

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

M. V. STIREWALT, et al.,  
Complainants,  
vs.  
CONSOLIDATED CANAL COMPANY,  
Defendant.

ORIGINAL

Case No. 916

M. V. Stirewalt, R. R. Englebeck and Adolph  
Anderson for complainants.  
W. A. Sutherland for defendant.

**THELLEN, Commissioner.**

OPINION ON REHEARING.

On June 27, 1916, a public hearing in the above entitled proceeding, was held in Fresno, at which time and place evidence and argument were received on the question whether a rehearing should be held herein, on petition of the defendant. As is usual in such proceedings, it was stipulated that if the Railroad Commission should decide that a rehearing should be held, the evidence and argument thus received should be deemed to be the evidence and argument which would have been offered and received on the rehearing, thus obviating the necessity of a further hearing. The Railroad Commission is of the opinion that defendant was entitled to a rehearing. The defendant has now filed certain additional data and the matter is ready for decision.

The Lobre Ditch, through which complainants receive their irrigation water from defendant, was constructed and is

owned by the landowners and not by defendant. Defendant has never maintained and operated the ditch except during the year 1915, under special arrangement with the plaintiffs. Defendant has been able to collect only a portion of the additional compensation which it was to receive for repairing the Lobre Ditch and for maintaining and operating it in 1915.

Under defendant's contracts, it has the option to take over and operate all the privately owned ditches under its system. There is no provision in the contract, however, under which the contract holders can compel defendant to exercise the option.

I am of the opinion that the best interests of the consumers under this system would be served if defendant took over and operated all the privately owned ditches. Such action would in many instances result in a material improvement in the service and in the removal of inequalities in the amount and time of delivery of water now existing as between different consumers on the same privately owned ditches. Defendant, however, can not reasonably be asked or required to perform this additional service unless it is reasonably compensated for the service and is assured that it will receive the additional compensation.

The problem could be solved by the establishment of a single rate which would cover both the service now performed by the defendant and the suggested additional service of maintaining the privately owned ditches and of delivering water through them directly to each individual consumer. Defendant, however, has not exercised its option to take over the Lobre Ditch and complainants have not offered to pay any increase over the contract rate of 75¢ per acre per year.

Another solution of the problem, less comprehensive and satisfactory, would be the establishment of a separate, additional compensation, not considered as part of the established rate, to

be paid to defendant for the additional service of maintaining and operating each private ditch as to which agreement can be reached between defendant and the consumers thereon. As already stated, such arrangement was in effect during the year 1915 under the Lobre Ditch, but defendant declines to proceed under this arrangement because it has been unable to collect the additional compensation to which it became entitled and has no assurance of being able to collect the additional compensation in the future.

Defendant concedes that the present method of maintaining and operating the private laterals is unsatisfactory. Waiving the question of the legal power of the Railroad Commission to compel defendant against its will to maintain and operate the private ditches, defendant at the hearing of June 27, 1916, offered to continue to maintain and operate the Lobre Ditch, but only if the annual compensation is paid in full in advance and if the entire compensation is paid in advance on or before the first day of November of the preceding year, so that the work of cleaning and repairing the ditches may be completed in time for the next season's operations. In view of the practical difficulty which defendant has had in collecting the compensation to which it was entitled for maintaining and operating the Lobre Ditch in 1915 and of the legal impossibility, in the absence of the exercise of defendant's option under the contracts, of compelling non-consenting landowners to pay their proportional share of the cost to defendant of maintaining and operating the Lobre Ditch, I am of the opinion that defendant is justified in its position.

If any number of consumers holding contracts under the Lobre Ditch shall, on or before September 15, 1916, agree in writing filed with the Railroad Commission, that they will pay to defendant, on or before November 1, 1916, the entire cost of

maintaining and operating the Lobre Ditch during the year 1917, as said cost may be estimated by the Railroad Commission's hydraulic department, on stipulation of Consolidated Canal Company, the Railroad Commission will issue a supplemental order herein directing defendant, on such entire cost being paid on or before November 1, 1916, to maintain and operate the Lobre Ditch during the year 1917. If no such written agreement is filed with the Railroad Commission on or before September 15, 1916, it will be necessary for the Railroad Commission to issue its order dismissing this proceeding.

In the meantime, the order heretofore made herein must be set aside.

I can not refrain from expressing the hope that ultimately the many difficulties and inequalities which have come to the Railroad Commission's notice in connection with the maintenance and operation of the private ditches by the landowners themselves may be solved by their maintenance and operation by defendant for a fair compensation under the supervision and regulation of the appropriate public authority. The Railroad Commission stands ready at all times to do all in its power to bring about this result.

I submit the following form of order:

#### ORDER ON REHEARING.

Consolidated Canal Company, defendant in the above entitled proceeding, having petitioned for a rehearing on the order rendered herein on April 29, 1916, and evidence and argument on the question of a rehearing having been received and the Railroad Commission finding that a rehearing should be granted and that on the evidence stipulated to be offered and received on such rehearing said order of April 29, 1916 should be vacated and set aside and this proceeding held open for further proceedings as

indicated in the opinion which precedes this order,

IT IS HEREBY ORDERED that the order of April 29, 1916 herein be and the same is hereby vacated and set aside and that this proceeding be held open for further proceedings as indicated in the opinion which precedes this order.

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 21st day of August, 1916.

Max Thelen

Alfred Gordon

Edwin O. Edgerton

Frank R. Decker

Commissioners