

ORIGINAL

Decision No. 3377

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

C. C. FULLER, ET AL.,

Complainants,

vs.

FRESNO CANAL AND IRRIGATION COMPANY,
Defendant.

Case No. 919.

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Francis Cunningham and I. Justin Miller
for complainants.
Short & Sutherland, by W. A. Sutherland, for
defendant.

BY THE COMMISSION.

O P I N I O N.

The complaint herein is signed by twelve of the eighteen land owners who receive water from the system of Fresno Canal and Irrigation Company through a ditch, known as "Sand Ditch."

The complaint alleges, in effect, that complainants are the owners of lands in the counties of Kings and Fresno, to all of which lands are attached water rights under defendant's irrigation system; that prior to the acquisition of said lands by complainants, Laguna Lands Limited, complainants' predecessor in title, entered into a contract with the defendant herein, by which contract defendant agreed to furnish for all the lands now owned by complainants such water as might be required for the irrigation of said lands, not exceeding at any one time 1/4 cu. foot per second for each quarter section of land; that said contract between Laguna Lands Limited and Fresno Canal and Irrigation Company provided, in part, that all ditches constructed by the land owners might, at the option of Fresno Canal and Irrigation Company, become a branch ditch of said company and be under its control; that the only means of conveying water to and upon the lands of complainants is by a

lateral ditch, commonly known as the "Sand Ditch", which ditch is a branch of one of defendant's main canals, known as "E Ditch"; that said "Sand Ditch" extends from said "E Ditch" in a westerly direction a distance of about two miles; that said "Sand Ditch", on information and belief, was constructed by said Laguna Lands Limited prior to the acquisition by complainants of their lands, thereafter became a branch ditch of Fresno Canal and Irrigation Company and was reconstructed, cleaned and used by said company as one of its own ditches; that complainants have performed all of their covenants but that defendant for more than five years last past has failed to supply to complainants the quantity of water called for in their respective contracts; ~~and~~ that the reason for such failure to supply to complainants the water to which they were entitled was due in part to the neglect and failure of defendant to keep the "Sand Ditch" in proper repair and to maintain the proper service for the distribution of water through said "Sand Ditch"; and that defendant has continuously charged complainants at the rate of 62 1/2 cents per acre annually for water. Complainants ask that defendant be required to keep the "Sand Ditch", its dams, bulk-heads and head-gates in good condition in order to facilitate the distribution of water for irrigation to complainants and that defendant be required to turn into the "Sand Ditch" at its intersection with the "E Ditch" the quantity of water which defendant is obligated to supply to the complainants in accordance with their contracts.

The answer denies that the "Sand Ditch" was constructed by defendant or ever became a branch ditch of defendant or was ever used by defendant; denies that defendant ever assumed control of the "Sand Ditch", or reconstructed said ditch or cleaned it or in any way used it for the purpose of conveying water for irrigation; alleges that the "Sand Ditch" is and at all times has been a branch ditch belonging to Laguna Lands Limited and

its successors in interest, including the complainants, and that said ditch, in so far as it has been maintained, has been maintained by Laguna Lands Limited and its successors in interest, and not by defendant; alleges that to place the "Sand Ditch" in a condition to receive and distribute water adequately will require an expenditure of \$4000.00, in addition to the annual charges for the salary of ditch tender and the maintenance and upkeep of the ditch and the necessary head-gates; and alleges that defendant is not now receiving from the operation of its canal system a reasonable return and that to require defendant to assume the control and operation of the "Sand Ditch" would be unjust and inequitable. Defendant asks that the complaint be dismissed.

A public hearing herein was held on March 27, 1916, at Fresno.

The theory of the complaint herein is that the "Sand Ditch" has become a branch ditch of Fresno Canal and Irrigation Company and that said company is hence under the duty of maintaining and operating said ditch in part compliance with its duty to the complainants in return for the payment by complainants to Fresno Canal and Irrigation Company of the annual sum of 62 1/2 cents per acre.

The evidence in this case was confined almost exclusively to the question whether the "Sand Ditch" had become a branch ditch of defendant. On this point, the evidence clearly showed that the "Sand Ditch" was originally constructed by ^{C. S. Lillis, who later sold to} Laguna Lands Limited; that it was thereafter reconstructed by Nares and Saunders, acting for Laguna Lands Limited, and that the ditch has never been maintained and operated by Fresno Canal and Irrigation Company. Although the latter company has the right, under its contract with Laguna Lands Limited, at its option, to take over the "Sand Ditch" and to maintain and operate the same as one of its own branch ditches, this option has never been exercised.

Hence, as complainants have not shown that Fresno Canal

and Irrigation Company has obligated itself to maintain and operate the "Sand Ditch" and as they have made no offer to compensate Fresno Canal and Irrigation Company for the additional expenditures which would be incurred by said company in maintaining and operating the "Sand Ditch", and as no evidence was introduced to show what costs would be incurred by defendant in maintaining and operating said ditch, the complaint herein must be dismissed.

At the same time, we desire to draw attention to the fact that the present method of maintaining and operating the privately owned ditches under defendant's system is by no means satisfactory. To a considerable extent, the land owners do not keep their own ditches in repair. Frequently they have no system among themselves for the delivery of water through their ditches, with the result that the land owners at the end of these ditches, to a considerable extent, fail to receive the water to which they are entitled. It seems entirely clear that the maintenance and operation of all these privately owned ditches by the defendant herein would be a far more satisfactory method of handling the problem. As defendant has not obligated itself to perform these additional duties, it is, of course, unreasonable to direct defendant to assume these additional obligations unless defendant is fairly compensated for the additional service. In a number of instances, defendant has expressed a willingness to undertake this additional service, provided that the necessary cost of such service be deposited in advance by each irrigator under the particular ditch under consideration. We suggest to the complainants herein that if each irrigator on the "Sand Ditch" is willing to pay to Fresno Canal and Irrigation Company, in advance, the additional compensation for the maintenance and operation of the "Sand Ditch" by Fresno Canal and Irrigation Company, the matter may be again drawn to

the attention of the Railroad Commission or may be taken up directly with Fresno Canal and Irrigation Company.

The Railroad Commission has no power, however, under the evidence as presented in this case, to compel Fresno Canal and Irrigation Company to undertake this service.

O R D E R.

A public hearing having been held in the above entitled proceeding, and the same having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that the complaint herein be and the same is hereby dismissed, without prejudice.

Dated at San Francisco, California, this 26th day of May, 1916.

Max Shelton
H. L. ...
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Commissioners.