

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the matter of the application )  
of North Fork Ditch Company for )  
appraisalment of its property and )  
adjustment of water rates. )

Application No. 1524

BY THE COMMISSION.

OPINION ON APPLICATION  
FOR REHEARING

This application for rehearing is made on behalf of A. N. Buchanan, Charles S. Gibbons and Samuel Jones, and the only modification asked to be made in the decision heretofore rendered herein is that the Commission recede from its declaration in the opinion preceding the order that sixteen inches of water claimed by these applicants should be charged for by North Fork Ditch Company at the rates paid by other consumers.

Applicants allege that certain testimony of Isaac Hinkle was overlooked by the Commission, which testimony it is claimed establishes a different state of facts with relation to the status of this sixteen inches of water than is set out in the decision.

We have very carefully reread the entire testimony of Mr. Hinkle, and while it is true that when recalled to the witness stand he made some statements which tend to refute other statements made by him, still reading his testimony, as a whole we think it is clear that it establishes the proposition that at the time the Board of Directors of North Fork Ditch Company by resolution attempted to convey sixteen inches of water to these applicants or their predecessors, all of the

water of this ditch company, including this sixteen inches, was being used and paid for at regular rates, and that the sixteen inches of water taken by these applicants or their predecessors under said resolution did deplete the supply of those who had been using water from this ditch system.

Applicants contend that there was a surplus of water not being used, and that those sixteen inches of water were legally granted to applicants or their predecessors and immediately and continuously thereafter put to a beneficial use and that this does not bring this water within the rule laid down in the case of Leavitt v. Lassen Irrigation Company, 157 Cal. 82. As applicants put it "if it be conceded that as the evidence clearly shows, there was an abundance of water for all desiring to use at the time the right was given to Buchanan, then his right became fixed and vested and cannot be divested or disturbed by circumstances arising subsequently. It appears in evidence that since that time the demand for water has increased but still that there is an abundant supply for all within the territory sought to be covered. This circumstance alone, in the absence of any direct testimony, clearly shows that the right of the public was in no manner adversely affected when the grant to Buchanan was made."

This contention ignores the rule laid down in said case of Leavitt v. Lassen Irrigation Company, which in effect is that where water is appropriated for sale or rental to the public there cannot be carved out of this public use a private use. There is no question here but that the company appropriated water for sale, rental and distribution to the public, and the sixteen inches of water in question was included within

the amount thus appropriated. Applicants do not claim that Buchanan, or any of their predecessors, ever made an appropriation of these sixteen inches of water, and the only effect of showing that at the time these sixteen inches of water were taken out of general use there was a surplus of water over and above that which was needed for this general use, would be to show that all of the water appropriated by the company was not being put to a beneficial use and it might be that the company thereby would lose its right to this surplus, but this would not inure to the benefit of Buchanan and the predecessors of applicant unless they appropriated this surplus for their own use.

As an additional reason for denying this application for rehearing, attention is called to the fact that it was filed fourteen days after the effective date of the order herein.

We recommend that this application for rehearing be denied.

#### O R D E R

Application having been made for a rehearing in the above entitled matter, and it appearing to the Commission for the reasons set out in the foregoing opinion that said application should be denied,

IT IS HEREBY ORDERED by the Railroad Commission  
of the State of California that the application for re-  
hearing herein be and the same is hereby denied.

Dated at San Francisco, California, this 8th day  
of May, 1916.

Max Thelen

Alex Gordon

Edwin O. Edgerton

Frank R. DeWolfe

Commissioners.