Decision No._____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

Decision No. 2443

W. J. ROGERS and CENTRAL PACIFIC LAND AND LUMBER COMPANY, Complainants, vs. SACRAMENTO VALLEY WEST SIDE CANAL COMPANY, and WILLIAM F. FOWLER, Receiver of the property of Sacramento Valley West Side Canal Company, Defendants.	Case No. 597.
SACRAMENTO VALLEY REALTY COMPANY, et al. Complainants, vs. SACRAMENTO VALLEY WEST SIDE CANAL COMPANY, and WILLIAM F. FOWLER, Receiver of the Property of Sacramento Valley West Side Canal Company, Defendants.	Case No. 673.

W. T. Belieu for W. J. Rogers and Central Pacific Land and Lumber Company and for protesting consumers in Case No. 673.
Charles L. Donohoe and Charles H. Sooy for complainants in Case No. 673.
Frank Freeman for Sacramento Valley West Side Canal Company.
William E. Kleinsorge for James M. Berry, intervener in Case No. 673.

THELEN, Commissioner.

O P I N I O N.

The above two cases were consolidated for hearing and decision.

The complaint in Case No. 597 alleges, in effect, that W. J. Rogers was heretofore the owner of certain lands in Glenn County, California, particularly described in the complaint; that in order to secure water to irrigate said lands he was obliged to

sign two contracts with Central Canal and Irrigation Company, a public utility; that by the terms of one of these contracts, dated November 20, 1907, he obligated himself to pay for water $3.00 per acre for the first ten years and $2.00 per acre thereafter during the corporate life of Central Canal and Irrigation Company, for the purpose of irrigating a tract of 205 acres; that by the terms of the other contract, dated June 2, 1908, Rogers obligated himself to pay the water company the same amounts per acre as specified in the first contract, for the purpose of irrigating a tract of 1363.24 acres; that by subsequent agreement, the rate for irrigating the tract of 205 acres was reduced from $3.00 to $2.00 per acre; that Rogers, in June and August, 1908, transferred to Central Pacific Land and Lumber Company these two tracts of land; that Sacramento Valley West Side Canal Company, the defendant in the above entitled actions, is the successor in interest of Central Canal and Irrigation Company in and to the latter company's canals and irrigation system; that Sacramento Valley West Side Canal Company has filed with the Railroad Commission a schedule of rates charged by it for the sale of water under certain contracts, which rates are as follows-

3873.53	acres	at	$1.00	per	acre
23.70	"	"	1.50	"	
2147.93	"	"	2.00	"	
1363.24	"	"	3.00	"	;

that the acreages thus reported form but a small portion of the lands irrigated by Sacramento Valley West Side Canal Company and that the water for all other lands irrigated by the company is claimed to be distributed under a so-called mutual plan and not by the company as a public utility; that Sacramento Valley West Side Canal Company is selling water to purchasers of land from companies incorporated by J. S. and W. S. Kuhn of Pittsburgh at rates much less than those charged complainants and many other land owners; that Sacramento Valley West Side Canal Company refuses to sell water to the capacity of its system except to purchasers

of land from the Kuhncompanies, unless the applicant for water pays an extortionate price for a so-called water-right; that the rates charged complainants by the defendant for water are excessive, unreasonable, unjust and discriminatory and that a reasonable rate should not exceed $1.00 per acre per annum. Complainants ask that defendant be ordered to cease collecting any excessive, unjust or discriminatory rate for the sale of water to complainants; that this Commission establish just and reasonable rates for the sale of water for irrigation purposes, which rates shall be applicable to water sold for use on the land of complainants during the last two years; that the Railroad Commission determine the capacity of the defendant's water system and compel defendant to sell water at reasonable rates to all land owners applying for the same, whose land can be served by the company's canals and ditches; and that the Commission establish just and reasonable rules for the distribution of water to the company's patrons.

The answer alleges, in part, that Central Canal and Irrigation Company, at the time it entered into the above mentioned contracts with Rogers, was a public service corporation, engaged in the business of selling and distributing water in Glenn and Colusa Counties; that in 1909, the water system of Central Canal and Irrigation Company was transferred to Sacramento Valley Irrigation Company, which company in turn transferred the system to Sacramento Valley West Side Canal Company, the present owner thereof, which company, it is alleged, was organized for the purpose of distributing water to its stockholders only; that Sacramento Valley West Side Canal Company has continued to deliver water to all persons who held contracts from Central Canal and Irrigation Company, although the cost of the delivery of water is alleged to be in excess of $8.00 per acre per annum for each

acre of land irrigated; that Rogers paid the amounts specified in his two contracts as water rental up to 1910, at which time a revision in the rate was arranged between Rogers and the water company; and that only partial payments have been made on the amounts due for 1912 and 1913. The answer denies that Sacramento Valley West Side Canal Company filed with the Railroad Commission any schedule of rates as a public utility; alleges that the company has at all times claimed to be a mutual water company and not a public utility; admits that complainants have been engaged in a controversy with defendant as to the amount due defendant for furnishing water; alleges that complainants have refused to abide by the terms of the agreements made between complainants and defendant with reference to the rates to be paid for water; alleges that the rates provided in all the contracts of Central Canal and Irrigation Company are too low; and contends that it should not be compelled to furnish water at less than $8.00 per acre. Defendant prays that the complainants be compelled to pay all balances due upon the above mentioned two contracts and that for the future the rates to be paid by complainants shall be increased to $8.00 per acre.

The complaint in Case No. 673 alleges, in effect, that each of the forty-nine complainants is an owner of land in Glenn County; that defendant is a public utility, incorporated for the purpose of appropriating water from the Sacramento River and Stony Creek and of selling the water for the purpose of irrigating agricultural lands; that the company's system of pumps, pumping stations, ditches, conduits, flumes and pipes already constructed within Glenn and Colusa Counties have a capacity sufficient to irrigate 160,000 acres of land in Glenn and Colusa Counties; that the lands of complainants are all embraced within the territory which can be irrigated from defendant's water system; that complain-

ants desire water from defendant's water system for the irrigation of their lands and the production of rice, alfalfa, fruit trees and other crops; that complainants have applied to defendant for water for irrigating their lands and that they have been and are willing to pay defendant a reasonable compensation for such water; that defendant has refused to deliver water to complainants at any reasonable or just price or at all; that certain of the complainants have been informed by defendant that no water will be delivered by defendant for any land under its canal system other than land owned or controlled by Sacramento Valley West Side Canal Company or Sacramento Valley Irrigation Company unless $75.00 per acre is paid by applicant in addition to a water rental; that said sum of $75.00 per acre is excessive and prohibitory; that Sacramento Valley Irrigation Company owns a controlling interest in defendant's capital stock and that defendant has entered into a contract with Sacramento Valley Irrigation Company to sell water to the lands of Sacramento Valley Irrigation Company and to no other lands; and that defendant's water system is of sufficient capacity and that defendant has appropriated enough water to supply all the lands under the irrigation system, including the lands of complainants. Complainants thereupon pray that the Railroad Commission determine the capacity of defendant's water system and compel defendant to sell water at reasonable rates to all land owners owning land which can be served by the water system; that the Commission determine what lands can be served by the defendant's system; that the Commission establish just and reasonable rates, rules and regulations in connection with the sale of water by defendant for irrigation purposes; that the Commission determine whether defendant should construct the laterals or ditches leading from defendant's main canal to the lands of complainants or whether complainants shall construct such laterals and ditches at their own expense.

The answer states fully, from defendant's point of

view, the history of the canal system operated by defendant. Defendant denies that it is a public utility and claims that it is simply a mutual water company, not subject to the jurisdiction of the Railroad Commission. Defendant alleges that it took over the contracts formerly entered into by Central Canal and Irrigation Company and that it has continued under protest to deliver water to the contract holders at the rates specified in the contracts, at considerable loss to defendant. The company claims that the full capacity of its water system as at present constructed is 60,000 acres and that defendant has no water for delivery to any lands other than those of its stockholders. The company alleges that when its water system has been fully completed, it will not irrigate more than 100,000 acres of land, this being 18,000 acres of land less than defendant's shares of capital stock already issued. Defendant draws attention to a judgment rendered by the Superior Court of Colusa County on March 14, 1913, in the case of Byington, et al., vs. Sacramento Valley West Side Canal Company, in which case it was held that defendant is a public utility and is obligated to deliver water to the lands of complainants in that case, although these lands are not owned by stockholders in Sacramento Valley West Side Canal Company. Defendant claims that this judgment is erroneous. Defendant asks that all the water right contracts entered into by Central Canal and Irrigation Company be cancelled and set aside and that if defendant is required to continue to serve the lands covered thereby, it be allowed to collect an increased rate, which the defendant claims should be at least $9.00 per acre per annum; that this Commission authorize defendant to make such amendments to its articles of incorporation and by-laws as will insure the preservation of rights to water to persons owning stock in the defendant and to whose lands water of defendant has been/made appurtenant; that the Railroad Commission determine that attempted to be

defendant has not been and is not now a public utility, and that the lands of complainants are not entitled to be served with water by defendant; that if the Railroad Commission should determine that defendant is a public utility, it should also determine that all the land to which stock of the defendant has been attached, being some 118,000 acres, shall be served with water prior to the service of water to any other lands; and that the Railroad Commission take into consideration in its order the judgment and decree heretofore rendered by the Superior Court of Colusa County in the Byington case.

Public hearings in these cases were held in Willows on October 23, 1914, and January 21, 22 and 23, 1915, and in San Francisco on January 27, 28, 29 and 30 and February 1, 2 and 3, 1915. Thereafter, in order to give full opportunity to rate payers under the contracts of Central Canal and Irrigation Company, to present their views in opposition to the increase in rates asked by the defendant, a supplemental hearing was held in Willows on April 6, 1915. On the same day, the Commissioner presiding in these cases made a personal inspection of the head works of defendant's water system and of a portion of the main canal and the river branch canal and of a portion of the lands irrigated from said system, including particularly all the lands irrigated under defendant's system for the culture of rice in 1914. Time was granted for the filing of briefs, as requested by the parties. These briefs have been filed and these cases are now ready for decision.

These cases are among the most difficult which have been presented to the Railroad Commission for decision. They are the culmination of almost 30 years of doubt, uncertainty and disaster in the irrigation situation of Glenn and Colusa Counties. They are not merely replete with legal and economic difficulties, but also represent a situation which from a financial point of view is almost impossible to solve satisfactorily under existing conditions. The

difficulties of the situation, of course, cannot deter the Commission from proceeding in the performance of its duties. I have given careful and earnest consideration to the problems presented by these cases and shall try to work them out in accordance with the law of this state as applied to the facts here presented.

At the very outset, we are met by the claim of defendant that it is not a public utility and that this Commission has no jurisdiction over the same. On April 29, 1915, subsequent to the submission of these proceedings, the Supreme Court of California rendered its decision in the case of Byington, et al. vs. Sacramento Valley West Side Canal Company, hereinbefore referred to. The Court affirmed the judgment of the Superior Court, which held that it is defendant's duty to serve water to the complainants, without payment for any so-called water right, and that defendant can not serve water outside the limits of the old Central Irrigation District until the requirementsof the lands within said District, including the lands of the plaintiffs in that suit, have been fully complied with. The Supreme Court draws attention to the fact that the pleadings below expressly admitted that Sacramento Valley West Side Canal Company is a public utility, and proceeds on the theory that defendant is such public utility, in charge of water and an irrigation system devoted to the use primarily of the public owning lands within the limits of the old Central Irrigation District.

In the proceedings now pending before this Commission, defendant in its answer in each case claims that it is a mutual water company obliged to serve no one except its own stockholders and expressly denies that it is a public utility. Defendant has consistently maintained this position throughout these proceedings. It accordingly becomes necessary to analyze the facts so as to determine on the facts whether defendant is or is not a public utility.

In order to present the matter clearly, I believe it will be well to present a short history of the water system now being operated by defendant, with particular attention to those facts which may have bearing on the question whether or not defendant is a public utility.

On November 22, 1887, at an election held in accordance with the provisions of the Wright Irrigation District Law of 1887, an irrigation district, known as Central Irrigation District, was formed in a portion of what was then ~~xxxxxxx~~ Colusa County. The territory covered by the district consisted of some 156,000 acres. The purpose of the district was to take water from the Sacramento River at a point in Colusa County, near the southern boundary of Tehama County, and thence to convey the same by means of a main canal with branch canals and laterals, to all the lands of the district. The main canal was designed to run through Colusa County (now Glenn County) in a general southerly direction, directly east of the town of Willows, and thence southerly past the towns of Maxwell and Williams to an intersection with Cortina Creek, in Colusa County, at a point about half way between Williams and Arbuckle. The main canal, as thus completed, would have a total length of some 62 miles. The lands included in the district were the lands lying in the present counties of Glenn and Colusa, between the main canal and the Sacramento River, with the exception of ~~xxx~~ several thousand acres adjacent to the Sacramento River.

In pursuance of this general plan, the district issued its bonds in the total amount of $523,145.00. By means of the bonds thus issued, the district excavated the main canal from a point about 2,000 feet south of the Sacramento River, where the headgate of the canal is now located, southerly to Stony Creek, a distance of about six miles. A bulkhead and gates were constructed on each side of Stony Creek, with a conduit to carry water across Stony Creek between the headgates. From the south side of Stony

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Creek the canal was finished for a distance of about three and a half miles to the property of the Glenn estate. A distance of about six and a half miles across the Glenn estate was not constructed because of inability at that time to secure the right of way. From the south line of the Glenn Ranch the canal was completed with only occasional small gaps, for a distance of 18 miles, to a point on the road running west from Norman. South of Norman there was a gap of about 4 miles. Beyond the southerly end of the gap the canal was practically completed, with a few small gaps, to a point several miles south of Maxwell, in Colusa county. Of the total of $523,145 of bonds issued by Central Irrigation District, bonds of the face value of $24,500 were issued in exchange for rights of way. After this work had been done, it became impossible to secure the necessary additional funds, and work stopped in the latter part of 1891. For 11 years the project was left in this incomplete condition. The Central Irrigation District never appropriated any water and never conveyed any water through the partly constructed canal.

In 1889, in Central Irrigation District vs. DeLappe, Secretary, and Lee S. Wakefield, Intervener, 79 Cal. 351, the Supreme Court of this State held on the evidence then presented to it, that Central Irrigation District had been validly organized and that the form of its proposed bonds was entirely lawful. In Quint vs. Hoffman, 103 Cal. 506, decided on August 8, 1894, being an action by Quint to enjoin the collector of Central Irrigation District from selling a portion of Quint's land for failure to pay assessments levied by the District in 1892, the Supreme Court held that the validity of the organization of Central Irrigation District could not be attacked collaterally and that in considering the validity of the assessment, it was immaterial whether the District existed de jure or de facto. In the Matter of the Organi-

zation and of the Bonds of Central Irrigation District, 117 Cal. 382, decided on June 24, 1897, the Supreme Court held that the Central Irrigation District had been illegally organized. The principal ground of the decision was that of the 50 signers necessary to the petition to institute proceedings for the formation of a district, a considerable number were storekeepers and lot owners in the towns instead of being owners of agricultural lands, as contemplated by the Wright Act. The Court expressly declined to pass upon the question of the validity of the bonds which had been issued by the District. These bonds passed through various hands, and were finally acquired for 35 cents on the dollar of principal plus interest by J. S. and W. S. Kuhn of Pittsburgh, in connection with their purchase of lands and the irrigation system in Glenn and Colusa Counties, as will hereafter appear. There has never been an authoritative determination as to whether these bonds constitute a valid lien on the property included within the old Central Irrigation District.

After a period of eleven years, during which no work was done on the canal, Willard M. Sheldon and associates undertook to complete the canal and to irrigate lands in Glenn and Colusa Counties therefrom. In pursuance of this plan, Sheldon in January, 1903, secured from the directors of the Irrigation District a lease of the entire property for the period of 50 years, at a rental of $25.00 per year. This rental was regularly paid until atleast 1910 or 1911. Sheldon then procured the incorporation of Central Canal and Irrigation Company, to which company he assigned the lease, in accordance with the understanding at the time he secured it. Central Canal and Irrigation Company was unquestionably a public utility. On October 28, 1903, Central Canal and Irrigation Company posted on the banks of Sacramento River, near the point of intake of the main canal, a notice of appropriation of the waters of the Sacramento River to the extent of 5,000 cubic feet per second. The notice states that it is intended to divert

the water from the Sacramento River "and to conduct said water thence down the west bank of said river in a southerly and westerly direction about one hundred and fifty miles to, through and over the counties of Glenn, Colusa, Yolo and Solano in the State of California, according to the topography of the country over which said water is to be used and there to furnish water for the use of the Central Canal and Irrigation Company or its assigns or to persons desiring the same, for irrigation, water power and domestic purposes, and for all purposes for which water may be used, and for all purposes incident thereto and incidentally for all legitimate purposes."

On November 14, 1904, Central Canal and Irrigation Company posted on the banks of Stony Creek, at a point on the south bank thereof, where the Central Canal intersected the same, a notice appropriating the waters of Stony Creek to the extent of 5,000 cubic feet per second. The notice stated that the purpose for which the water was to be used was "to supply water for domestic use and for irrigation." The notice stated that the place of intended use was "in the eastern portion of Glenn County and Colusa County, on those lands lying to the west of the Sacramento River therein and on either side of the Colusa Canal, also in the center portion of said Glenn, Colusa and Yolo Counties on the lands lying to the east of the Central Canal, and to the east of the foothills bounding the western portion of the Sacramento Valley in the Counties of Colusa and Yolo to the south of the point to which said canal has been constructed."

Before the plan of diverting waters of the Sacramento River into the Central Canal could be consummated, it became necessary to secure the consent of the Federal Government, because of the control of that government over navigation in the Sacramento River. In 1906 the Federal Congress granted to Central Canal and Irrigation Company the right to divert not to exceed 900 cubic feet of

water per second from the Sacramento River, to be used "for irrigating lands of the Sacramento Valley on the west side of the Sacramento River, in said State of California." The report of the Committee on Interstate and Foreign Commerce, to whom the bill was referred, states that the water is to be used "for irrigating the arid lands of Glenn and Colusa Counties, in the Sacramento Valley, in the State of California." Furthermore, the report states that "the territory covered by Central Irrigation District consists of more than 150,000 acres of as fine land as can be found in the world, and is the principal territory affected by this application for water under this bill."

In my opinion, there can be no reasonable doubt that the rights thus granted by the Federal Government were granted for the purpose of enabling Central Canal and Irrigation Company, a public utility, to distribute waters of the Sacramento River for public use, without discrimination, to lands west of the Sacramento River, in Glenn and Colusa Counties.

After receiving this grant from the Federal Government, Central Canal and Irrigation Company proceeded with the extension of its irrigation system. The company completed the gap in the main canal between the southern bank of the Sacramento River and the location of the present headgate, a distance of some 2,000 feet; constructed several miles of canal across the property of the Glenn estate, for which right of way had not been secured by the Irrigation District; completed the construction of the main canal,

so that it became possible to conduct water through it to a point about six miles northeast of Willows; and constructed the river branch canal, which takes out of the main canal at a point near the north line of the Glenn estate and conducts water to a point some five or six miles south of Princeton. The company installed a pump on the southerly bank of the Sacramento River, which pump started operations in 1906. For three years, 1906, 1907 and 1908, Central Canal and Irrigation Company conducted water through the main canal and river branch canal to whomever cared to purchase it. An affiliated land company, known as Sacramento Valley Land Company, purchased the tracts of land known as the Boggs tract, the Packer tract and the Glenn tract, lying in the easterly portion of Glenn County, sub-divided these lands and offered them for sale. A large number of purchasers of these tracts received water from Central Canal and Irrigation Company. In 1909, when the properties were transferred to the Kuhns, Central Canal and Irrigation Company was selling water as a public utility to several thousand acres of land under this system. It is admitted on all sides that up to this time the company's canal system was devoted to a public use and that the waters delivered through it were appropriated and actually sold for public use.

In 1909, J. S. and W. S. Kuhn, of Pittsburgh, acquired the outstanding bonds of the old Central Irrigation District, purchased the stock of Sacramento Valley Land Company, thereby becoming the owners of the stock of Central Canal and Irrigation Company and secured options on over 135,000 acres of land in Glenn and Colusa Counties, which lands they proceeded to subdivide and place upon the market for sale, with the representation that water rights under the canal system were attached thereto.

The Kuhns, on August 14, 1909, caused the incorporation of Sacramento Valley Irrigation Company, which company was primarily the Land Company. Having acquired by stock ownership the control of both Sacramento Valley Land Company and Central Canal and Irrigation Company, the Kuhns caused these companies by deed dated September 20, 1909, to convey to L. D. Waddell, the nominee of the Kuhns, all the rights of these companies in and to the pumping station on the banks of the Sacramento River, installed by Central Canal and Irrigation Company, the main canal and the river branch canal, together with all laterals, ditches, branches, extensions, rights of way, lands, fixtures, buildings, structures and improvements owned, used or controlled in connection therewith, and the two appropriations of 5,000 cubic feet per second made by Central Canal and Irrigation Company, the one being of waters of the Sacramento River and the other of waters of Stony Creek, hereinbefore referred to, as well as the right granted by the Federal Government to Central Canal and Irrigation Company to divert the waters of the Sacramento River. Thereafter, on September 22, 1909, Waddell conveyed these same properties to Sacramento Valley Irrigation Company, the company organized by the Kuhns for the purpose of doing their land business in Glenn and Colusa Counties. Thereafter, by deed dated June 16, 1910, Sacramento Valley Irrigation Company conveyed these same properties to Sacramento Valley West Side Canal Company, which Company was incorporated by the Kuhns for the purpose of conducting their water business in these two counties. Sacramento Valley

West Side Canal Company, hereinafter at times referred to as the Canal Company, was incorporated under the laws of California on August 6, 1909, with a capital stock of $250,000, divided into 250,000 shares of the par value of $1.00 each. Under its articles as thus originally adopted, the company had the power simply of a mutual water company. It was authorized to distribute the waters which it might convey through the main canal and branch canals, only to its stockholders, and to seek compensation from its stockholders by means of xxx assessments. It was thus attempted, through the transactions which I have indicated, to transmute a canal system devoted to the public use, conveying water appropriated for public use, into a system owned and controlled by a private mutual water company for the sole benefit of its private stockholders. True, the Canal Company continued to supply water to the customers of Central Canal and Irrigation Company at the rates established by the contracts with that company, but as to all the other water conveyed through the canal system, the Canal Company has claimed the right to utilize the same solely for the benefit of the lands bought by the Kuhns. The Canal Company bound itself by contract dated June 16, 1910, to supply water to no lands other than the Kuhn lands, except upon the payment of $75.00 per acre for an alleged "water right." How the Kuhns and their advisors ever expected to convert to their private uses a water system and the waters thereof which had been devoted to the public, in such a way as to defeat the rights of members of the public other than those purchasing lands from the Kuhns seems impossible to understand. In any event, the attempt to do so has added another difficult and complicated situation to those already existing in connection with this water system.

By the agreement of September 1, 1909, as modified by the agreement of June 16, 1910, hereinbefore referred to, Sacramento Valley Irrigation Company, the Land Company, undertook to supply the necessary money to complete the main canal system, with the

necessary laterals, and the Canal Company in turn agreed to convey to the Irrigation Company 249,500 out of its 250,000 shares of authorized capital stock. The plan was to have the Land Company then attach this stock, one share to each acre, to lands owned by the Kuhns, so as to facilitate the sale of these lands at increased prices.

Acting under these arrangements, the Land Company constructed a considerable portion of the main canal south of what is known as the Irrigated Farms Check, constructed a large number of laterals to lands owned by the Kuhns, installed four pumps and erected the necessary structures at the intake at the Sacramento River and constructed a system of drains and levees.

For the purpose of condemning certain rights of way necessary for the extension of the main canal, the Canal Company, in 1909, or just prior thereto, filed in the Superior Court of the County of Glenn a number of complaints in eminent domain proceedings. One of the defendants demurred on the ground that the Canal Company under its articles of incorporation, was not a public utility, and hence had no right to exercise the power of eminent domain. This demurrer was sustained. The Canal Company thereupon amended its articles of incorporation, and filed the same on June 6, 1910. Under these amended articles the company was granted power, among others, "to purchase, acquire, lease, construct and build, own, hold, operate, maintain, enlarge, improve, extend and sell, lease, mortgage or otherwise dispose of real and personal property, notes, bonds, stocks and securities, canals, ditches, flumes, dams, reservoirs and lakes, natural or artificial, and other water works, or any interest therein with all convenient appliances for the diversion, storage, sale, rent, distribution and supply of water for irrigation for agricultural purposes and for mining and manufacturing, commercial or domestic purposes." The company was also granted power "to fix, charge, collect, receive, use and enjoy tolls, rentals, rates or other compensation for any such water so sold,

furnished, rented or distributed or for the use thereof or for any of the rights to enjoy the same which shall be granted or conferred by this company." After having thus amended its articles of incorporation so as clearly to give it public utility powers, the company filed amended complaints in a number of the proceedings in eminent domain heretofore referred to. Certified copies of these complaints are in evidence in the present proceedings. In each thereof the Canal Company alleges that it is "a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Glenn in the State of California, and organized, among other things, for the purpose of storing, selling, renting, supplying and distributing water for irrigation and domestic use and for manufacturing and all other purposes and uses to which water may be put, to the farming neighborhoods in the Counties of Glenn and Colusa, in the State of California, within the limits and area of land comprising said farming neighborhoods." Said lands and neighborhoods are described in these various complaints. The descriptions are not identical in all of them, but together they include most of the lands of the old Central Irrigation District together with certain additional lands, embracing the larger part of the lands of the complainants in the present proceedings. Findings and judgments were thereafter entered in these proceedings establishing the truth of the allegations of the amended complaints.

Reference has already been made to the case of Byington, et al., vs. Sacramento Valley West Side Canal Company, et al., which was tried in the Superior Court of Colusa County in 1912. The complaint was filed by a number of land owners in the old Central Irrigation District owning lands south of the present completed portion of the main canal, who alleged that the Canal Company is a public utility and that it is obligated to supply water to the lands of complainants. In this proceeding, as already indicated, the Canal Company admitted, on the pleadings, and also at the trial "for the purpose of the case" that it is a public utility and the

court so found.

Notwithstanding all the matters hereinbefore set forth, the Canal Company now claims before this Commission that it is not a public utility, or, at least, that it is a hybrid water company, part public utility and part not a public utility. When pressed, the representatives of the defendant admitted in this proceeding that in so far as the company sells water to the customers of the old Central Canal and Irrigation Company, it is a public utility. At the same time, however, they contend, notwithstanding the matters hereinbefore set forth, that with reference to water delivered to all other consumers, the company is a private mutual water company, not subject to the jurisdiction of this Commission. How a corporation can take over a water system impressed with a public use and thereupon convert that system into a private system for the private advantage of the corporation to the exclusion of members of the public owning lands capable of irrigation and under the flow of the system and not consenting to the change is beyond my understanding. I know of no such thing as a corporation which is at one and the same time both a public utility and not a public utility. Although the Canal Company has treated its customers holding lands bought from the Kuhns as though the company were simply a private mutual water company, collecting its rentals by means of assessments, this conduct is not sufficient to authorize the conversion of a public water system into a private water system.

Under the definition of a public utility given by Section 23 of Article XII of the Constitution of this State, as amended on October 10, 1911, the definition of a public utility as found in Section 2 of the Public Utilities Act, the cleancut differentiation between a public utility water company and a private mutual water company established by Chapter 80 of the Laws of 1913, as well as under the Canal Company's own amended articles of incorporation, its admissions and its conduct, as well as in view of the nature and character of the canal system and its waters at the time they were acquired by the Kuhns,

I cannot escape the conclusion that the defendant is a public utility and that the canal system which it is operating and the waters delivered through the same are still devoted to the public use. The attempt of the Kuhns to secure the control of a public utility water system for their own private purposes to the exclusion of other members of the public was foredoomed to failure, because it was legally impossible. The issue as to whether or not the defendant is a public utility must be resolved on the facts and the law applicable thereto, against the defendant.

I shall now address myself to the other issues presented in these proceedings.

The complaint in Case No. 673 is signed by 49 complainants. Permission was given at the trial to add to the complainants the following:

Boyd Millar--owning 86 acres on the River Branch Canal.

Lacey-Williamson Company--owning 720 acres east of Willows.

L. Lindsey--owning Sections 16 and 17 and the South half of Section 9, Township 18 North, Range 3 West, totalling 1560 acres.

Owen Dunlap--owning Southwest quarter of Section 6, Township 19 North, Range 2 West, 160 acres.

Charles Glenn--owning 800 acres on the River Branch Canal.

George E. Fleming--owning Northeast quarter of Section 15, Township 19 North, Range 3 West--160 acres.

William Spaletta--owning Northwest quarter and North half of Northeast quarter of Section 25, Township 19 North, Range 3 West--240 acres.

L. H. Twede testified that the name of Twede Ranch and Land Company, one of the complainants, had been signed by mistake. His request that this name be withdrawn from the complaint was granted. The complainants, Charles L. Donohoe and H. J. Barceloux, are owners of undivided interests in a 71 acre parcel of land in the Northwest quarter of Section 12, Township 19 North, Range 3 West.

No evidence was presented in behalf of S. Givens, T. H. Newsom, J. L. Bondurant, F. S. Reager, F. and C. Sturm, C. S. and Mary Jurges and Lena Ferem. James Arnold testified that he would not make an application for water, and N. Peterman testified that he did not know whether he wanted water or not. The testimony also shows that if water were served to the lands of Peterman and the Sturms, it would be necessary to incur an expenditure of $11,000 to enlarge the "B" Canal as it now exists.

The complainants in Case No. 673, to whose claims consideration will be given in this proceeding, are as follows: Sacramento Valley Realty Company, California Midland Realty Company, Charles L. Donohoe and H. J. Barceloux, Lloyd T. Lacy, Frank Spooner, William Schilling, M. C. Dethlefs, S. C. Pierce, J. J. Curry, W. H. Crook, H. Jameson, O. L. Raper, G. M. Hanson, A. D. Girard, D. R. Linebaugh, C. T. Dillard, J. E. Knight, J. W. Farmer, Mrs. A. C. Troxel, Mrs. L. M. Newsom, W. B. Baylor, George E. St. Louis, Henry E. Reed, A. E. Duncan, Frank Miller, C. R. Wickes, Edgar Hunter, John S. Figge, M. S. Hess, Frank Shotts, Blanche Durbrow, F. M. Temple, A. Gollnick, Peter Barceloux Company, Estate of P. R. Garnett, H. W. Garnett, Boyd Millar, E. E. Avery, Lacey-Williamson Company, The Spalding Company, L. Lindsey, Owen Dunlap, Charles Glenn, George E. Fleming and William Spaletta.

While relief herein must be confined to those complainants in whose behalf evidence was presented, it is expected that the principles herein established will be applicable to all landowners who are in the same classes as the complainants designated in the order herein.

The testimony shows that it is physically possible to irrigate from the system of the Canal Company all the lands of all complainants referred to in the order herein, with the following possible exceptions:

1. J. J. Curry--the testimony shows that the major portion, if not all, of the lands of Curry can be so irrigated.

2. W. H. Crook--the testimony shows that between 20 and 30 acres of this land can be so irrigated.

3. C. T. Dillard--between 10 and 12 acres of this land may be so irrigated.

4. Mrs. L. M. Newsom--the larger portion of Mrs. Newsom's land can not be so irrigated.

5. George E. St. Louis--over one half of this 25 acre parcel can be so irrigated.

6. A. Gollnick--not more than 10 acres of this 51 acre parcel can be so irrigated.

Of the lands of complainants to which consideration is herein given, part are located within the boundaries of the old Central Irrigation District and part are located outside of the District principally between the Sacramento River and the easterly boundary of the old District. The lands of the following complainants seem to be located within the boundaries of Central Irrigation District: Sacramento Valley Realty Company, California Midland Realty Company, Charles L. Donohoe and H. J. Barceloux, Frank Spooner, William Schilling, A. D. Girard, M. S. Hess, Frank Shotts, Blanche Durbrow, F. M. Temple, Peter Barceloux Company, Estate of P. R. Garnett, H. W. Garnett, Lacey-Williamson Company, The Spalding Company, L. Lindsey, Owen Dunlap, George E. Fleming and William Spaletta. The lands of the other complainants referred to in the order herein seem to be located outside the limits of the old Central Irrigation District. In the case of certain of the complainants, the testimony is indefinite on the question as to how many acres the particular complainant desires to irrigate, what crops he desires to raise and when he desires the use of the water. A careful perusal of the evidence shows that water is desired by the complainants referred to in the order herein, approximately as follows:

For rice ..... 7483 acres

For alfalfa ..... 2615 "

83

For alfalfa and trees ..... 758 acres

For trees ..... 45 "

Some of this acreage desires water during the first year, while the development of the remaining lands would extend over several years.

Under the decision of the Supreme Court in the Byington case, supra, the complainants who own land within the boundaries of the old Central Irrigation District are entitled to water from the Canal Company, if the Company has the water and is able to deliver it, and those complainants who own lands contiguous to but outside the limits of Central Irrigation District are entitled to water under the same conditions but only after the requirements for the irrigation of the lands within the District have been fully met and provided for.

It now becomes necessary to consider defendant's ability to deliver water to the lands of complainants.

As already stated, the Canal Company has the right under its grant from the Federal Government to take from the Sacramento River, as long as such diversion shall not seriously injure the navigation of the river, an amount of water which shall not exceed 900 cubic feet of water per second when the river at the point of diversion stands two feet above low water. Mr. D. W. Ross, who was in actual charge of most of the construction work on defendant's system which was performed by Sacramento Valley Irrigation Company, estimates in defendant's Exhibit No. 18 that this amount of water would irrigate 90,000 acres, assuming an average depth of 1.5 feet of water per acre per year delivered on the land. Mr. R. W. Hawley, the Railroad Commission's hydraulic engineer, estimated that this amount of water would irrigate 100,000 acres of land, assuming a depth of 1.5 feet of water per acre during the year, of which amount 25 per cent would be applied during any 30-day period of the irrigation period in the summer. If the Federal Government should permit the taking of water in excess of 900 cubic feet per second,

the system's capacity to deliver water could be very materially increased.

At the present time, however, due to certain limiting factors, to which attention will hereinafter be directed, defendant's system is not capable of irrigating acreages as large as those just indicated. Defendant's answer in Case No. 673 admits that the system is at present capable of irrigating 60,000 acres of land. Mr. Ross testified that if certain work were done on the main canal, this system could now irrigate 60,000 acres. Mr. Hawley testified that the system in its present condition could irrigate very nearly 46,000 acres.

The limiting factors in the ability of defendant at the present time to deliver water are stated by Mr. Ross in defendant's Exhibit No. 18, as follows:

1. The condition of the west branch of the Sacramento River from which the water is diverted.

2. The capacity of the present pumping system.

3. The condition of the main canal between the river and Stony Creek.

4. The construction of better means for conducting the water across the channel of Stony Creek.

5. The reconstruction of the upper section of the main canal south of Stony Creek.

In 1909, more than 1000 cubic feet of water per second flowed through the west channel of Sacramento River, past the point where defendant's pumps are installed. During the last few years, however, a gravel bar has gradually moved down this channel making it necessary to dredge each year to maintain defendant's supply of water. While a channel can be maintained across this bar, Mr. Ross estimates that it will cost about $6,000 per year for dredging expense for several years to come, unless the river should, during some flood stage, change back to its original channel.

Mr. Ross estimates that with the pumps at present installed at the head of the canal, it would not be safe to count on a diversion in excess of 750 cubic feet of water per second, with all the pumps in operation, under favorable conditions of water supply. In order to pump the full 900 cubic feet of water per second, Mr. Ross advises the installation of two additional pumps, with a capacity of 150 cubic feet per second each, to be installed in the year 1920, at a cost of $59,000.

The main canal between the Sacramento River and Stony Creek, a distance of about 6 miles, contains considerable deposits of silt and portions thereof have not been excavated to grade. Mr. Ross reports that there are still obstructions in this section of the canal of an average height of more than 3 feet for a distance of nearly 3,000 feet. It is necessary at present to pump against this additional height. Mr. Ross estimates that it will be necessary to complete this section of the canal in 1917 or 1918 and that the work can be done for $64,812.00, not including overhead expenses.

The waters pumped from the Sacramento River are conducted by means of a concrete weir with removable wooden superstructure across the bed of Stony Creek, to the continuation of the main canal to the south thereof. The superstructure is removed at the end of each season to permit of the passage of the flood waters of Stony Creek during the winter and early spring, and the removal from the concrete base of the weir of the gravel deposited by the waters of Stony Creek. Each year the company must defer running the Sacramento River water through its system until the waters of Stony Creek have subsided sufficiently to enable teams to enter the creek bed and to remove the gravel there deposited. This method of operation is admittedly only temporary. Central Irrigation District constructed a conduit across Stony Creek at this point, but this structure has disappeared. Mr. Ross estimates that a suitable permanent structure for the purpose of carrying the waters of the Sacramento River to the south side of Stony Creek can be erected for about $100,000.00

and that this work should be done in 1917 or 1918.

As already stated, the main canal from a point about 3 miles northeast of Willows to its present southern extremity has been permanently constructed to grade by Sacramento Valley Irrigation Company. From the northerly extremity of this portion of the canal to Stony Creek, the canal is still, in the main, in the condition in which it was left by Central Irrigation District many years ago. Portions of the canal are not down to grade and other portions are badly choked with tules. Ultimately it will be necessary to complete this portion of the canal, so as to carry the full amount of water to which defendant is entitled. Mr. Ross estimates that the total cost of fully completing this section of the canal so as to enable it to carfy the full capacity of water originally estimated would be $312,478.00, which amount includes engineering, administration and legal expenses. Mr. Ross is of the opinion that this work should be done in 1917 or 1918.

As contrasted with the acreage which may be irrigated by the Canal Company's system in its present condition and the acreage which may ultimately be irrigated when the system has been fully completed, I desire to draw attention now to the acreage which has actually been irrigated by defendant during the last few years. This acreage is reported by the defendant as follows:

Year	Acres Irrigated
1910	3448
1911	5800
1912	16111
1913	16522
1914	12265

The area irrigated in the year 1912 included 5419 acres of grain lands belonging to Sacramento Valley Irrigation Company and apparently not subsequently irrigated. The acreage irrigated in 1914 includes about 210 acres which were planted to rice.

It will be noted that the maximum acreage of land hitherto irrigated, being 16,522 acres in the year 1913, is only slightly in excess of one-third of the capacity of the system even in its present condition, as testified to by Mr. Hawley, and only about one-sixth of the ultimate capacity of the system if constructed so as to utilize the full 900 cubic feet of water per second, which the defendant may at the present time take from the Sacramento River.

I find from the evidence herein that defendant has under its control sufficient water to irrigate at least the lands of the complainants whose claims are being considered in these proceedings, as well as the complainants in the Byington case, in addition to its present customers, and that defendant's canal system in its present condition is capable of delivering water as required to the lands of all these complainants, with a considerable margin to spare for other lands if the portions of defendant's system are completed from time to time as advised by Mr. Ross.

This Commission must, in this proceeding, determine the rate which defendant must charge the complainants for water delivered. The complaint in the Rogers case (Case No. 597) alleging discrimination as to the rates at present charged by defendant to different consumers, also requires an investigation into defendant's rates. The defendant itself has petitioned the Comission in Case No. 673 to establish all its rates, if this Commission should find that the company is a public utility. It accordingly becomes necessary to investigate defendant's entire rate situation.

At the present time, defendant is selling water in part to the so-called Central Canal and Irrigation Company contract holders and in part to its own stockholders.

Central Canal and Irrigation Company, admittedly a public utility, entered into contracts to sell water to various land holders at various prices. The form of contract at first used provided that

water would be delivered at the rate of not exceeding one cubic foot of water per second for each 160 acres of land until the year 1953, and thereafter during the existence of the corporation, for the sum of $1.00 per acre per year, for each acre of land described in the contract, whether water was actually used or not. Central Canal and Irrigation Company later entered into one contract covering one parcel of land in which the rate was fixed at $1.50 per acre and several contracts in which the rate was fixed at $3.00 per acre for the first 10 years, with $2.00 per acre annually thereafter. There is also some evidence that a few contracts provided for the payment of a rate of $2.00 per acre during the first 10 years and $1.00 per acre thereafter.

When Sacramento Valley West Side Canal Company entered into possession of the system formerly operated by Central Canal and Irrigation Company, it took the system subject to all its outstanding burdens, including the outstanding contracts for the delivery of water. From time to time, as persons under contracts to purchase land found themselves unable to make payments at the times and in the amounts specified in their various contracts, ~~[illegible]~~ Sacramento Valley Irrigation Company, the Kuhn Land Company, agreed to certain changes in the terms of the land purchase contracts, on condition that the rate to be paid for water to Sacramento Valley West Side Canal Company should be increased from $1.00 to $2.00 per acre per year. Almost all the $2.00 contracts now outstanding were thus entered into after the Kuhn people had secured control of the project and it may fairly be assumed that the rate thus established expressed the views of the new owners of the project as to the fair rate to be charged for water.

The number of acres under the Central Canal and Irrigation Company contracts as originally entered into or as modified, was testified at the hearing to be as follows:

$1.00 contracts	3996.37	acres
$1.50 "	23.7	"
$2.00 "	2449.64	"
$3.00 "	1668.24	"
Total,	8137.95	"

The testimony shows that frequently one land owner pays $1.00 per acre per year, whereas his neighbor owning land of exactly the same character lying by the side of the first parcel pays $2.00 or $3.00 per acre. The charge of W. J. Rogers, complainant in Case No. 597, that defendant discriminates in its charges has been clearly sustained. That this Commission can not permit this discrimination to continue is obvious. The rates to be established in this proceeding must be uniform and non-discriminatory in their application.

In addition to supplying consumers under the so-called Central Canal and Irrigation Company contracts, Sacramento Valley West Side Canal Company also supplies water to certain of its stockholders. The agreements entered into between Sacramento Valley Irrigation Company and purchasers of land provide that Sacramento Valley Irrigation Company will assign and deliver to the purchaser one share of the capital stock of Sacramento Valley West Side Canal Company for each acre of land purchased, the water to become appurtenant to the land. The agreements further provide that the Canal Company shall have the right to levy the necessary assessments upon its stockholders, these assessments to be paid by all the stockholders whether they use water or not. The agreements further provide as follows:

> "The company (Sacramento Valley Irrigation Company) prior to the year 1915 shall pay all such assessments, charges or expenses levied against the stock of the purchaser, if any, in excess of the sum of $1.50 per acre per annum."

The practice of the Canal Company has been to subtract from the total maintenance and operating expenses of any particular year the amount of revenue collected from Central Canal and Irrigation

Company contracts and then to divide the difference by the total number of shares of its stock outstanding. The quotient has then been assessed upon each acre of land represented by capital stock of Sacramento Valley West Side Canal Company, then outstanding, irrespective of whether water was being used upon the land.

In the year 1912, the Canal Company collected the sum of $9651.04 from Central Canal and Irrigation Company contract holders. After applying this amount to the cost of maintenance and operation for the year 1912, there was a deficit in maintenance and operating expenses of $77,514.02. There being 111,667.69 shares of capital stock of the Canal Company outstanding, the assessment for the year 1912 was 70 cents for each share of the capital stock of the Canal Company then outstanding. It follows that people who bought their land from the Kuhns and used water, secured it in 1912 for 70 cents. per acre. The deficit was met by the Kuhns out of their land project.

In 1913, $9,711.38 was collected under the Central Canal and Irrigation Company contracts. There were certain other sources of revenue bringing the total amount collected from sources other than stockholders up to $10,167.38. This left a deficit in maintenance and operating expenses which was reported by the Company as being $112,483.18. This amount was divided by 118,340.75, being the number of shares of the Canal Company's stock then outstanding, resulting in an assessment of 95.025 cents per share. The cost of water to stockholders of the Canal Company using it was thus 95.025 cents per acre.

The assessment for 1914 does not appear from the evidence.

Attention should be drawn to the fact that stockholders of the Canal Company have been paying these assessments entirely irrespective of the question of whether they were or were not actually using water for irrigation.

It now becomes necessary to consider the investment in the Canal Company's property.

The Canal Company presented as its Exhibit No. 5a a statement of total investment by the present owners of the system of the Canal Company. This statement is as follows:

TABLE No. I.

INVESTMENT BY PRESENT OWNERS OF SYSTEM OF SACRAMENTO VALLEY WEST SIDE CANAL COMPANY.

Central Irrigation Dist. Bonds	Amount paid	331,823.59
Central Canal & Irrigation Co.	" "	225,272.00

COST OF CONSTRUCTION DONE BY S.V.I. CO.

Main Canal Grading		176,923.54	
Main Canal Structures		257,365.62	
Lateral Grading		422,848.49	
Lateral Structures		278,120.19	
Lateral System Concrete Pipe	31,132.53		
Less cost of pipe over estimated cost of open ditches - - - - - - - - - - -	23,047.53	8,058.00	
Pumping Plant Machinery		123,759.41	
Drains		241,134.98	
Levees	73,340.39		
Less payments by landowners	15,294.11		
	57,046.28		
One-half chargeable to protection of irrigation system	28,523.14	28,523.14	
Telephone System construction		7,934.97	
Telephone System maintenance during construction		1,570.65	
Power Line Hamilton City to Stony Creek		1,249.74	
Automobiles		4,181.25	
Wagons & Harness		5,901.45	
Dredge "Delevan" & Equipment		15,546.90	
Depreciation on construction Equipment		54,848.70	
Rights of Way Purchased		30,955.93	
Lateral Rights of Way Purchased		70,570.22	
Rights of way for Canal System on S.V.I. Land-			
2325 acres occupied @ $150-	348,976.50		
Less Amt. paid	70,570.22	278,406.28	
Total Amt. expended by S.V.I.Co. on canal construction			1,987,904.46
			2,543,000.05
Overhead expenses during construction:			
Organization		3,596.63	
Engineering & superintendence		296,672.85	
Salaries of clerks		49,549.54	
Salaries of Legal Dept.		10,662.32	359,481.14
Beckwith Judgment			87,116.65
			2,989,597.84
Discount on bonds 15%			448,439.67
			3,438,037.51

The first item, being "Central Irrigation District Bonds", and totalling $331,823.59, is the amount paid by the Kuhns for the entire outstanding bonds of the old Central Irrigation District, with accrued interest. The second item, "Central Canal & Irrigation Company, $223,272.00" is the amount paid by the Kuhns for the entire property of Central Canal and Irrigation Company. The remaining amounts shown in the exhibit are given by the Canal Company as representing the amounts of money expended on the irrigation system by Sacramento Valley Irrigation Company or Sacramento Valley West Side Canal Company subsequent to the acquisition of the property by the Kuhns, with an allowance of 15 per cent claimed by the Company as estimated discount on bonds. That this statement does not represent correctly the amounts actually expended by Sacramento Valley Irrigation Company appears from the fact that the statement includes an item of 2525 acres of right of way at $150.00 per acre, which amount is largely in excess of the amount actually paid by the Kuhns for the land. The statement also includes items for laterals which apparently have never been deeded by Sacramento Valley Irrigation Company to the Canal Company. The statement also includes the item of "Drains $241,134.98", which item Mr. Hawley considers should be properly chargeable against the land operations of the Kuhns and not against the irrigation system. The statement does not purport to enter into the question of title to the property as between Sacramento Valley Irrigation Company and the Canal Company.

Mr. R. W. Hawley presented a tabulation showing his estimated cost of the property of the Canal Company as of January 1, 1915, which estimate was introduced as Railroad Commission's Exhibit No. 4. The estimate is as follows:

TABLE No. II.

ESTIMATED COST OF PUBLIC UTILITY PROPERTY Of
SACRAMENTO VALLEY WEST SIDE CANAL COMPANY

R. W. Hawley

Built By	Excavation	Structures	Damages, Rights of way, etc.	Sub-Total	Overhead	Overhead percent Incl. Right of Way	Overhead percent Excl. Right of Way	Total
MAIN CANAL								
By C.I.District	$ 328235	$ 37000	$ 10225	$ 375460				
" C.C.& I. Co.	56549	78954	sss	136391				
" S.V.I. Co.	159202	234622	30936	424760				
	$ 543986	$362826	$ 42049	$ 936611				
PUMPING PLANTS:								
By C.C.& I. Co.		17179		17179				
" S.V.I. Co.		115007		115007				
		$132186		$ 132186				
LATERALS:								
C.C. & I. Co.	50000	26528		76528				
S.V.I. Co.	422849	278120	174400	785369				
	$ 472849	$304648	$174400	$ 951897				
LEVEES, ETC.								
S.V.I. Co.								
Concrete Pipe		8085		8085				
Levees	28523			28523				
Beckwith Judgment			87117	87117				
	$ 28523	$ 8085	$ 87117	$ 123725				
OVERHEAD								
C.I. District	Known,			460460	$ 44460	9.56	9.86	$ 504920
C.C. & I. Co.	Estimate,			244098	33614	15.00		280712
S. V. I. Co.	Known,			1538861	427385	27.76	34.18	1966246
S. V. I. Co.	Engr. alone,				270849	17.60	21.70	
GRAND TOTAL								$2751878

In this tabulation Mr. Hawley has undertaken to give the actual expenditures incurred by Central Irrigation District, Central Canal and Irrigation Company and Sacramento Valley Irrigation Company, with estimates in a few cases in which the actual cost could not be secured. Mr. Hawley has eliminated certain structures which were erected by Central Irrigation District but which have since been obliterated or replaced. Mr. Hawley included no allowance for drainage canals for the reason that in his judgment this item, as already indicated, is properly chargeable to the land operations of the Kuhns and not to the irrigation system. He made a segregation of the cost of levees, partly to the land business and partly to the irrigation operations, adopting in this respect the segregations used by the Canal Company. He included the cost of laterals, the title to which is probably still in Sacramento Valley Irrigation Company. While reporting the percentages for overhead construction claimed to have been expended by Sacramento Valley Irrigation Company and the Canal Company, Mr. Hawley draws attention to the fact that the percentages are unusually high, particularly for engineering and superintendence. Mr. Hawley stated that the sum of $10,225.00 under the head of damages, rights of way, etc., under the Central Irrigation District, should be increased to $54,539.00, which correction should be made in the foregoing table.

Mr. E. C. Mills, defendant's chief engineer, presented an estimate of reproduction cost of defendant's main canal, as follows:

Rights of way - 1039 acres @ $150 per acre	$155,850.00
Excavation costs	750,886.00
Structures	307,616.00

I am satisfied that the allowances claimed by defendant for rights of way are excessive, but it is unnecessary, on the facts of these proceedings, to pursue this subject further.

Mr. Ross estimated (defendant's Exhibit No. 18) that it would cost $1,223,218.00 to reproduce the irrigation system as it stood at the time it was purchased by Sacramento Valley Irrigation Company. How little assistance estimates of reproduction cost and even statements of moneys actually expended on this system render in determining the real value thereof is shown by the fact that at the time the Kuhns purchased Central Canal and Irrigation Company's stock, they expressed themselves as considering it to be practically worthless. They refused to take the canal independent of the lands which became a part of their project and bought the canal principally for the purpose of developing their lands.

For reasons which will hereinafter appear, it is not necessary in this proceeding to place an exact value on the property of the Canal Company.

Mr. Ross testified concerning a value to be placed upon the water rights owned by the Canal Company, but states in defendant's Exhibit No. 18, that no interest on any estimated value of water rights is claimed until sufficient revenues can be derived to cover the cost of maintaining and operating the system, together with interest on the amount actually invested. Neither the Federal Government nor the State of California made any charge for the water rights claimed by the Canal Company. It is unnecessary in the present proceeding to give further consideration to any value to be allowed for defendant's water rights.

Mr. R. W. Hawley presented a statement, which was introduced and marked Railroad Commission's Exhibit No. 2, showing the amounts claimed by the Canal Company, as shown by its books, to have been expended for maintenance and operation from November, 1910, to November, 1914, inclusive, except the month of November, 1913. This statement is as follows:

TABLE N

MAINTENANCE AND OPERATING EXPENSES ACCORDING TO

		Canal Co. 5800 Acr Account No. 1910-191 Nov. to O
MAINTENANCE		
Main Canal Cleaning etc	1	$(
Main Canal Intake Channel	1a	(4410.
Main Canal Structures	2	526.
Main Canal Opening & Closing Flood Gates	2a	(
Lateral Cleaning	3	(10171.
Lateral Structures	4	397.
Maintenance Pipe-Lateral System	4a	—
Betterment Work-permanent repairs	4c	—
Repairs to Tools and Machinery	6	9.
Stony Creek Weir	6a	—
Concrete Check-River Branch Canal	6b	—
Repairs to Roads	17	177.
Drainage System	19	—
Levees	20	—
		$ 15692.
OPERATION		
Salaries and Expense of Engineers	5	2392.
Pump Plant, repairs to Buildings	7	69.
Pump Plant, Repairs to Machinery	8	17.
Pump Plant, Wages of Attendants	9	1684.
Pump Plant, Power,	10	3737.
Pump Plant, Miscellaneous Supplies	11	372.
Telephones	12	299.
Telephone System M-O	12a	—
Ditch Riders	13	6044.
Miscellaneous	14	178.
Operation Main Canal Structures	11a	—
		$ 14794.
GENERAL		
Automobile Operations	16	1237.
Office Equipment	22	—
Field Equipment	23	—
Salaries of General Officers	25	4761.
Salaries of Clerks	26	2215.
Printing and Stationery	27	268.
Miscellaneous Office Expense	28	1560.
Store Room Expense	29	0.
Miscellaneous Equipment Repairs	30	—
Advertising and Attractions	31	—
Miscellaneous General Expense	32	264.
Salaries of Legal Depts.	35	641.
Insurance	38	—
Taxes	39	1709.
		12659.
GRAND TOTAL		43147.

80

Mr. Hawley also presented an estimate of reasonable maintenance and operating expenses, sufficient for the irrigation of up to 19,000 acres, which estimate is as follows:

TABLE No. IV

ESTIMATE OF ANNUAL MAINTENANCE AND OPERATING EXPENSES
R. M. Hawley

MAINTENANCE:	
Main Canal, 50 miles @ $100	$ 5,000
Laterals, 300 " " 60	18,000
Power Plant,	3,000
Telephone system,	500
Equipment,	200
Levees,	300
Pipe System,	100
Intake Channel, 100,000 cu. yd. @6¢,	6,000
	$ 33,100
OPERATION, 7 MONTH PERIOD:	
Main Canal, 53 miles	1,785
Three tenders @ $85,	
Laterals, 300 miles,	
Ten tenders @ $85	5,950
Three Foremen @ $100,	2,100
One Superintendent @ $175	1,225
1/2 Engineer @ $250,	875
Pump Plant 2 all 3-½ times @ $90	1,575
Floodgates	2,000
Power (for 16,000 acres or more)	12,000
Replacement of Equipment	1,000
Transportation of officials- autos,	1,500
	$ 30,010
GENERAL:	
Salaries, General Manager,	3,600
Clerks,	2,400
Transportation Autos,	1,000
Legal Expenses,	1,200
Supplies, etc.,	600
Rental- office,	600
Insurance- Liability 5% on $30,000+ or -	900
Taxes,	6,000
	$ 16,300
TOTAL	$ 79,410

In this estimate, Mr. Hawley omits certain items appearing in the Company's books under the head of "maintenance and operation", for the reason that in his judgment the items referred to are properly chargeable to capital account or to depreciation and not to maintenance and operation. He also takes an average of expenses over the last few years with reference to certain items as to which the expenditures as reported for 1914 appear to be abnormal.

Mr. Ross, in defendant's Exhibit No. 17, presents a statement of maintenance and operating expenses representing in part the expenditures hitherto incurred, as claimed by the Company, and in part an estimate of expenses hereafter to be incurred up to and including the year 1925, on an assumed development of the land in such a way that 90,000 acres will be taking water by the year 1925. Mr. Ross' computation is as follows:

Table No. V.

ESTIMATED MAINTENANCE AND OPERATING EXPENSES.

D. W. Ross.

Year	Maintenance and Operating Expense	Number of Acres Irrigated	Maintenance and Operating Expense Per Acre.
1910	$18,421.00	3,448	$ 5.35
1911	43,147.00	5,800	7.44
1912	87,165.00	16,111	5.41
1913	114,998.00	16,111	7.14
1914	91,669.00	12,265	7.43
1915	125,000.00	19,000	6.50
1916	130,000.00	26,000	5.00
1917	140,000.00	33,000	4.25
1918	145,000.00	41,000	3.50
1919	150,000.00	48,000	3.02
1920	150,000.00	55,000	2.73
1921	150,000.00	62,000	2.42
1922	152,000.00	69,000	2.10
1923	152,000.00	76,000	2.00
1924	166,000.00	83,000	2.00
1925	180,000.00	90,000	2.00

The figures for the years 1910 to 1914, inclusive, are assumed to be the actual figures from the Company's operations for those years. The figures for the years subsequent to 1914 are estimates.

The Canal Company has kept no depreciation account. The only evidence in the record as to the sum proper to be set aside each year for depreciation was the rough estimate by Mr. Hawley of $20,000.00 per year on the straight line method.

Before making a finding as to just and reasonable rates to be charged by the Canal Company, it will be necessary to consider several matters arising out of the particular facts in this case.

I have already drawn attention to the fact that this canal system is capable, in its present condition, according to Mr. Hawley's estimate, of irrigating 46,000 acres of land and of irrigating when completed 100,000 acres, but that the actual acreage irrigated in the year 1914 was only 12,265 acres. In answering the question whether the canal system as at present constructed bears a reasonable relation to the acreage at present served from the canal, Mr. Hawley testified that, in his opinion, the canal system is entirely out of proportion to the number of acres served. He further testified that, in his opinion, the system is very much overbuilt for the present demands made upon it. If a canal system is built large enough to serve 100,000 acres of land and during the first few years only 1,000 acres of land actually take water from the system, it must be evident that it would be unreasonable to expect those 1,000 acres to pay a return on the entire investment. In fact, it may well be that no rate which the owners of those 1,000 acres can reasonably afford to pay will be sufficient to meet even maintenance and operating charges. If the

owners of a large area of land desire to build an irrigation system sufficiently large to irrigate the entire acreage, or a considerable portion thereof, so as to enable them to sell their land at a material profit, they certainly have the right to do so. However, if the irrigation system thus constructed is a public utility, the owners thereof have no right to expect that those who take water from it during the first few years will meet the entire burdens of the system.

This principle was clearly established by the Supreme Court of the United States in San Diego Land and Town Company vs. Jasper, 189 U.S. 439, a water rate fixing case which originated in San Diego County, California. In that case, at page 446, the Supreme Court declared that,

> "The supervisors, in determining the rates, assumed that the amount of water available for outside irrigation, apart from the amount used and paid for by National City was enough for a little over 6000 acres, and on that point there is no serious dispute. Then they fixed the rate as if the company supplied these 6000 acres, although such was not the fact. Of course, the amount actually received for the water actually furnished was correspondingly less than the receipts as estimated by the supervisors upon their assumption.....If a plant is built, as probably this was, for a larger area than it finds itself able to supply, or, apart from that, if it does not, as yet, have the customers contemplated, neither justice nor the Constitution requires that, say, two-thirds of the contemplated number should pay a full return."

The same principle was applied in Southern Pacific Company vs. Bartine, 170 Fed. 725, in which case, at page 767, the court said:

> "If a railroad is built into a new, sparsely settled territory, with a view of serving a large future population and developing business, the Constitution does not require the few people and the small business of the present time to pay rates which will yield an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road."

In the present case, it is as impossible from a practical point of view as it is unjust from an ethical point of view to

expect the limited number of consumers of water under defendant's irrigation system to pay the entire cost of running the system. It is the experience of all irrigation projects of large extent that during the first few years the revenues derived from the sale of water are not sufficient to pay even maintenance and operating expenses. It is for this reason primarily that quasi public irrigation districts are formed, which districts have the right to tax all the lands therein, both those which take water and those which do not take water, for the purpose of constructing, maintaining and operating the system. But when investors acquire an irrigation system in a case in which the water and the system have been dedicated to a public use, they can not expect to be able to keep those waters exclusively for their own private lands which they are developing and trying to sell to advantage and thereafter, when this plan fails, as legally it must, expect to be able to compel the relatively few purchasers who have settled on their lands to pay the entire cost of running the system. It is to the advantage, however, of the Sacramento Valley Irrigation Company or its successor to make up the deficits in the operation of the Canal system, as they have been doing in the last few years, for the purpose of keeping up an irrigating system as an aid in the sale of their lands at a handsome profit.

Another element which must be taken into account in establishing the rates in this case is the ability of the consumer to pay. It is a well-established principle of public utility regulation that whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public.

In Covington & L. Turnpike Road Co. vs. Sanford, 164 U.S. 578, the Supreme Court of the United States was considering the reasonableness of maximum rates to be charged by the Covington & Lexington Turnpike Road, as established by the General Assembly of Kentucky. At page 596, Justice Harlan says:

> "The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

Again, on the same page:

> "If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public."

In the leading case of Smythe vs. Ames, 169 U.S. 464, the same learned Justice, at page 547, says:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

These cases clearly establish the principle that the rates to be charged by a public utility must in no event be higher than the service is reasonably worth to the public. It is unnecessary for me to point out that they do not hold that the utility can charge up to the maximum of what the consumer can pay.

In the present case, most of the purchasers of land from the old Sacramento Valley Land Company, securing the water from Central Canal and Irrigation Company, were induced to settle upon the land under agreements that they would receive water for one dollar per acre per annum. When the Kuhn people later made new arrangements, through the Sacramento Valley Irrigation Company, with as many of these people as they could induce to do so, they established a rate of two dollars per acre. Witness after witness in the present proceedings testified that he could not afford to pay more than one and one half or two dollars per acre for purposes other than the cultivation of rice and that if a rate were established

in excess of two dollars per acre, the witness would either pump water or use none at all. While the testimony of witnesses as to what they can reasonably afford to pay for a utility service, is not necessarily conclusive on that point, because of their obvious self interest, I find on the facts of these proceedings, that consumers under this system can not reasonably afford to pay for water more than $2.00 per acre, assuming a use of 1½ feet of water per acre, except for the cultivation of rice, to which special attention will hereinafter be given.

Obviously, it would be absurd to establish a rate so high that present or intending consumers under the system using their lands for the purposes for which they can be utilized, could not reasonably afford to pay it. The effect of such an order would simply be to take from the Canal Company a large part, if not all, of the relatively few consumers whom the company has been able to secure.

I have already indicated that complainants in this proceeding desire water for approximately 7,000 to 7,500 acres of rice. In the year 1914, some 210 acres under the defendant's system were planted to rice under special arrangements, under which the company agreed to supply water up to 5 acre feet per acre at the rate of $7.00 per acre. It was provided that the water would be supplied for the season of 1914 only and that no right to water for subsequent seasons should arise from this arrangement. The results from this experience were so flattering that a large number of land owners under defendant's system now desire the use of water for the cultivation of rice. The lands to be utilized for this purpose are largely so-called "Goose Lands", which are low lying, marshy lands, hitherto of but slight value, and not suitable for the cultivation of other crops.

Much more water is needed for the cultivation of rice than for either trees or alfalfa. One of defendant's witnesses estimated that 6.8 feet per acre were used by Sacramento Valley

Realty Company on its land in 1914. No accurate measurement was taken and the estimate is not such as to inspire confidence in its accuracy. Mr. William Durbrow estimated that 5 feet per acre would be a usual and reasonable amount. Mr. R. W. Hawley, estimated about 4½ feet. The testimony shows that at Gridley, about 5 1/4 feet are used. The much larger amount of water used for rice must be taken into consideration in establishing the rate to be charged by defendant for water for rice lands.

Defendant objects to the sale of water for rice lands on the ground that the same amount of water which is necessary for the irrigation of one acre of rice could irrigate 3 or 4 acres of fruit trees and several acres of alfalfa, and further, on the ground that people do not usually care to build homes where land is flooded during a large portion of the year and that the cultivation of rice would not tend to the highest community development. Whatever theoretical merits there may be in this point of view, defendant's greatest need is to secure enough revenue to enable it to operate its system. The cultivation of rice will be a profitable business from the point of view of the sale of water and will result in largely increased revenues immediately available to defendant.

Reference has already been made to the holders of contracts from Central Canal and Irrigation Company. At an adjourned hearing held in Willows on April 6, 1915, a large number of these contract holders appeared before the Commission and protested against any increase in rates over the rates specified in their contracts. Most of these protestants are $1.00 contract holders. They claimed that by reason of the fact that they were accorded a right to receive water and that they had to pay for this water only $1.00 per acre per year, they paid from $30 to $50 per acre for their land in excess of what they otherwise would have paid. The matter of this Commission's power to pass on water rates established in contracts of this character was exhaustively considered by this Commission in Decision No. 536, rendered on March 28, 1913, in

Application No. 118, in the Matter of the Application of Murray and Fletcher for an order authorizing an increase in water rates (Vol. 2, Opinions and Orders of the Railroad Commission, p.464). The same subject in its application to other utility rates as well as water rates was again considered by this Commission in its Decision No. 1309, in Case No. 483, decided February 27, 1914, Town of Ukiah vs. The Snow Mountain Water and Power Company (Vol. 4, Opinions and Orders of the Railroad Commission, p. 293). Under the authorities referred to in these two cases, there can be no doubt as to the Commission's power over rates thus established. Both parties to a contract establishing a rate to be charged by a public utility will be presumed to have entered into the contract subject to the power of the State, under its police power, to supervise and regulate the utility whenever the State determines so to do, and to establish just and reasonable rates to be charged by the utility, including such rates as might have been established by contract.

That the $1.00 rate is an impossible rate is shown by the fact that even if 90,000 acres of land were irrigated under this system, being the maximum development for 900 cubic feet of water per second, as estimated by Mr. Ross, the sum of $2.00 per acre would have to be paid for maintenance and operating expenses alone, as estimated by Mr. Ross, without taking into consideration any return on the investment or any allowance for depreciation. Of course, if over 90,000 acres are finally irrigated, the expense of maintenance and operation per acre would be somewhat reduced. In the year 1913, assuming that the Company's claim of $114,998.00 for maintenance and operating expenses is correct, the average cost for maintenance and operation for the 16,111 acres under irrigation in that year was $7.14 per acre. In 1914, assuming that Mr. Ross' figures of $91,669.00 for maintenance and operation are correct, the cost for maintenance and operation alone for each of the 12,265 acres irrigated during that year was $7.43 per acre. Assuming the correctness of Mr. Hawley's estimate of $79,410.00 for maintenance

and operation, the cost for this item alone for 1914 was $6.47 per acre. While it is true that the present limited number of consumers can not be expected to bear the entire burdens of the system, as already indicated, it is also true that if the present system were donated to them outright, some means would have to be provided for meeting at least maintenance and operating expenses. Furthermore, the fact that contracts were improvidently entered into by the former utility, the Central Canal and Irrigation Company, under which, if extended over the entire system, it would be absolutely impossible to operate the system, should not prevent the present consumers under those contracts from having their rate increased to a fair and reasonable rate. A number of consumers under this system took this point of view and testified that they would be willing to pay a reasonable rate, but that they hoped it would not exceed $2.00 per acre for crops other than rice. Referring directly to the contention that landowners paid from $30 to $50 per acre in excess of what they would have paid for the land without water, it is sufficient to point out that Central Canal and Irrigation Company was a public utility and that under the decision of the Supreme Court in the Byington case, supra, the operator of this water system has no right to charge for a water right. While the purchasers of land under this system may not have realized their legal right to demand water without payment for a water right, their alleged excess investment of $30 to $50 per acre must be charged either to their ignorance of the law (however excusable) or to their land investment. They could not expect to receive water indefinitely at rates so low as to make the continued operation of the system impossible. With reference to the purchasers of land from the Kuhns, it will be sufficient to point out that the agreement of the Kuhns to meet the deficits in the cost of water delivered extended only to 1915.

After a careful consideration of all the evidence in these cases, I find as a fact that the following rates are fair and reasonable rates to be charged by Sacramento Valley West Side Canal Company for water:

(1) FLAT RATES.

For rice - - - - - - - - - - - - - - - - $7.00 per acre per annum

For all other crops - - - - - - - - - 2.00 " " " "

or

(2) MEASURED RATES.

Where water is measured, the rate shall be $2.00 per acre per annum for the use of 1½ feet per acre during the irrigating season, with an additional charge of $1.50 per acre foot per annum for each acre foot used in excess of 1½ acre feet.

The measuring device may be installed at the option of the Canal Company, in which event, the cost thereof must be borne by the Canal Company, or it may be installed at the option of the consumer, in which event, the consumer will pay the cost thereof.

As a public utility water company can charge only for water which it actually delivers, the result of the decision herein will be that henceforth no payments need be made to the Canal Company except for water actually used. Those persons who have been paying, year by year, for water which they did not use, will henceforth be relieved of that liability.

The rates herein established will automatically take care of the complaint of discrimination raised by Mr. Rogers in Case No. 597.

The rates herein established assume the construction of necessary additional laterals at the expense of the landowners, in accordance with the Canal Company's standard specifications, and the maintenance and operation thereof by the Canal Company at the Canal Company's expense. These conditions are in accord with the practice hitherto prevailing under this system and apply to the particular facts herein shown to exist. In a case in which the Canal Company's burdens are already so heavy, it would be un-

reasonable to ask the Company to go to the further expense of constructing the laterals. Laterals paid for by the landowners will belong to them.

If the right of eminent domain must be exercised to acquire rights of way, the construction work will naturally be done by the Canal Company, which may in such case demand an adequate deposit in advance before incurring expense.

In this opinion, the situation has been examined and the facts have been set forth in much greater detail than would otherwise have been done, for the reason that the Commission desires to do all in its power to state the facts clearly to the people of Glenn and Colusa Counties, so that they may have a solid foundation on which to act in case they should desire themselves to acquire and operate the Sacramento Valley West Side Canal Company's water system. Attention has been drawn to the fact that it has generally been found desirable in the development of large irrigation projects in California to form an irrigation district, so that the entire land in the district, the value of all of which is enhanced by the possibility of securing water, may bear its fair share of the burdens of the system, particularly during the early years when the revenues are always insufficient to run the system. If the people of Glenn and Colusa Counties should in their wisdom adopt this solution of the extremely difficult problem which has confronted them for more than 30 years, and if the facts herein presented in considerable detail shall prove to be of assistance in this undertaking, the Commission will feel that its labors in these cases have not been in vain.

Subsequent to the submission of these two cases, William F. Fowler was appointed by the United States District Court for the

Northern District of California, as receiver of the property of Sacramento Valley West Side Canal Company. On June 4, 1915, the Railroad Commission thereupon made its order herein, directing that William F. Fowler, as such receiver, be added as a party defendant in these proceedings.

I submit the following form of order:

O R D E R .

Public hearings having been held in the above entitled proceedings, and evidence and briefs having been presented by all parties thereto, and a personal inspection of the more important properties of Sacramento Valley West Side Canal Company having been made by the Commissioner who presided at the hearings, and these proceedings having been submitted and being now ready for decision,

THE COMMISSION HEREBY FINDS AS A FACT that the rates herein established are just and reasonable rates to be charged by SACRAMENTO VALLEY WEST SIDE CANAL COMPANY and by WILLIAM F. FOWLER, receiver of the property of said company, for water and that the existing rates of said company are unjust and unreasonable in so far as they differ from the rates so established.

THE COMMISSION FURTHER FINDS AS A FACT that the lands of the complainants hereinafter specified are all under the flow of the canals of Sacramento Valley West Side Canal Company, except to the limited extent pointed out in the opinion which precedes this order, and that Sacramento Valley West Side Canal Company and William F. Fowler, receiver of the property of said company, have available a sufficient supply of water and have in operation a system of pumps, headworks and canals of capacity sufficient to enable said company and the receiver of the property of said company to supply water, as required, to the complainants hereinafter specified, in addition to its present consumers and the complainants in the case of Bvington vs. Sacramento Valley West Side Canal Company, supra, decided by the Supreme Court of California on April 29, 1915.

Basing its order on the foregoing findings of fact and on each further finding which is contained in the opinion which precedes this order, the Railroad Commission hereby makes its order as follows:

1. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby ordered to supply water to the lands, as described in the complaint and the evidence herein, of the following complainants:

Sacramento Valley Realty Company, California Midland Realty Company, Charles L. Donohoe and H. J. Barceloux, Frank Spooner, William Schilling, A. D. Girard, M. S. Hess, Frank Shotts, Blanche Durbrow, F. M. Temple, Peter Barceloux Company, Estate of P. R. Garnett, H. W. Garnett, Lacey-Williamson Company, The Spalding Company, L. Lindsey, Owen Dunlap, George E. Fleming and William Spaletta - to the extent to which application may be made by the owners of said lands upon Sacramento Valley West Side Canal Company or William F. Fowler, the receiver of the property of said company, within a period of two years from the date of this order. While the Commission does not preclude itself from hereafter extending this period, it desires to indicate its opinion that demand for water must be made by these complainants within a reasonable time.

2. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby ordered to supply water to the lands as described in the complaint and the evidence herein of the following complainants:

Lloyd T. Lacy, M. C. Dethlefs, S. C. Pierce, J. J. Curry, W. H. Crook, H. Jameson, O. L. Raper, G. M. Hanson, D. R. Linebaugh, C. T. Dillard, J. E. Knight, J. W. Farmer, Mrs. A. C. Troxel, Mrs. L. M. Newsom, W. B. Baylor, George E. St.Louis, Henry E. Reed, A. E. Duncan, Frank Miller, C. R. Wickes, Edgar Hunter, John S. Figge, A. Gollnick, Boyd Millar, E. E. Avery and Charles Glenn - to the extent to which application may be made by the owners of said lands upon Sacramento Valley West Side Canal Company or William F. Fowler, the receiver of the property of said company, within a period of

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two years from the date of this order, but only to the extent to which said lands are under the flow of the canals of Sacramento Valley West Side Canal Company, as pointed out in the opinion herein, and only after Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, have met the requirements of their present consumers, the complainants designated in paragraph 1 of this order, the plaintiffs in the Byington case, and other land owners owning lands within the limits of the old Central Irrigation District, who may make application for water to Sacramento Valley West Side Canal Company or to William F. Fowler, the receiver of the property of said company, within two years from the date of this order.

3. Such additional laterals as may be necessary to serve the lands of complainants herein shall be constructed at the expense of the landowner and according to Sacramento Valley West Side Canal Company's standard specifications, but shall be operated and maintained by Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, at their sole expense. Laterals paid for by the landowners shall belong to them.

4. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby directed to establish and file with the Railroad Commission within thirty (30) days from the date of the order herein, the following rates to be charged by them for water:

FLAT RATES.

For rice ..... $7.00 per acre per annum

For all other crops ..... 2.00 " " " "

or

MEASURED RATES.

Where water is measured, the rate shall be $2.00 per acre per annum for the use of one and one-half (1½) feet per acre during the irrigating season, with an additional charge of $1.50 per acre foot per annum for each acre foot used in excess of one and one-half (1½) acre feet.

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The measuring device may be installed at the option of the Canal Company or the receiver of its property, in which event the cost thereof must be borne by them, or it may be installed at the option of the consumer, in which event the consumer will pay the cost thereof.

5. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby directed to prepare and file with the Railroad Commission, within thirty (30) days from the date of this order, reasonable rules and regulations to govern the service of water by them to their consumers. The Commission will thereafter, by supplemental order, establish what it may find to be reasonable rules and regulations for the service of water by Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company.

6. Compliance by Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, with each provision of the order herein shall be a condition precedent to the exercise by said company and by said receiver of its property, of any rights under this order. No increased rates can be charged or collected by them under this order unless they comply with all the other provisions thereof.

7. In all other respects, the complaints herein are 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 14th day of June, 1915.

Max Thelen
H. B. Loveland
Alex Gordon
Edwin O. Edgerton
Frank R. Devlin

Commissioners.