Decision No._____

Decision No. 26669

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

In the Matter of the Application of JAMES A. MURRAY and ED FLETCHER, co-partners doing business under the firm name and style of Cuyamaca Water Company, a public utility, and La Mesa, Lemon Grove and Spring Valley Irrigation District, a public irrigation district, for an order establishing the value of the property of Cuyamaca Water Company and authorizing Cuyamaca Water Company to convey said property to said District.

Application No. 1432.

BY THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

This is a petition for rehearing by Cuyamaca Water Company. The Commission has given careful consideration to each point presented in the petition. We shall comment on such of these points as in our opinion require consideration.

The sum of $745,000.00, which the Commission found to be the fair value of the property of Cuyamaca Water Company to be transferred to La Mesa, Lemon Grove and Spring Valley Irrigation District, is the fair value of the property in cash. There is no evidence in the record on which it would have been possible to base a finding concerning the probable value of the bonds to be issued by the Irrigation District or the value of said property expressed in terms of bonds instead of cash. We assume that when the property is taken over by the Irrigation District, the necessary adjustment will be made so that the owners thereof will receive in cash or the equivalent thereof in bonds, the amount found by the Commission to be its fair value in cash.

In Application No. 118 (2 Opinions and Orders of Railroad Commission of California 464) Commissioner Eshleman made a careful examination into the so-called water right contracts entered into

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by San Diego Flume Company, the predecessor of Cuyamaca Water Company. After an exhaustive review of the authorities, Commissioner Eshleman, at page 501, concluded:

> "It can no longer be questioned that this Commission has the right to fix the rates which may be charged by the applicant and prevent deviations from such rates, contracts to the contrary notwithstanding, and by reason of the fact that this same question is continually coming up with reference to utilities, other than water companies, I deem it proper at this time that we announce a similar conclusion with reference to all utilities. It is my opinion that no contract affecting the relationship which exists between a public utility and its patrons or in any other way affecting the public is of any effect in the face of this Commission's authority, except this Commission shall approve the same as a rate which it has a right to do under the Public Utilities Act, providing such action will not bring about discrimination."

To this conclusion we adhere. There is nothing in the decision in the present proceeding which in any way conflicts with any of the principles established by the decision in Application No. 118. Neither in our decision on said Application, nor in the decision in the present proceeding, did we undertake to decide whether the so-called water right contracts did or did not transfer the title to water rights or rights to water, or whether they were or were not void ab initio for any purpose. These matters, as we held in the decision in the present proceeding, are for the courts to determine.

Obviously, the question whether a water system is burdened with obligations to deliver water may have a material bearing on the value of the property. Hence this Commission gave careful attention to the question of the so-called water right contracts, the considerations which were paid under them and the circumstances surrounding them. The question was considered both on the theory that the contracts did and that they

did not establish valid claims to the delivery of water from this system, but the Commission did not attempt to encroach upon the function of the courts by undertaking to decide whether or not the contracts were valid for this purpose.

The Commission, viewing the matter in the light most favorable to Cuyamaca Water Company, by assuming that the Company owns the water rights unimpaired, then analyzed the two distinct bases presented by the Water Company for determining the value of these water rights and found that on each theory the water rights, in so far as covered or purported to be covered by the contracts, had, on the Water Company's own showing, no substantial value.

The petition for rehearing herein, on page 27, refers to 24 miner's inches of domestic water supplied by the Cuyamaca Water Company without contract. As pointed out in the decision, Mr. W. S. Post testified that only 8.3 miner's inches are supplied without contract. Referring to the 24 miner's inches, the petition states:

> "It should be noted that the only claim for a water right value made by the Company was for this domestic water and it would certainly seem that under any theory petitioners would be entitled to this value."

While in view of this position now taken by the Water Company, it becomes unnecessary to consider further the question of value to be allowed for the water covered or purported to be covered by the contracts, we have drawn attention to this matter so that it may be perfectly clear on the one hand that we have adhered to the principles established in the decision in Application No. 118, and on the other hand, that we have carefully refrained from undertaking to decide matters which are within the province of the courts.

Some doubt is expressed in the petition as to the extent of the property of which the value was found in the decision herein. It will be sufficient in this connection, to say that the entire property as described in Exhibit No. 1, attached to the decision and made a part thereof, including all the water rights therein set forth, was valued as a going concern, and that the value found was increased to cover the water rights. The statement in the petition that no value was allowed for water rights is incorrect.

The Commission has again given careful consideration to the question of the fair value of the property and we find no reason to change the conclusion heretofore reached. While the Commission gave to each element which enters into the value of the property the consideration to which it believed the same to be entitled, petitioner in its brief gives special consideration to the cost of the property, including losses in operation.

In this connection we desire to point out that the finding of $25,000 to cover reasonable deficits in maintenance and operating expenses from Junel, 1910, to July 1, 1915, includes interest at 8 per cent per annum. Petitioner in its computations does not make allowance for the value of the 601 acres of land in the vicinity of Cuyamaca Reservoir,which are being retained by the company. This value is estimated at $15,005.00.

The value found by the Commission is more than large enough to return to petitioner all the money which it has invested in the property, beginning with the initial purchase price of $150,000.00 on June 1, 1910, with interest on all these moneys at the rate of 8 per cent per annum to July 1, 1915, together with the value of the property acquired for this system by Murray and Fletcher individually with interest thereon at the rate of 8 per cent per annum from the date of acquisition, together with all deficits which have accrued over

reasonable maintenance and operating expenses with interest on such deficits from the time they accrued until July 1, 1915.

We may note in passing that on the depreciated reproduction value of the physical property, as testified to by engineers Dockweiler and Whitney, the value of the property would be considerably less than that established by the Commission.

Furthermore, if we start with the sum of $352,500.50, found by Mr. Eshleman to be the fair value of the property devoted to the public use at the time of the decision in Application No. 118, and bear in mind that the sum to be allowed for deficits in maintenance and operating expenses from June 1, 1910, to July 1, 1915, with interest, is $25,000.00 and not $35,000.00, and use in other respects the computations used by petitioner on page 25 of its petition, the resulting value would be $729,073.91 as contrasted with the $745,000.00 found by the Commission. As is so frequently done, petitioner in its computation confused an engineering estimate of cost to reproduce less depreciation, with the ultimate fact of the value of the property for the purpose specified.

In the decision in Application No. 118, Mr. Eshleman found that the annual cost of operation and maintenance of the property is $28,600.00. However, pending the renewal at least of the flume, Mr. Eshleman found that "the applicants can not in justice and under the law, demand more than the proportion of its operating and maintenance expenses which

its adequacy represents, which is approximately $21,000.00". In other words, the amount to be allowed for maintenance and operating expenses was decreased by reason of the inadequacy of the system. Mr. Eshleman then continues:

> "I feel that a similar reduction of the other items would be warranted, but out of desire not to hamper the present owners unduly and feeling the consumers can readily pay a little more without hardship if their service is improved I shall recommend that the gross earning allowed be $66,825.03."

On a rate hearing, if the Water Company can show that the inadequacy of the system has been removed, allowance will of course be made for full, reasonable operating and maintenance expenses.

That petitioner is in error in his claim that the amount found in the decision on Application No. 118 to be the fair value of the property was also depreciated by reason of the inadequacy of the system appears clearly from the following paragraph in the order:

> "The Commission further finds as a fact that the fair value of the property of the applicants devoted to the public use and upon which they would be fully entitled to earn a return provided their system were in adequate condition is $352,500.50."

Also there is no warrant in the language of the opinion in said decision that the fair value of the property was also depreciated

by reason of the inadequacy of the system at that time. The best evidence on this point is the finding on the fair value of the property, which reads as follows:

> "Mr. Harroun's cost to reproduce depreciated to its present condition as corrected for the Cuyamaca lands gives a figure of $483,134.00. This, however, as has already been pointed out, is only one of the elements to be considered. Taking it together with all the other elements required to be considered, I find as a fact from the evidence that the present fair value of the property of the applicants devoted to the public use is $352,500.50."

There was no intention in the decision herein to give the impression that the Water Company has in any way acted unlawfully in connection with the Commission's decision in Application No. 118. The rubberoid roofing paper in the flume was put in with this Commission's sanction.

After careful consideration of the petition herein, prompted by a desire to do full justice to all parties concerned, we find no good reason for granting a rehearing. The petition must be denied.

ORDER ON PETITION FOR REHEARING

James A. Murray, Wm. G. Henshaw and Ed Fletcher, copartners doing business under the firm name and style of Cuyamaca Water Company, having filed their petition for rehearing herein, and careful consideration having been given thereto, and no good reason appearing why said petition should be granted,

IT IS HEREBY ORDERED that said petition be and the same is hereby denied.

Dated at San Francisco, California, this 4th day of ~~July~~ August, 1915.

Max Thelen

H. D. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.