

Decision No. .

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
EMPIRE WATER COMPANY, a corporation,
and TULARE LAKE CANAL COMPANY, a
corporation, for an order approving
a certain contract made between said
companies on March 10, 1915.

Application No. 1984.

D. Hadsell for applicants.

BY THE COMMISSION.

O P I N I O N.

This is an application by Empire Water Company, a public utility, and Tulare Lake Canal Company, a mutual water company, for an order approving a certain alleged contract made and entered into by Tulare Lake Canal Company with Empire Water Company and Empire Investment Company, a copy of which alleged contract is annexed to the application herein and marked Exhibit "B".

A public hearing was held upon said application at San Francisco on December 21, 1915. From the evidence it appears that both of said applicants are furnishing water of the Kings River, principally for irrigation purposes, to their respective consumers in Kings County; that the Tulare Lake Canal Company is apparently a mutual water company which furnishes water only to its stockholders and at actual cost, meeting its expenses by stock assessments from time to time as occasion demands, and that the officers of Empire Water Company prior to March 15, 1915,

considered their company not to be a public utility company. On that date, however, in Decision No. 2200, this Commission declared that company to be a public utility.

The history of the negotiations leading up to the execution of the contract in question is as follows:

In April, 1900, Kings Canal and Irrigation Company was incorporated for the purpose, among others, of acquiring certain water rights of H. R. Cousins, H. Clawson, and J. W. Barbour to part of the water of the Kings River, said water to be diverted near the center of Section 28, Twp. 20 S., R. 20 E. M.D.B. & M. The point of diversion and the course of a certain slough used in diverting said water were upon the lands of the predecessors in interest of Empire Investment Company. By degrees said Kings Canal and Irrigation Company improved and reconstructed said old slough into a large ditch or canal.

Certain transactions were carried on between Empire Investment Company, its predecessors in interest, the Empire Water Company, and Kings Canal and Irrigation Company, which are fully set forth in the preliminary recitals of said agreement above referred to and which resulted in a certain escrow agreement being entered into on March 2, 1906, between Empire Investment Company and Kings Canal and Irrigation Company, by one of the terms of which it was agreed that Kings Canal and Irrigation Company should have a new point of diversion about a quarter or a half mile farther up said river, from which it should build across Empire Investment Company's lands a short line of canal to connect with the aforesaid canal; that Kings Canal and Irrigation Company should deed to the Empire Investment Company that portion of the canal thus abandoned, and the latter

company should deed to the former a right of way for said new canal and finally that Kings Canal and Irrigation Company should pay one-half of the expenses of constructing and maintaining a new weir at the new intake; and that the Empire Water Company should have the same interest in the new canal which it had in the old one. It further appears that in the spring and summer of 1906, and subsequent to the execution of said escrow agreement above mentioned, enormous quantities of water flowed into the Tulare Lake basin through the Kings River and other streams, filling said basin and completely submerging the canal system of Kings Canal and Irrigation Company; that in the year 1914, the water of Tulare Lake for the first time receded sufficiently to make the Kings Canal and Irrigation Company's canal available to its stockholders for the irrigation of their lands, although for several years prior thereto the lands of Empire Investment Company were ready to use water from said canal under the agreement with regard thereto. Accordingly, in the year 1911, Empire Water Company itself constructed said weir and ⁸/certain new portion of said canal and began the use thereof in the irrigation of the lands of Empire Investment Company.

In November, 1914, Kings Canal and Irrigation Company transferred all of its rights and property to Tulare Lake Canal Company. The latter at once began to construct an extension of its canal to Tule River and to reconstruct its old system which has now been practically completed, the capacity of said canal being now about one thousand second feet of water. Immediately upon the commencement of work by Tulare Lake Canal Company, the Empire Water Company demanded compliance with the terms of said escrow agreement and declined to allow said new

company to proceed with any work upon the property of Empire Investment Company. Mutual litigation to determine the respective rights and obligations of the several companies in the premises was threatened, to avoid which and to determine the respective rights of the parties and to perform to a large extent the terms of said escrow agreement, the parties entered into the alleged agreement, of which they now seek approval.

Said agreement comprises a great many typewritten pages and is too complicated for us to attempt to summarize it in this Opinion. Its provisions include the transfer to Tulare Lake Canal Company by Empire Water Company of an undivided one-half interest in said above mentioned weir and and undivided seven-eighths interest in the head-gate placed at or near the intake in the canal constructed over the new right of way above referred to, and the construction by the Tulare Lake Canal Company at its own expense of a check-gate in said canal and the maintenance and replacement of said check-gate. It further provides for the improvement and building up of said canal and the completion of a portion of the same, and certain other improvements, seven eighths of the expense of which shall be borne by the Tulare Lake Canal Company and the remaining one-eighth to be borne by the Empire Water Company.

It also contains provisions for the transfer to the Tulare Lake Canal Company of the land for the new canal and the transfer by it of the abandoned portion of the canal, and attempts to settle definitely and permanently the mutual rights, relations and obligations of the contracting parties. In addition it provides for the termination of the old escrow agree-

ment, the dismissal of a certain action in the Superior Court of the State of California, in and for the County of Kings, by the Kings Canal and Irrigation Company against the Empire Water Company, said action being further designated as No. 2370, and the payment by the Tulare Lake Canal Company to the Empire Water Company and Empire Investment Company of the sum of \$10,000.00.

It further appears from the evidence that Tulare Lake Canal Company has paid the \$10,000.00 mentioned in said agreement; that the original cost of said weir was \$11,057.45; and that this transaction will benefit the Empire Water Company: first, by the settling of the difficulties between the companies without litigation, which might otherwise jeopardize and disturb the delivery of water to Empire Water Company's consumers; second, by providing for the immediate construction of said canal without cost to this company; third, by having the Tulare Lake Canal Company assume such a large share in the maintenance of the weir, head-gates and canal; and, fourth, by receiving payment for a large portion of the cost of said weir.

It further appears that said alleged contract was entered into in good faith by all the parties thereto without realization on the part of any of them that Empire Water Company as a public utility required the authorization of this Commission for the execution of such a contract, and that the officers of said Empire Water Company were not familiar with the Public Utilities Act owing to the fact that their company had been declared a public utility only five days prior to the execution of said alleged agreement. It was pointed out to applicants at the hearing, however, that this Commission has no power to ratify a contract void by reason of its having

illegally entered into by a public utility, and, accordingly, applicants asked and received permission to amend their application by asking this Commission to grant the parties to said agreement authority to execute a new agreement between said parties substantially the same as the aforesaid agreement which they had signed on March 10, 1915, with the exception of its dates.

As to the building by the Empire Water Company of the new line of canal above referred to, so far as we have been able to judge from the evidence introduced under or in connection with Case No. 494, (Reported in Vol. 6 Opinions and Orders of the Railroad Commission of California, p.309.) this may not have been a wise investment, but this expenditure is not now before us and has never been passed upon by this Commission. This Opinion and Order simply hold that, as this expenditure has been incurred, it will undoubtedly be to the advantage of Empire Water Company to receive the cash payment and other reimbursements provided for in said contract hereinafter authorized and to be relieved of seven-eighths of the expense of maintaining the weir, the headgate and that portion of the canal which will be operated jointly.

O R D E R.

EMPIRE WATER COMPANY, a public utility corporation, and TULARE LAKE CANAL COMPANY, a mutual water company, having applied to this Commission for an order authorizing the execution and delivery on behalf of Empire Water Company of a certain proposed agreement between Empire Water Company, Tulare Lake Canal Company and Empire Investment Company, hereinafter

more specifically referred to, and a public hearing having been held and it appearing that said application should be granted,

IT IS HEREBY ORDERED that said Empire Water Company be authorized to execute a certain contract with Tulare Lake Canal Company and Empire Investment Company to the same effect and in substantially the same wording, with the exception of the dates, as the agreement which said parties signed on March 10, 1915, a copy of which is incorporated in the application herein and designated therein as Exhibit "B".

The authority herein granted is granted upon the following conditions and not otherwise:

1. The contract herein authorized shall not be executed after May 31, 1916.
2. Nothing in the foregoing Opinion or in this Order contained shall be construed as an approval by this Commission of the original expenditures made by Empire Water Company for which said company is being in part reimbursed under the terms of said contract.
3. Within 30 days after the execution of said contract applicant, Empire Water Company, shall file a copy of the same with this Commission.

Dated at San Francisco, California, this 28th day of January, 1916.

W. D. Boardman
W. E. Gordon
Francis P. Dyer
Commissioners.