

ORIGINAL

Decision No. 3165

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
 North Fork Ditch Company, for ap-)
 praisement of its property and ad-) Application No. 1524
 justment of water rates.)

- Frank F. Atkinson, of Elliott & Atkinson, for receivers of American Irrigation Company.
- Lester Hinsdale for North Fork Ditch Company.
- Chauncey H. Dunn for Citrus Heights Colony.
- J. M. Inman for Fair Oaks Water Takers Association.
- Sheridan Downey, of Downey, Fullen & Downey, for Fair Oaks Water Takers Association.
- A. E. Clark for Water Users of Rosedale School District.
- O. G. Hopkins for Orangevale Water Company and American Irrigation Company.
- A. F. Lacey for Water Users of Cardwell Colony.
- Robert T. Devlin for Estates of A. N. Buchanan, Charles S. Gibbons and Samuel Jones.
- George A. Van Smith in propria persona.
- S. Glen Andrus in propria persona.
- R. L. Shinn for Carmichael Colony System.
- M. L. Sears in propria persona.

EDGERTON, Commissioner.

O P I N I O N

Applicant asks that the Commission fix rates for its domestic and irrigation water service. The applicant's plant consists of a diversion dam on the North Fork of American River, a main ditch which is 25-3/4 miles long, laterals and appurtenant structures. The dam is in Placer County, about 2 miles from Auburn. The main ditch extends from the dam into Sacramento County and ends at the Penstock Reservoir, about 3 miles from Folsom, being on the other side of the American River from that place. The 4 lateral ditches aggregate a total of 9.65 miles in length with 2 distribution pipe lines aggregating 4.25 miles in length. The

other principal structures consist of a main reservoir covering 20 acres, the Penstock Reservoir covering one acre, the Mississippi Bar Reservoir covering 21 acres and mud settler covering 4 acres. The Company has a right to divert from the North Fork of the American River 3,000 inches of water, measured under a 4-inch pressure, equal to 60 cubic feet per second. The company also claims other unadjudicated rights to water. Three hundred and seventy-five acres of land are irrigated along the main ditch, using the 16 inches of water delivered to the Buchanan Ranch.

From the lateral ditches the following acreage is irrigated:

Rose Spring Ditch	423 acres
Ashland Ditch	67 acres

A total of 490 acres on the lateral ditches.

On the pipe lines the following acreage is irrigated:

Cardwell and San Juanita Colony	156 acres
Orangevale Colony	589 acres
Colonies on the Fair Oaks Pipe System	3350 acres

A total of 4095 acres on the pipe line, and 4565 acres on the lateral ditches and pipe lines combined. This gives a grand total of 4960 acres.

The Fair Oaks Water Takers Association appeared in the proceeding by counsel, and introduced evidence and filed briefs. This Association protests against any increase in applicant's rates and urges that applicant is indirectly responsible for the sale of lands under its system at a price which embraced an amount sufficient to install a water system such as that of applicant, and that inasmuch as applicant's plant was used by manipulators in the sale of such land that applicant should not be allowed to charge rates so as to produce any excess of an amount equal to depreciation and operating expenses, and that no interest or return on property should be allowed.

I have considered the evidence carefully and read all of the briefs filed, and find that there is no justification for holding that applicant is now or ever has been interested in lands irrigated by it, or that applicant ever took part in the sale of any such lands.

I find nothing in the evidence, nor am I persuaded by the briefs of counsel, to import into the determination of this matter any unusual considerations.

One matter, however, requires attention. The estates of A. N. Buchanan, Charles S. Gibbons and Samuel Jones now claim the right to receive 16 minor's inches of water from applicant free of cost. On the 8th of February, 1903, North Fork Ditch Company, through its Board of Directors, adopted a Resolution, as follows:

"Resolved, that for and in consideration of services heretofore rendered by A. N. Buchanan for this company, as its Secretary, a perpetual right to sixteen inches of water be granted to him and his assigns for the exclusive purposes of irrigating the land hereinafter in this resolution described, and for use thereon for domestic purposes, such water to be diverted from the ditch of this company and conveyed to said land and used thereon for such purposes at his own cost and expense; and the President of this Company is hereby vested with full authority to carry into effect this resolution. The land in this resolution referred to is situate in the County of Sacramento and State of California, and is about 100 acres of land bought by the said A. N. Buchanan from Joseph and Wm. M. Sims, particularly described as follows:"

It appears from the evidence that subsequent to the adoption of this Resolution Buchanan and his successors and associates diverted from the ditch of applicant the full 16 inches of water and have ever since diverted and used said water without payment therefor to applicant.

Mr. Isaac A. Hinkle, a witness called on behalf of the estates of Buchanan, Gibbons and Jones, testified that he had worked

for the North Fork Ditch Company since 1862, and that he looked after what is known as the Ashland section of the ditch.

Mr. Hinkle testified that just prior to the diversion of the 16 inches of water the full amount of water running in the ditch was used either for the use of individuals or for mining for which use applicant was paid compensation. His testimony on that subject is as follows:

Q What was becoming of that water before the Buchanan water was taken out?

A It went into a reservoir and was distributed from there.

Q What reservoir was that?

A It is what we call Reservoir No. 1, storage reservoir.

Q Who was supplied from that reservoir with water?

A That went back into the old original ditch and come on down and supplied the people below Fair Oaks, Orangevale and any one that bought water out of the ditch below that point.

Q Those people, I assume it will be agreed, were paying rates, is that true?

A Yes, they were all paying rates.

Q Were they using all of the water?

A Well, I couldn't say whether they were using it all at that time; I think though practically all of it. What was not used for irrigation purposes was used for mining. There was some mining going on at that time.

Q I am speaking now about the time the Buchanan ditch was put in there.

A Yes.

Q Well, was there any waste water at that time?

A Well, as I say, we were running it-- whatever waste water there was, we carried it down into what we called the Mississippi Bar.

Mr. Devlin: And used it for dredger mining?

Commissioner Edgerton: Would you say all the water was being used for the purpose which you have named?

A Yes, it was practically all of it.

Q What then became of the consumers when the Buchanan water was taken out?

A Well, I don't know as it made any particular difference, because he never got only the 16 inches. I never could see any great difference. Of course, there was that much taken out of the mining part.

Q You think it came out of that which you were supplying the mine?

A Yes, we ran considerable water down to the dredge. Since that time we run them with winter water.

Q These dredges being what we now know as gold dredges?

A Yes sir."

It appears that applicant and its predecessors appropriated water from the North Fork of the American River for sale, rental and distribution for agriculture, mining and mechanical purposes at all seasons of each year. It appears, further, that at the time of the attempted conveyance of water to Buchanan by applicant in 1903, applicant was a public utility water company distributing water for compensation.

Taken together, these facts bring this 16 inches of water squarely within the rule laid down in the case of Leavitt v Lassen Irrigation Company, 157 Cal. 82. It was there said:

"Treating Leavitt's appropriation as being wholly and entirely for public use, he, the owner of the system, was but an instrumentality for the distribution of the waters which he gathered to such members of the public as might apply for them and pay to him the re-

quired charge for the service that he rendered. As the agent of such a public use, he had no power whatsoever to reserve to himself for his private purposes any part of this water. If he could reserve a part, he could reserve all, and thus, by his ipse dixit, convert a public use into a private ownership, or, if he could reserve a part for himself, he could with equal authority give away parts of the supply to others, and by this method destroy what the Constitution itself has declared shall forever remain a public use."

It follows, therefore, that this 16 inches of water should be treated the same as all other water supplied by applicant and should be paid for at the same rates as are fixed for other consumers receiving a like service.

It appears, also, from the evidence, that Isaac Hinkle, present superintendent of applicant's system, is receiving water at a rate lower than the ordinary consumers. He was given the privilege of taking 25 inches of water at the rate of 10 cents per miner's inch day. Using 180 days per year as the irrigation period, this would amount to \$18 per miner's inch per year, which would net the company \$450 per year. If paid for at the regular rate of \$37.50 per miner's inch, it would amount to \$937.50 per year. This results in a loss to the company of \$487.50 per year.

It is alleged that this lower rate for water is given Mr. Hinkle because he conveyed to applicant 15.4 acres of land for a reservoir site.

It is evident that if a public utility water company is permitted to accept property or money under an agreement fixing the rate for water and that the consumer thus favored may forever urge this agreement as binding against the power of the State to fix rates that the State would be impotent to exercise its regulatory power. While I do not believe that any sweeping declaration should be made by this

Commission that it will in no case recognize or consider agreements heretofore made for the service of water, still in this present instance I see no reason for permitting water to be served at less than the regular rates to Mr. Hinkle.

He occupies no different position than that of consumers under systems where different prices have been paid for so-called water rights. Obviously, if the Commission gave full consideration to these different prices paid for water rights then different rates would have to be established upon a basis of these payments, and a chaotic condition would result.

The operating revenue of applicant, as shown by its books, from April 1, 1914 to March 31, 1915, was \$23,412.47, and the operating expense for the same period was \$12,577.77, which includes maintenance, operation, taxes and insurance. This gives a net operating revenue of \$10,834.70. However, the net operating revenue has been less than this on account of the fact that some of the consumers, notably the American Irrigation Company, have not paid their bills in full, but it is probable that this condition will be improved by the adoption of suitable rules and regulations.

Applicant delivers water directly to consumers along its main ditch and laterals, the stated rate therefor being \$37.50 per miner's inch, under a 6-inch pressure. It delivers water wholesale at the Penstock Reservoir to American Irrigation Company at the stated rate of \$18 per miner's inch, under a 4-inch pressure. This latter company in turn conveys the water through its system and delivers it to its consumers in Fair Oaks at the rate of \$3.00 per acre per annum for irrigation use and \$12 per year per consumer for domestic use.

In Carmichael Colonies Nos. 1 and 2, and Citrus Heights and Additions, American Irrigation Company charges its consumers for irrigation \$4.00 per acre per year and \$12 per consumer per year for domestic use.

Applicant delivers water in bulk at the Penstock Reservoir into the pipes of Orangevale Colony, but collects from each consumer in said Colony at the following rates:

- \$4.00 per acre per year for citrus trees, berries, vegetables and nurseries.
- 3.00 per acre per year for alfalfa and deciduous trees and grape vines two years old.
- 2.00 per acre per year for deciduous trees and grape vines under two years.
- 12.00 per year for domestic use.

Mr. Nickerson, engineer for applicant, estimates that the above rates for Orangevale Colony result in a charge of about \$10.00 per inch per year under a 6-inch pressure.

Applicant delivers water into the pipes of Cardwell and San Juanita Colonies at the Penstock Reservoir and collects from each colonist the following rate:

- \$20.00 per miner's inch per year, under a 6-inch pressure.

Water is delivered by applicant at the Mississippi Bar Reservoir to a mining company, at the rate of \$200.00 per month. No measurement is made of this water and the mining company takes such as is available.

All of the rates above mentioned are set out in contracts made between American Irrigation Company and between the latter company and its consumers in Fair Oaks and Carmichael Colonies, and in contracts between applicant and the colonists in the other colonies mentioned.

However, under the interpretation of the law long since made and frequently declared by this Commission, I shall recommend rates upon the theory that these contracts are not

binding as against the power of the Commission to regulate.

The rates asked for by applicant are:

For water delivered directly to consumers along its main ditch and laterals to remain at the present rate of \$37.50 per miner's inch, under a 6-inch pressure.

For all water delivered to American Irrigation Company, Orangevale Colony, Cardwell and San Juanita Colonies, \$21.00 per miner's inch per year, under a 4-inch pressure.

The Mining Company's rates to remain as at present.

To grant applicant's request would result in increasing the rates to American Irrigation Company by \$3.00 per inch per year, and more than doubling the rates to Orangevale Colony, and to increase the rates to Cardwell and San Juanita Colonies by about \$5.00 per inch per year.

It is obvious that the present rates result in serious discrimination between consumers of applicant as widely differing charges are made for the same class of service. Therefore, I shall recommend a rate which shall be uniform for identical service.

The several valuations of the property presented at the hearing were as follows:

	<u>Reproduction Cost.</u>	<u>Reproduction Cost Less Depreciation</u>
Commission's Engineers	\$408,494	\$371,865
Nickerson, for applicant	426,675	381,497
Elliott, for Fair Oaks Water Takers Association.	347,715	295,601

Eight thousand five hundred dollars of the difference between reproduction cost by the Commission's engineers and Nickerson are that the latter used a cost for better pipe than was actually laid, \$20,000 additional difference is due to a lower unit price on the main dam used by the Commission's engineers. This point was gone into thoroughly at the hearing and nothing was developed that should change the figures of the Commission's engineers. Eight thousand dollars of additions and betterments

were included by the Commission's engineers and not by Nickerson. The difference between Elliott and the Commission's engineers is due primarily to the amount of \$50,000 resulting from the use by Elliott of extremely low unit prices on ditch excavation. Disagreement on unit prices on the pipe lines and main dam explain the balance. No details were exhibited as to how such unit prices were obtained.

The greater part of the North Fork Ditch Company was built about 1854 for the purpose of hydraulic mining principally, although some of the water in those early days was used for irrigation.

The ditch was used for a great many years to its full capacity but with the decline of hydraulic mining it gradually went into disuse until the year 1877 when C. W. Clark, H. Williams, and H. C. Smith acquired it. Conflicting evidence was introduced to show the price paid for this ditch which placed the figure ranging from \$20,000 to \$50,000.

In 1899 the property included the former dam on the North Fork of the American River, together with canals, ditches, and other improvements. The North Fork Ditch Company was incorporated in 1899 and immediately became the owner of this property, there being issued \$200,000 par value of common stock.

Immediately after incorporation of the company, the present main dam was built on the North Fork of the American River.

Assuming the sale price of this property to be \$50,000 the investment up to date is as follows:

Original investment	\$50,000
Dam and appurtenant structures	112,381
Tunnel No. 3	680
Pipe lines and syphons	60,195
Miscellaneous	<u>2,344</u>
Total	\$225,600

Considering that the ditch system was originally built largely for mining purposes and that the mining use has largely failed, it seems fair to assume that the original investors did not make any sacrifice for present irrigation consumers. They invested their money with a view to the mining industry, and it cannot fairly be held that their successors should be allowed a return upon an investment made originally for a purpose which has failed and disappeared, simply because it became possible to use the property thus acquired and constructed for a new and different purpose. It is apparent from the evidence in this case that if an investment were now being made for consumers, or if the investment had originally been made for irrigation purposes the result in total of money expended and design of property might be very different. I believe, therefore, that it is entirely fair to applicant to allow as investment the highest price any one has suggested was paid for this ditch property by the present company, to-wit, \$50,000, and to add thereto all expenditures for betterments and additions made since.

Allowing six per cent return on this investment and adopting the estimates of operating expenses and depreciation of the Commission's engineers, we arrive at the annual gross income which would be reasonable:

6 per cent interest on \$225,600--	\$13,536
Operating Expenses - - - - -	10,562
Depreciation - - - - -	<u>3,478</u>
Total - - - - -	\$27,576

According to the evidence, applicant has available and can deliver regularly, 1500 miner's inches, and if the present rates to consumers on the main ditch and laterals of applicant remain undisturbed except to state such rates in terms of 4 inch pressure rather than 6, and a wholesale rate of \$16 for water delivered at the Penstock Reservoir, and a rate of \$20 for water delivered at the Penstock Reservoir into the pipes of colonists and collected by applicant from the individual consumers, with the mining company still paying \$200 per month, a total gross income of \$29,100 would result.

The only consumer which at present would get the benefit of the \$16 wholesale rate is the American Irrigation Company, but there are plans now being perfected to organize some of these colonies into irrigation districts with the idea of purchasing water wholesale from applicant, and of course, these irrigation districts or mutual water companies which now exist or which might be organized would get the benefit of this wholesale rate. It will be noticed that a higher rate is fixed for the colonists taking water at the Penstock Reservoir, but this is for the reason that applicant is compelled to deal with the individual consumers.

There has been much complaint of service among the colonists, and from the evidence introduced I think it is clear that much of the bad service has resulted from the fact that there has been little, if any, organi-

zation among the colonists as to the distribution and use of water, with the result that those colonists most favorably situated on the distributing lines have used water to the detriment of those less favorably situated, and I believe that service will not be materially improved until these colonies are organized in such a way as to permit control of the service among consumers to be had.

It may be that the opportunity to obtain the lower rate will in part be persuasive toward such organization.

Applicant should be required to file with this Commission rules and regulations governing service.

I recommend the following form of order:

O R D E R

Application having been made by North Fork Ditch Company, requesting that its rates for the service of water be fixed, and a public hearing having been had, and the Commission being fully advised in the premises,

IT IS HEREBY FOUND AS A FACT by the Railroad Commission of the State of California that the rates now charged by applicant in so far as they differ from the rates hereinafter in this order set out, are unjust and unreasonable, and that the rates set out in this order are just and reasonable rates to be charged by applicant to its consumers for water.

Basing its order upon the foregoing findings of fact and the further findings of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that applicant may file with this Commission the following schedule of rates, said rates to become effective April 1, 1916:

- \$30.00 per miner's inch per year to consumers on the main ditch and laterals.
- 20.00 per miner's inch per year delivered at the Penstock Reservoir where collection is made direct from individual consumers.
- 16.00 per miner's inch per year for water delivered at the Penstock Reservoir where collection therefor is made from one consumer.
- 200.00 per month for water delivered for mining purposes at Mississippi Bar Reservoir.
- 1.00 per month per consumer for domestic service.

The term "miner's inch" used herein means one-fiftieth cubic foot per second.

IT IS HEREBY FURTHER ORDERED that within the period of 15 days from the date of this order, applicant file for the approval of this Commission rules and regulations governing its service of water.

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 17th day of March, 1916.

J. S. Hayward

Carroll O. Edgerton

James R. Decker

Commissioners.