Decision No. 2822

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

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.

BY THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

Sacramento Valley West Side Canal Company and William F. Fowler, Receiver of the property of Sacramento Valley West Side Canal Company, have each filed a petition for rehearing herein. The grounds urged in each of these petitions are substantially the same.

Petitioners no longer take the position that Sacramento Valley West Side Canal Company is not a public utility. Neither is any claim made that any of the complainants in Case No. 673 are not within the area to the service of which the water system of the defendants has been dedicated. The petitions urge only one point, namely, that the rates established by this Commission are not sufficiently high.

Sacramento Valley West Side Canal Company requested that in case this Commission should find that the company is a public utility, the Commission should establish all the rates to be charged

172

by the company. The rates thus established are as follows:

"1. Flat rates. For rice, $7.00 per acre per annum; for all other crops, $2.00 per acre per annum; or

2. Measured rates. Where water is measured, the rate shall be $2.00 per acre per annum for the use of 1-1/2 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 1-1/2 acre feet."

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

Petitioners contend that it is the duty of this Commission to establish such rates as will yield to the Water Company operating and maintenance expenses, an allowance for depreciation and a full return on the fair value of the property used and useful in the public service. Petitioners contend that the rates established by the Commission are not sufficient for this purpose.

While it is true that a rate fixing authority must consider all the matters to which petitioners refer, petitioners overlook another principle which is equally well established, namely, that the public is entitled to demand that no more be exacted from it for a public service than the service rendered is reasonably worth. In other words, a rate fixing authority cannot look solely to the position of the utility. It must look also to the position of the present and prospective consumers of the utility. See Covington and L. Turnpike Road Co. vs. Sanford, 164 U.S. 578, and Smythe vs. Ames, 169 U.S. 464, 547.

What we have just said is particularly applicable to irrigation projects, in which large installations are frequently

necessary at the outset and in which it is impossible, either as a matter of ethics or of practical operation, for the few customers during the first years of the utility's operations to pay rates high enough to yield operating and maintenance expenses, depreciation and a full return on the investment. In fact, persons acquainted with the actual operations of irrigation systems in this State and elsewhere, know that it is common experience that during the first few years of irrigation projects, the rates paid are frequently not high enough to yield even maintenance and operating expenses. If attempt were made to apply the principle urged by petitioners herein, the rates would be so high that nobody could afford to buy land in the project, and hence the project would permanently be deprived of an opportunity to make good.

All irrigation projects in the West, whether they are Federal projects under the Reclamation Act, or public irrigation districts owned and operated by the people themselves, or public utilities, are founded on a recognition of the fact that during the first few years the rates, as a practical matter, can not be made high enough to yield a return on the investment and depreciation, in addition to maintenance and operating expenses. The Sacramento Valley West Side Canal Company is no exception to this general rule. As pointed out in the opinion of June 14, 1915 herein, the agreements entered into between Sacramento Valley Irrigation Company (the Kuhn land project) and purchasers of land, provide that Sacramento Valley Irrigation Company will assign and deliver to each purchaser of land one share of the capital stock of Sacramento Valley West Side Canal Company (the Kuhn Irrigation Company) for each acre of land purchased. The agreements further provide that the Canal Company shall have the right to levy the necessary assessments upon its 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 one dollar and fifty cents per acre per annum."

It is thus provided that the settler should in no event pay more than $1.50 per acre per annum prior to the year 1915, by which time it was hoped that the project would be successful. As a matter of fact, the settler paid only 70 cents per acre in the year 1912, and 95.025 cents per acre in 1913. The deficits were paid by assessments on the stock of the Water Company, which stock was mostly owned by the Land Company. In other words, the Land Company in this case, as is necessarily true in all projects of this character, found it necessary to agree to reasonable water rates and to bear the deficits until the project could stand upon its feet. Petitioners now complain because this Commission has established rates which, as we shall hereinafter show, are on the average twice as high as the maximum rate which the Kuhn people themselves established in their contracts with the purchasers of land in the project, and at least three times as high as the charges which were actually assessed for water against the purchasers of land from the Land Company.

The principles to which we have referred, in addition to being those which necessarily must be applied in the practical development of an irrigation project, also have the sanction of the courts. The leading case on this point is San Diego Land and Town Company vs. Jasper, 189 U. S. 439. This is a case involving the rates established by the Board of Supervisors of San Diego County to be charged by San Diego Land and Town Company for water supplied from the Sweetwater project. In this case, at page 446, the Supreme Court of the United States said:

"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 six thousand acres, and on that point there is no serious dispute. Then they fixed the rate as if the company supplied these

six thousand 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."

These principles are peculiarly applicable to the Sacramento Valley West Side Canal Company. The evidence shows that the project, when fully developed, will irrigate between 90,000 and 100,000 acres of land, using 1-1/2 feet of water per acre. In the present condition of its main canal, without doing any further work in deepening or enlarging the main canal, as testified to by Mr. R. W. Hawley, this Commission's hydraulic engineer, the project is capable of irrigation 46,000 acres of land. As hereinafter indicated, a relatively small expenditure will enable the main canal to irrigate up to 90,000 or 100,000 acres. Notwithstanding this capacity of the project, the actual acreage irrigated in the year 1914 was only 12,265 acres. Mr. Hawley testified that, in his opinion, the canal system is built entirely out of proportion to the number of acres served. Instead of developing the project, unit by unit, as the lands were sold and the settlers moved on to the land, the canal has been extended to serve the entire acreage, with the exception of a few miles at the lower end. If the hopes of the Kuhn people for the speedy and complete settlement of their project had been realized, the case would be entirely different. However, as the situation has actually developed, we find a 100,000 acre project selling water to only 12,265 acres. The principles declared by

the Supreme Court of the United States in the San Diego Land and Town Company case fit exactly the case of Sacramento Valley West Side Canal Company.

As pointed out in the Opinion herein, the acreage sold by Central Canal and Irrigation Company, the predecessor of Sacramento Valley West Side Canal Company, was sold under contracts providing rates as follows:

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

Attention is drawn in this Commission's decision of June 14, 1915, to the fact that in the case of certain of the $1.00 contracts, where the settlers found themselves unable to comply with the provisions for payment for the land, the Kuhn people entered into new arrangements with reference to the land payments and voluntarily established a rate of $2.00 per acre. Attention has already been drawn to the fact that as to the remaining acreage under irrigation, the Kuhn people provided that the maximum rate to be paid by the settlers up to 1915 should not exceed $1.50 per acre.

We desire now, for the purpose of comparison, to draw attention to the rates established by this Commission.

The Water Company is given the option of continuing a system of flat rates or of installing measured service. The flat rates, as established by this Commission, are $7.00 per acre per annum for rice and $2.00 per acre per annum for other crops. Petitioners entirely overlook the provision for the establishment of metered service and the increased rate which will result to the Water Company therefrom. The decision herein provides that if the Water Company installs metered service, it shall have the right to charge $2.00 per acre per annum for the use of 1-1/2 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 1-1/2 acre feet. Investigations of the Federal and State authorities show that for

the purpose of irrigating alfalfa in the Sacramento Valley, alfalfa being the principal crop irrigated under the Water Company's system, it is necessary to apply between 2 and 2-1/2 acre feet per annum. This means that if the Water Company avails itself of the option to install measuring devices, it will derive a minimum revenue of $3.00 per acre from all alfalfa land under the system. This rate is twice the maximum rate specified in the Kuhn contracts as an inducement to secure settlers on the project and three times the rate specified in many of the Central Canal and Irrigation Company contracts. Nevertheless, petitioners claim that they are not being fairly treated by this Commission.

We desire now to consider briefly certain of the claims presented by petitioners.

Petitioners state that this Commission, in its decision herein, made the statement that the rates established will not pay operating charges of the system now, and will never do so. There is nothing in this Commission's decision herein which in any way justifies this claim on the part of petitioners. While the Commission did say that there might be cases in which reasonable rates would not pay maintenance and operating expenses, particularly during the first few years of an irrigation project, the Commission did not intend to say, and did not say that this result would follow with reference to the system of Sacramento Valley West Side Canal Company. Petitioners refer with disapproval to the statement in the decision that such deficits as there may exist below a full return will have to be met by Sacramento Valley Irrigation Company, and that it is to the interest of this company to maintain the system so as to be able to sell to advantage the large acreage which the Kuhns bought and which they have not been able to sell. This is exactly what Sacramento Valley Irrigation Company has done in the past, and we do not see in what respect it is unfair to suggest that the company continue

to do the very thing which it found necessary to do before its irrigation system was declared to be a public utility. Sacramento Valley Irrigation Company is the principal stockholder of the Water Company. In all irrigation projects, such deficits as exist below a full return on the property must be met by the stockholders of the water company until the project is settled and can take care of itself. It is not clear why the Kuhn project should be an exception to the general rule.

Petitioners present certain computations to show that the rates established by the Commission will not yield even maintenance and operating expenses, even though the 46,000 acres testified to by Mr. Hawley as the capacity of the system in its present condition, should take water. We desire to draw attention to a number of errors in these computations.

Referring first to maintenance and operating expenses, petitioners add 30 per cent to Mr. Hawley's estimate of $79,000 for 19,000 acres. Petitioners evidently overlook the fact that the operating and maintenance expenses for the irrigation of 46,000 acres of land will be but slightly in excess of the expenses for 19,000 acres, with the exception of the bill for the power: and even this bill will not increase ratably in proportion to the additional acreage, for the reason that the loss for evaporation and seepage will be proportionately much less for the irrigation of 46,000 than for the irrigation of 19,000 acres. Most of the loss which will result under these heads is already incurred in the operation of the system for the irrigation of 19,000 acres. Under the head of revenue, the petitioners entirely overlook the possibility of increasing the rate by measuring the water, which practice this Commission hoped the company would adopt for the purpose of conserving its water and reducing its expenses. As already pointed out, most of the land irrigated under this system is planted to alfalfa, and from this land the Water Company can

secure a revenue of $3.00 per acre by simply installing measuring devices.

The complainants in Case No. 673 desire water approximately as follows:

For rice,	7483	acres
For alfalfa,	2615	"
For alfalfa and trees,	758	"
For trees,	45	"

Assuming that water will be required for 7,000 acres of rice, using 4-1/2 feet of water per acre, that alfalfa will use 2-1/3 feet of water per acre, and that deciduous trees will use 1-1/2 feet of water per acre, which figures are entirely safe, and further, that under this project, six acres of land are planted to alfalfa to one planted to deciduous trees, the revenue to be derived from 46,000 acres of land would be approximately as follows:

7,000 acres rice	at $7.00		$49,000
14,600 " alfalfa	"	3.00	43,800
2,300 " deciduous trees	"	2.00	4,600
	Total,		$97,400

The foregoing acreage is equivalent to 46,000 acres of land using 1-1/2 acre feet of water per annum.

Referring now to operating and maintenance expenses, and accepting Mr. Hawley's estimate of $79,410.00 for 19,000 acres, an addition of approximately $17,000 would be necessary under the head of cost of power, if the cost of power increased proportionately to the acreage irrigated, which assumption we have already shown to be incorrect. As the other expenses for maintenance and operation would not increase materially over those necessary for the irrigation of 19,000 acres, we are satisfied that the addition of $17,000 to the maintenance and operating expenses estimated by Mr. Hawley for 19,000 acres would be substantially correct, thus making a maintenance and operating expense of $96,410.00, as

against a revenue of $97,400.00.

Mr. D. W. Ross, one of the Water Company's chief witnesses, testified that by the expenditure of the additional sum of $312,478.00, the system will be able to supply water to 90,000 acres of land. Thus, by the expenditure of a relatively small amount of additional money, the system would be placed in the position of earning a largely increased revenue, under the rates established by this Commission.

There is no ground in the Commission's decision for the claim that the rate of $7.00 per acre for rice was based on the agreements entered into by Sacramento Valley West Side Canal Company for the sale of water for rice at this rate. The $7.00 rate was established as being fair and reasonable on the evidence, and not because Sacramento Valley West Side Canal Company had agreed to this rate in its special contracts with a number of water users.

Petitioners complain because this Commission did not establish a definite value to be assigned to the Water Company's water rights. In view of the fact that water users on less than half the acreage for which this water system was constructed can not reasonably be expected to pay full returns on the entire project, it seems clear that the time has not yet come when a definite value must be assigned to the intangible elements of the Water Company's property. In pursuing this course, this Commission followed the testimony of Mr. D. W. Ross, the Water Company's own witness, who stated that no interest on any estimated value of water rights is claimed by the Water Company until sufficient revenues can be derived to cover the cost of maintaining and operating the system, together with interest on the amount actually invested.

In determining whether or not the rates established by this Commission are fair and reasonable, a comparison with the rates charged in other portions of the Sacramento Valley for the

irrigation of the same character of crops will be instructive.

Sutter-Butte Canal Company, operating in Sutter and Butte Counties, located on the other side of the Sacramento River from the lands under the project of Sacramento Valley West Side Canal Company, has established rates of $4.50 and $5.00 per acre for rice, and $1.50 and $2.00 per acre for other crops, principally alfalfa. In other words, for exactly the same crops which are raised and desired to be raised under the project of the Water Company herein, the rates charged by Sutter-Butte Canal Company are materially less than those authorized by this Commission herein.

Yolo County is located in the Sacramento Valley, immediately south of Glenn and Colusa Counties, in which counties the Water Company's system is located. Bulletin No. 207 of the United States Department of Agriculture shows that 90 per cent of the acreage irrigated under this system in 1907 was alfalfa and that the cost of water on the Moore-Ditch, one of the principal ditches, was an average of $2.10 per acre for alfalfa, as contrasted with the rate of $3.00 which the Water Company herein can secure if it will measure the water.

Tehama County adjoins Glenn County on the north. Practically the same crops are raised in both counties. Coneland Water Company, under whose project the principal crop is alfalfa, has in effect a flat rate of $2.00 per acre per annum. The same rate is charged by Richfield Water Company.

Thus it will be seen that the rates actually charged for water in the counties to the north and the south of the counties in which the Water Company operates, on the west side of the Sacramento River, and in the counties directly across the Sacramento River on the east side thereof, are less than those authorized by the Commission herein. Attention might also be drawn to the fact that in the San Joaquin Valley, in which large amounts of alfalfa are raised in competition with the alfalfa produced in

Glenn and Colusa Counties, the following rates are in effect for an amount of water which is generally specified as being not to exceed 1/160 second foot per acre per annum.

Fresno Canal and Irrigation Company and Consolidated Canal Company-- 52-1/2 cents and 75 cents per acre on contract and $1.00 without contract.

East Side Canal Company-- $1.00 per acre per annum.

San Joaquin and Kings River Canal Company--$1.25 to $2.25 per acre per annum.

Crocker-Huffman Land and Water Company--$2.00 per acre per annum.

An interesting sidelight is thrown on the situation by the fact that most of the territory served and capable of being served by the Water Company herein is underlaid with ground waters which are near the surface and that a number of the complainants in Case No. 673 testified that if their rates were materially increased, they would sink wells and pump. The United States Geological Survey and the State Engineering Department found in 1913-1914 that 40,859 acres of land were already being irrigated in the Sacramento Valley from 1664 pumping plants.

This Commission should not be called upon to do an act which, from a practical point of view, would amount to an absurdity. In view of the rates which are being charged for water in the communities on all sides of the project of Sacramento Valley West Side Canal Company for the irrigation of crops identical with those irrigated on the Water Company's project, and also the possibility of sinking wells and pumping, it is clear that if this Commission should increase the rates to be charged by the Water Company above the relatively high rates already established herein, the net result would be that intending settlers desiring lands for irrigation would go to other projects, while a portion of the relatively few settlers who are now on the Water Company's project, would

pump water or entirely cease irrigation. All opportunity for the successful development of this project would be gone and the bond-holders now owning lands bought by the Kuhns under this project would find themselves unable to dispose of their lands to advantage.

Both in the original decision herein and on these petitions for rehearing, this Commission has gone into the matters presented at far greater length than is usual, for the reason that it has been our earnest desire to set forth all the facts fully, and to assist in constructive work. Protracted litigation has been the curse of irrigation in Glenn and Colusa Counties. The time has come to stop litigating, to take a fresh start, and to settle the irrigation problem in Glenn and Colusa Counties on a basis fair both to the Water Company and its existing and prospective consumers. After a careful review of these entire proceedings and a consideration of each point urged by the petitioners for rehearing, the Commission has reached the conclusion that the rates established by it are at least fair and reasonable to the Water Company, and that it would be folly to think of establishing rates which are higher. We may be permitted to express the hope that the Water Company will without further litigation accept the conclusions which have been reached after two careful examinations into the matter, and thus help do constructive work in the solution of the irrigation problem which is so vital to the people of Glenn and Colusa Counties.

After a careful consideration of the petitions for rehearing, we find that there is no merit therein. The petitions should be denied.

O R D E R.

SACRAMENTO VALLEY WEST SIDE CANAL COMPANY and WILLIAM F. FOWLER, Receiver of the property of Sacramento Valley West Side Canal Company, having filed petitions for rehearing herein, and

careful consideration having been given to said petitions, and the Railroad Commission finding that there is no merit therein,

IT IS HEREBY ORDERED that said petitions be and the same are hereby denied.

IT IS FURTHER ORDERED that the rates established in the Decision of June 14, 1915 herein be made effective commencing with the coming irrigation season, subject, as provided in said Decision, to compliance by Sacramento Valley West Side Canal Company and William F. Fowler, Receiver of the property of Sacramento Valley West Side Canal Company, with all the terms and conditions of the order of June 14, 1915.

Dated at San Francisco, California, this 9th day of October, 1915.

Max Thelen

H. D. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.