evidence introduced on the rehearing shows that the Water Company has two forms of contract. In one form the Water Company agrees to furnish to the consumer a specified maximum number of miner's inches of water, and the consumer is obligated ^{only} to pay for such water as he actually uses. In the other form, the Water Company agrees to sell and the consumer agrees to take and pay for a specified number of miner's inches of water, but an addendum provides that the sum of \$36.50 per miner's inch shall be paid only for the water used, and that for additional water held but not used the sum of \$1.00 per acre shall be paid annually. The evidence on the rehearing shows that the provision for the payment of \$1.00 per acre per annum for water not used has never been enforced and is a dead letter.

Counsel have ably argued and briefed the question whether a water utility has the legal right to contract to hold for an intending consumer water not immediately used, on the consumer's payment of an annual rental for such holding. It is not necessary, however, to discuss this important question in this case, for the reason that in the present case there are no contracts outstanding under which the consumer pays an annual charge for water not used.

The evidence further shows that although the safe minimum yield of the system at the canal heading is 1200 miner's inches, and although 430 inches, an abnormally large amount, are at present lost in transmission, leaving a net yield of 770 miner's inches, only 333.8 miner's inches were actually used in 1913. Hence, without any reduction in the losses, over 400 miner's inches

would seem to be now available for additional consumption, as claimed by the Water Company. Under these circumstances, it seems obvious that no one familiar with the facts would pay the Water Company to hold water for him, even if such contracts were held to be legal, when he can secure from the present surplus such water as he needs, at any time, by simply paying the regular rates for water.

Defendant publicly takes the position that all water under its control is devoted to a public use and that any prospective consumer can secure water by merely signing an application and paying the established rates.

Eliminating this source of revenue from lands not now using water would entail a loss of \$4,920.00 in revenue. The Commission found that if an allowance of \$8,000.00 per annum were made for return on the value of the property, the Water Company would be entitled to an annual revenue of \$15,774.00, but that the Water Company's revenue under the old rates in 1913 was only \$12,178.98. Considering the losses in revenue herein indicated, it is clear that the rate established by this Commission on the evidence introduced at the original hearing can not stand.

The Water Company states that it does not expect a return on the full value of its property and that it will be satisfied with a return to the old rate, which was \$36.50 per miner's inch of continuous flow, payable annually in advance. While under the evidence now before this Commission, this rate must be restored, I am of the opinion that the payment of the entire year's rate in advance is unfair to the consumer. The order will provide for payment in two equal semi-annual installments.

A general impression seems to have prevailed among landowners under the Water Company's system that they must sign a

contract and pay for a water right before they can secure water. The Water Company insists that the payments so demanded were for pipe or other matters, but the evidence clearly shows cases which can be nothing other than payments for water rights. The Water Company's attorney, however, has advised the Company that it can not legally exact a charge for a water right and the Company's General Manager in a public hearing before this Commission stated that it is not the Company's ^{present} policy to exact any such charge. It is of considerable importance to landowners to know that in order to secure water, up to the reasonable capacity of the system, they need only sign the regular application blank and need not sign a contract or pay for a water right.

The order of June 30, 1914, in so far as it refers to the delivery of water to A. Henrici, Miss Barbara Wenck and other landowners in the Constaät Tract should stand.

I submit the following form of order:

O R D E R.

SOUTH FEATHER LAND AND WATER COMPANY, defendant herein, having petitioned for a rehearing on this Commission's order of June 30, 1914, and evidence and argument having been presented and the parties having stipulated that said evidence and argument should be considered as being the evidence and argument to be considered by the Railroad Commission, if the Commission should find that a rehearing should be granted, and the Commission finding that a re-hearing should be granted and that the alterations hereinafter set forth should be made in its said order of June 30, 1914,

IT IS HEREBY ORDERED that South Feather Land and Water Company file with the Railroad Commission within 20 days from the date of this order a rule or regulation providing for the payment of water rates in two equal installments payable at the times

specified in such rule or regulation.

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 its regular rates to A. Henrici, 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.

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 January, 1915.

Max Thelen

H. B. Revland

Edwin O. Edgeston

Paul R. Derbin

Commissioners.