

ORIGINAL

Decision No. 3005

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

WILLIAM PAXTON MONTAGUE, et al.,

Complainants,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 613.

W. H. Carlin and Ben P. Tabor for complainants.
Charles P. Cutton for defendant.

THOMAS, Commissioner.

O P I N I O N.

The two chief issues in this case are the reasonableness of the rate of \$45.00 per miner's inch charged by Pacific Gas and Electric Company for water sold for irrigation in Placer County and the supply of water by Pacific Gas and Electric Company for irrigation on additional acreage in eastern Placer County.

The amended complaint herein was filed by William Paxton Montague in behalf of himself and some 187 other land owners in eastern Placer County. The amended complaint alleges, in effect, that the rate charged for water by Pacific Gas and Electric Company for irrigation in Placer County is \$45.00 per miner's inch; that said rate is excessive and unreasonable, and if continued will cause water users to discontinue the use of water from Pacific Gas and Electric Company's system; ^{and} that the flow of water delivered by Pacific Gas and Electric Company is frequently obstructed by debris, thus causing a considerable percentage of loss of water to water users. The amended complaint further alleges, in effect, that during the last 34 years, the major portion of the water devoted by defendant and its predecessors has been used by plaintiffs and their neighbors for irrigation; that the territory upon which said

water has been used for irrigation is located in Placer County, mostly above and adjacent to the town of Newcastle; that during said 34 years, plaintiffs and their predecessors in interest have purchased and paid for their lands, clearing the same from time to time as rapidly as possible, and reducing the same to a high state of cultivation; that the development of the lands occupied by the plaintiffs has kept pace with the development of the system of dams, ditches and canals owned by Pacific Gas and Electric Company, and that plaintiffs and their neighbors have still many hundreds of acres of land, portions of their original holdings, which have not as yet been brought under cultivation and irrigation, but which the owners thereof desire to irrigate from the irrigation system of Pacific Gas and Electric Company; that Pacific Gas and Electric Company has recently increased its impounding facilities so that the company will hereafter be able to impound and carry through its irrigation system approximately 11,000 miner's inches of water in excess of the water heretofore impounded and carried through its irrigating system; that all said additional water can be used in the further development and irrigation of the lands of plaintiffs and their neighbors along and within reach of the line of the distributing system of Pacific Gas and Electric Company; that unless prevented by this Commission, Pacific Gas and Electric Company will take said 11,000 miner's inches of additional water beyond the lands of plaintiffs and their neighbors, thereby depriving them of all right to use the same; and that Pacific Gas and Electric Company is about to install a large electrical power plant east of the lands of plaintiffs, in which the water controlled by Pacific Gas and Electric Company will be used to such an extent as to make it impossible for Pacific Gas and Electric Company to continue to supply to plaintiffs even the amount of water heretofore supplied for irrigation purposes. Complainants ask that the Railroad Commission make its order estab-

lishing a reasonable rate to be charged by Pacific Gas and Electric Company for water sold for irrigation, and also that this Commission prevent defendant from taking any of its additional waters beyond the lands of plaintiffs and their neighbors and from installing any power plant which will in any way interfere with the full, fair and equitable right of the plaintiffs and their neighbors to use the water for irrigation purposes.

The answer denies that the rate of \$45.00 per miner's inch for water used for irrigation is excessive; denies that the flow of the water delivered by Pacific Gas and Electric Company is obstructed by debris; and denies the other material allegations of the complaint. Defendant alleges that it has increased its impounding facilities by constructing a dam 225 feet high across the South Yuba River at the foot of Lake Spaulding, thus enabling defendant to impound 38,000 acre feet of water in addition to that formerly impounded, making a total of 43,500 acre feet stored with the dam at its present height; that defendant is able to impound in other lakes tributary to Lake Spaulding 40,850 acre feet of water; and that defendant is unable to convey through its distributing system any water in addition to that which was conveyed in 1914. Defendant further alleges that in addition to the construction of said dam at Lake Spaulding to a height of 225 feet, it has constructed what is known as the Drum Canal, conveying water from Lake Spaulding to the Drum Forebay, located in the north half of the southwest quarter of Section 16, Township 16 North, Range 11 East, M. D. B. and M., whence the water is diverted through the Drum Power House, which is located in the fractional northwest quarter of Section 17, Township 16 North, Range 11 East, M. D. B. and M. Defendant also alleges that it has enlarged the Bear River Canal and has commenced the construction of Power House No. 4, located ^{near} ~~in~~ Clipper Gap, and Power House No. 5, located

near Auburn. Defendant has also purchased certain lands and rights of way in connection with a proposed Power House No. 6, to be located near Newcastle. Defendant alleges that large sums of money have been spent in said project.

Defendant avers that it "has never held itself out as willing, and is not now willing to use any part of the water which it will require to operate Power Houses Numbers 4, 5 and 6 for irrigation or domestic purposes until said water shall have passed through said power houses. It is and has been defendant's purpose to divert said water to irrigation and domestic uses after it has reached the level of Power House No. 6."

Defendant sets forth a number of petitions ^{by it} to the Railroad Commission and orders of the Railroad Commission granting certificates of public convenience and necessity in connection ^{and proposed to be done} with the work done under said project, and authorizing the issue of securities to enable Pacific Gas and Electric Company to secure the necessary funds. Defendant alleges that by virtue of the orders thus made, the Railroad Commission is barred from taking any further action in this proceeding.

Defendant further avers that this Commission has no jurisdiction to compel defendant to supply water to any additional lands in eastern Placer County, on the ground that defendant has never dedicated any portion of the additional water conserved or to be conserved by the erection of the Spaulding Dam, to the public use of supplying water to the complainants or any of them, and on the further ground that the enforcement of any order of the Railroad Commission compelling defendant to supply complainants with water in addition to the water heretofore supplied would deprive defendant of its property without due process of law and would deny to defendant the equal protection of the laws, in violation of the Constitution of the United States and the Constitution of the State of California.

Defendant asks that the complaint be dismissed in so far as the supply of water to additional lands is concerned and that if the Commission establishes rates for water supplied for irrigation, it will also establish rates for water supplied by Pacific Gas and Electric Company to the cities of Auburn, Rocklin, Lincoln, and Roseville, the towns of Newcastle and Loomis, and to the Southern Pacific Company.

Public hearings in this case were held in Auburn on October 13, 1914, and February 5, 1915, and in San Francisco on March 18, 19, 20, 30 and 31, May 12 and August 10, 11 and 20, 1915. Briefs have been filed and the case is now ready for decision.

This case vitally affects the welfare of both eastern Placer County and Pacific Gas and Electric Company. The matter of rates charged by a public utility is always one of importance. Far more important, however, in this case is the question whether any additional lands in eastern Placer County may be irrigated from the irrigation system of Pacific Gas and Electric Company. If the position taken by Pacific Gas and Electric Company at the hearings, to the effect that it cannot be compelled to supply water to a single additional acre of land in eastern Placer County, is sound, it follows that thousands of acres of land suitable for the production of deciduous fruits must lie untilled and that the further development of one of the most desirable fruit growing sections of California must be thwarted. On the other hand, if Pacific Gas and Electric Company is to be denied the right to use for the purpose of generating hydro-electric energy, the additional waters impounded and to be impounded in Lake Spaulding, the company will find itself seriously crippled in a project on which it has already expended several million dollars. By reason of the importance of this case both to

eastern Placer County and to Pacific Gas and Electric Company, it has received the most careful and thorough consideration from the Commission.

The ^{area referred} to by complainants as the irrigable area of eastern Placer County lies between the Bear and the American Rivers, Colfax on the north and Rocklin on the south.

The irrigation of deciduous fruits in this territory started about the year 1880, at which time the canals and ditches of the predecessors of Pacific Gas and Electric Company, which theretofore had been used almost exclusively for mining purposes, were used for the first time for irrigation to any appreciable extent. The irrigation of lands in this territory has developed until in the year 1914, 17,466 acres of land were irrigated by Pacific Gas and Electric Company in this territory. To irrigate this area, Pacific Gas and Electric Company supplied at the land 2697.25 miner's inches of water. Pacific Gas and Electric Company also supplied 320 miner's inches, continuous flow, for the use of cities and towns in this district, and 40 miner's inches, continuous flow, for the use of the Southern Pacific Company.

Of the 17,466 acres of land thus irrigated by Pacific Gas and Electric Company in Placer County in 1914, 669 acres were situated between the contours of Colfax and proposed Power House No. 4 of Pacific Gas and Electric Company, located near Clipper Gap; 6,050 acres were irrigated between the contours of ^{proposed} Power House No. 4 and proposed Power House No. 5 of Pacific

Gas and Electric Company, to be located near Auburn; and 10,670 acres were irrigated between the contours of ^{proposed} Power House No. 5 and proposed Power House No. 6, to be located near Newcastle. The average duty of each miner's inch of water sold

in this territory has been slightly in excess of 6 acres of deciduous fruit.

The average increase in the acreage/irrigated from ^{in Placer County} the irrigation system of Pacific Gas and Electric Company between the years 1907 and 1914 has been 20.43 miner's inches, or about 1,200 acres per year.

Complainants presented testimony to show that there is a large area of land in this general territory in eastern Placer County which desires water for the irrigation of deciduous fruit, alfalfa and clover; that many persons have bought tracts of land, clearing off portions thereof from time to time and expecting ultimately to irrigate the entire tract and that many have now brought a portion of their lands under irrigation and are desirous of irrigating the remaining portions of their land; and that if Pacific Gas and Electric Company is permitted to carry out its policy, announced in 1914, that no additional lands will be irrigated until the additional waters stored by the company have ~~xxxx~~ passed through the proposed Power House No. 6, all additional developments in the irrigable area of eastern Placer County hereinbefore referred to must necessarily cease. In support of their position, complainants filed as Exhibit No. 2 a statement of land owners in eastern Placer County who desire additional water for 1916 and 1917. Not all persons using water from the irrigation system of Pacific Gas and Electric Company were interviewed. Applying to the entire number of users the ratio of increased use ascertained from the users who were interviewed, complainants conclude that 294 miner's inches of additional water will be required for 1916 and 956½ miner's inches of further additional water for the year 1917. Complainants presented no evidence as to the location of the lands of the various persons whose names appear on this exhibit

or of the expense necessary to be incurred by Pacific Gas and Electric Company in enlarging its existing irrigation canals and ditches and possibly constructing new irrigation canals and ditches to serve the lands referred to in Exhibit No. 2. The persons whose names appear in complainants' Exhibit No. 2 were not present for cross-examination, so that the Commission is unable to say whether the amount of water claimed to be necessary for the irrigation of additional acreage in 1916 and 1917 will actually be required. As already indicated, the average use of additional water for the years 1907 ^{to} ~~and~~ 1914 was 200.43 miners inches per year.

Complainants introduced evidence showing that the acreage of land not now irrigated but capable of profitable irrigation in the three areas hereinbefore set forth is as follows:

Between Colfax and Power House No. 4	9,150 acres
Between Power House No. 4 and Power House No. 5.....	7,260 "
Between Power House No. 5 and Power House No. 6	<u>13,590</u> "
Total - - - - -	30,000 acres

As already indicated, in the area between Colfax and the contour of proposed Power House No. 4, in which territory water has been available for irrigation longer than in the other territories within the irrigable area, only 669 acres were irrigated in 1914. As far as I can ascertain from the evidence, there is little demand at the present time, for additional water in this area. In area No. 2, between the contours of proposed Power House No. 4 and Proposed Power House No. 5, 6,050 acres are now irrigated and an additional 7,260 acres is capable of irrigation. The evidence shows a substantial demand for increased water in this area, but nowhere nearly to the extent to which the demand exists in area No. 3. In area No. 3, between the contours of proposed Power House No. 5 and proposed Power House No. 6, 10, 670 acres are now under irrigation and 13,590 acres of ad-

ditional land is irrigable. There is a large demand for additional water in this area. This entire demand could be supplied if a tunnel were constructed to divert the water after it has passed through proposed Power House No. 5.

Before the construction of the present dam at Lake Spaulding, the capacity of the lake was 5,440 acre feet; at present, with the new dam at a height of 235 feet, the capacity of the lake is 43,500 acre feet, when the new dam has been raised to its ultimate height of 305 feet, the capacity of the lake will be 93,000 acre feet. Pacific Gas and Electric Company earnestly insisted at the trial that the additional waters stored by the erection of the new dam at Lake Spaulding are the ^{private} property of the Pacific Gas and Electric Company and that it has not dedicated any thereof for irrigation in eastern Placer County. The company asserted, however, that when this water has passed through Power Houses No's 1 to 6, inclusive, the water would be sold for irrigation purposes in Western Placer County or elsewhere.

In reply to the position of Pacific Gas and Electric Company in the matter of dedication, complainants referred/certain statements, oral and written, made by representatives of Pacific Gas and Electric Company, at various times, to the people of eastern Placer County, from which statements complainants urge that the people of eastern Placer County were entirely justified in concluding that it was the intention of Pacific Gas and Electric Company to supply, from its additional storage, water for the irrigation of additional lands in eastern Placer County as well as in western Placer County. For reasons which will hereinafter appear, it becomes unnecessary herein to decide this disputed question.

Representatives from Lincoln, Sheridan, Roseville, and other sections of western Placer County, appeared before the Commission at one of its hearings in Auburn, and suggested that there was a contest for the additional water impounded by Pacific Gas

and Electric Company between eastern Placer County and western Placer County, and urged that the complaint be dismissed and that Pacific Gas and Electric Company be permitted to take its entire additional water through its proposed Power Houses No's 4, 5 and 6, past the lands in eastern Placer County, so that its entire additional water might be used for the irrigation of western Placer County, where practically no irrigation has hitherto been practised.

I can say, without hesitation, that as I view the evidence, there is no necessary conflict between the interests of eastern Placer County and western Placer County. Bearing in mind the facts that it has taken over 30 years to bring 17,466 acres of land under irrigation in eastern Placer County, that an immense supply of additional water, variously estimated at between ten and eleven thousand miner's inches, will be impounded by Pacific Gas and Electric Company when the dam at Lake Spaulding has been completed to a height of 305 feet, that each miner's inch of water at the land will irrigate slightly over 6 acres, and that a very large amount of water will be available after having passed through proposed Power House No. 5 or proposed Power House No. 6, for irrigation in western Placer County, I am convinced that even though water be supplied for the irrigation of additional acreage in eastern Placer County, there will be enough water available for the irrigation of western Placer County to take care of the needs of that territory for many years to come. Hence, I conclude that the only real conflict of interests in this case is between Pacific Gas and Electric Company, desiring to use the entire additional water for the generation of hydro-electric energy through its Power Houses No's 1 to 6, inclusive, and the people of eastern Placer County desiring to use a relatively small portion of the additional water for the irrigation of additional lands. both western

It is in the public interest that the people of eastern and /

Placer County should receive the water necessary for the irrigation of additional acreage. It is likewise in the public interest that the rights of Pacific Gas and Electric Company to any additional waters impounded and to be impounded by that company be clearly established. I am convinced that justice lies somewhere between the extreme claims of these two parties.

After careful consideration, I have reached the conclusion that it would be fair to Pacific Gas and Electric Company if this company is permitted to use the additional water impounded and to be impounded by the company for passage through its Power Houses No's 1 to 5, inclusive, with the exceptions hereinafter noted, leaving the matter of the construction of the proposed Power House No. 6 in abeyance, to be hereafter again considered in case Pacific Gas and Electric Company should conclude that the generation of electric energy in this proposed power house would be economical and that the company desires, notwithstanding the use of water for additional irrigation, as hereinafter specified, to construct said power house. In my opinion, it would be fair to the irrigationists if Pacific Gas and Electric Company agreed to hold itself in readiness to supply an additional 2 second feet, or 80 miner's inches, for the irrigation of lands between the contours of Colfax and proposed Power House No. 4; an additional 15 second feet, or 600 miner's inches, in the territory between the contours of proposed Power House No. 4 and proposed Power House No. 5; and such water as may be necessary for the irrigation of additional lands below the contour of Power House No. 5. Such water should be delivered by Pacific Gas and Electric Company at its regular rates and on such terms with reference to the construction of laterals as may be fair and reasonable. As already indicated, there will be an abundance of additional water for western Placer County.

This solution of the problem has been presented to Pacific Gas and Electric Company, which company has agreed to waive such legal rights as it may have in the premises and has, by written stipulation on file herein, accepted the plan. The result of the acceptance of this plan by

Pacific Gas and Electric Company and of the order of the Commission herein will be to meet all the reasonable requirements of the irrigationists of ~~xxxxxx~~ Placer County, while at the same time definitely defining the uses to which Pacific Gas and Electric Company can devote the additional waters impounded and to be impounded, under its present plans, by the company.

Complainants have also asked this Commission to establish a fair and reasonable rate to be charged by Pacific Gas and Electric Company for water sold for irrigation. The rate which has been in effect for many years, under which eastern Placer County has developed to its present condition, has been \$45.00 per miner's inch. Considerable testimony was introduced both by complainants and by defendant and by the Commission's hydraulic engineers, bearing upon the elements which must be considered in establishing a reasonable rate. The ditches and canals of Pacific Gas and Electric Company used in distributing water for irrigation in eastern Placer County were running practically to their capacity in the year 1914. When water is supplied for the irrigation of additional acreage, as herein provided for, it will be necessary for Pacific Gas and Electric Company to incur considerable expenditure for the enlargement of existing canals and ditches and the possible construction of new canals and ditches. There is no evidence as to the amount of additional expenditure which will thus be incurred or of the additional charges for maintenance, operation and depreciation. In view of these conditions and of the conclusion herein reached with reference to the supply of additional water for irrigation, I shall recommend that that portion of the complaint herein which refers to the rates shall be dismissed. If, after Pacific Gas and Electric Company has made the necessary improvements to enable it to supply the additional water required for irrigation in eastern Placer County, and after the existing rates have had a fair trial under these altered conditions, the consumers of water for irriga-

tion in eastern Placer County desire again to present to the Commission the question of rates. a new complaint may be filed at that time.

There is evidence to show that the tubes conveying water from the ditches and canals of Pacific Gas and Electric Company to the laterals are frequently interfered with, if not completely choked up with moss, twigs, fruit and other debris. The attention of Pacific Gas and Electric Company has been drawn to this situation and the company will be expected to provide ^{such} means as are reasonably adequate to remedy this condition.

I submit the following form of order:

O R D E R.

The above entitled proceeding having been submitted and being now ready for decision,

IT IS HEREBY ORDERED AS FOLLOWS:

1. In accordance with written stipulation of Pacific Gas and Electric Company on file herein, Pacific Gas and Electric Company is hereby directed to supply, on demand therefor, water for the irrigation of additional lands in the irrigable area in eastern Placer County, as described in the opinion herein, as follows:

(a) For lands between Colfax and the contour of proposed Power House No. 4 - 2 second feet (80 minor's inches).

(b) For lands between the contours of proposed Power House No. 4 and proposed Power House No. 5 - 15 second feet (600 minor's inches).

(c) For lands below the contour of proposed Power House No. 5, such water as may be necessary.

Said additional water shall be supplied at ^{the} established rates of Pacific Gas and Electric Company, ^{and} on such terms with

reference to extensions of laterals as may be just and reasonable. If the parties can not agree, the matter may be referred to the Railroad Commission for decision, as provided in this Commission's Decision No. 2879 in Case No. 683.

2. In all other respects the above entitled complaint is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of December, 1915.

Max Thelen
H. J. [unclear]
[unclear]
Edwin D. Edgerton
Frank R. [unclear]
Commissioners.