

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

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In the Matter of the Application )  
of PACIFIC GAS AND ELECTRIC COM- )  
PANY for an order authorizing the )  
permanent discontinuance as a con- ) Application No. 2288.  
duit for the conveyance of water )  
of two portions of Bear River Canal. )

G. P. Cutton for Pacific Gas & Electric Co.  
Geo. W. Hamilton and John A. Livingston  
for Placer County Land Company.  
H. L. Ostrander in propria persona.

THEBLEN, Commissioner.

O P I N I O N .

The petition herein alleges, in part, that for a number of years petitioner has owned and possessed a certain conduit and canal in Placer County, known as Bear River Canal; that said canal diverts water from the Bear River in the northeast quarter of Section 22, Township 15 North, Range 9 East, M.D.B.&M., approximately two miles north of Colfax; that said canal runs in a general southerly direction a distance of approximately 22 miles to a point in the northwest quarter of Section 18, Township 13 North, Range 9 East, M.D.B. & M., where the canal terminates at the entrance of the Ragsdale Tunnel; that the Old Bear River canal, prior to its reconstruction, had a capacity of 48 second feet and a length of approximately 30.5 miles; that in 1913 petitioner enlarged said canal from a capacity of 48 second feet to a capacity of 350 second feet, or thereabouts, for the purpose of conveying a sufficient volume of water to operate proposed new power houses and to use said water for irrigation and domestic uses after the same had passed through its power houses; that in thus enlarging said

canal, its length was shortened to approximately 22 miles by the construction of two tunnels, known as Tunnels Nos. 1 and 2, the location of which tunnels is shown on map attached to the petition herein and marked Exhibit A; that the construction of said tunnels has rendered unnecessary two portions of the Old Bear River canal, specifically described in the petition herein, one portion having a length of approximately 4.7 miles and the other portion a length of approximately 3.8 miles; that the water was turned out of said two eliminated portions of Old Bear River Canal on November 1, 1912, and that no water has been run through said portions of the canal subsequent thereto; that at the time of the elimination of said portions of Old Bear River canal, petitioner was not serving any customers with water from said portions of the canal for irrigation or domestic purposes and that said portions of the canal are not necessary or useful and for some time past have not been necessary or useful to petitioner in its business of supplying water for domestic or irrigation purposes and will not hereafter be necessary or useful in petitioner's business of generating hydro-electric energy; and that petitioner desires ~~to~~ to discontinue permanently said two portions of Old Bear River canal as a conduit for the conveyance of water.

Public hearings in this proceeding were held in Auburn on May 25, 1916, and in San Francisco on September 13, 1916.

At the hearing in Auburn, petitioner presented evidence to show that water was last conveyed through said two portions of Old Bear River canal during the summer of 1912; that there are no consumers taking water from these portions of the canal; that the construction of Tunnels Nos. 1 and 2 has rendered the further maintenance and use of said two portions of the canal unnecessary; that there are no demands for water from said portions of the canal,

and that petitioner desires to avoid the expense of hereafter maintaining and operating said portions of the canal.

Representatives of the Placer County Land Company appeared at the hearing and testified that the Company is the owner of several thousand acres of land located below the second portion of Old Bear River canal proposed to be abandoned, which land Placer County Land Company proposes hereafter to subdivide and place on the market. The representatives of the Company testified that they cannot sell this land advantageously unless they can secure water for it, and that if petitioner herein is authorized to abandon the second portion of Old Bear River canal proposed to be eliminated, Placer County Land Company will be unable to secure water for its ~~rocky~~ land. There appearing to be a probability that petitioner and Placer County Land Company could reach an agreement in the matter, the hearing herein was adjourned until the further order of the Railroad Commission.

An adjourned public hearing was held in San Francisco on September 13, 1916. At this hearing it appeared that petitioner and Placer County Land Company had reached an agreement satisfactory to both parties. Subsequent to the hearing, petitioner filed herein copy of agreement made between Pacific Gas and Electric Company and W. B. Hotchkiss, which agreement recites that Pacific Gas and Electric Company is conveying to Mr. Hotchkiss lands in Sections 29 and 30, Township 14 North, Range 9 East, M.D.B. & M., commonly known as the Cortopassi Ranch, on which the head of the second portion of the Old Bear River canal proposed to be abandoned is located. The agreement recites in part that if Pacific Gas and Electric Company shall be permitted by the Railroad Commission to abandon said portion of Bear River canal, then Hotchkiss will permit Placer County Land Company and such other persons as may desire to obtain water by means of said portion of Old Bear River

canal, at their own expense, to maintain and use the same over the lands of Hotchkiss to obtain water from Pacific Gas and Electric Company, which water will be delivered to such persons by Pacific Gas and Electric Company at the upper end or portal of Tunnel No. 2 of Pacific Gas and Electric Company upon said land.

The Railroad Commission is in receipt of a letter from Mr. John A. Livingston, Secretary of Placer County Land Company, stating that this agreement is satisfactory to Placer County Land Company. Hence, in so far as this protest is concerned, there is no reason now existing why the petition should not be granted.

At the hearing in San Francisco, Mr. H. L. Ostrander appeared and objected to the granting of the petition herein unless he were assured the right to buy water from Pacific Gas and Electric Company on specified terms ~~which are not~~ satisfactory to him.

Mr. Ostrander represented that he is the owner of the west half of the southwest quarter of Section 36, Township 14 North, Range 8 East, M.D. B. & M., acquired by him in February, 1910; that Bear River flows through this property; that he has applied to petitioner for the right to pump water from Bear River for use on his property and that petitioner was willing to grant this right if he paid at its regular rate of \$45.00 per miner's inch, but that he was unwilling to pay this price; that in years past water was wasted from three spillways from Bear River canal during the summer season and also was run in this manner from Old Bear River canal over the property now owned by Mr. Ostrander into Bear River, whence it was diverted into petitioner's Gold Hill canal; that many years ago the owner of the property now owned by Mr. Ostrander received water free

for use on this land, apparently in return for the privilege of permitting the water to flow over and across portions of the land to Bear River; that thereafter a subsequent owner of the property was permitted to use water thereon for an annual payment of \$20.00 per year; and that no water has been used on this property since 1908. Mr. Ostrander stated that he now desires a "couple of inches" of water but that he can not afford to go to petitioner's canal to secure the water and that he can not afford to pay \$45.00 per miner's inch for such water as he may take.

The testimony presented by petitioner shows that it is petitioner's uniform practice in Placer County to sell water at the measuring box in its canals and that persons desiring to purchase water pay for the same at the rate of \$45.00 per miner's inch at petitioner's canals. Mr. Ostrander states that he is unwilling and unable to pay for water on these terms.

As already stated, the deed from Pacific Gas and Electric Company to Mr. W. B. Hotchkiss specifically provides that Hotchkiss will permit the use, not merely by Placer County Land Company, but also by "such other persons as may desire to obtain water by means of said portion of said Old Bear River ditch" of that portion of Old Bear River canal which is located on the Cortopassi Ranch. If it is necessary for Mr. Ostrander to use any other portion of Old Bear River canal located on the property of other owners, I assume that the necessary arrangement can be made in accordance with the usual practice in Placer County.

If Mr. Ostrander should hereafter find himself able to pay the established rates for water sold by petitioner, he will thus be able to secure the water either at petitioner's portal of its Tunnel No. 2 or by pumping from petitioner's water flowing in Bear River canal.

Petitioner should not be compelled needlessly to ~~xxx~~ incur the expense of continuing to maintain and operate portions

of its canal system.

I recommend that the application be granted and submit the following form of order:

O R D E R

PACIFIC GAS AND ELECTRIC COMPANY having applied to the Railroad Commission for an order authorizing the permanent abandonment as conduits for the conveyance of water of two certain portions of Old Bear River Canal, which portions have been rendered unnecessary by the construction of Tunnels Nos. 1 and 2, as said portions of Old Bear River Canal to be abandoned and said Tunnels Nos. 1 and 2 are specifically described in the petition herein, and a public hearing having been held and this proceeding having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company be and the same is hereby authorized to abandon the use of those two certain portions of Old Bear River Canal which are specifically described as follows:

Beginning at a point in the northwest quarter of Section 29, Township 14 North, Range 9 East, M.D.B. & M., being beginning of tunnel at Station 753 plus 40 of old canal survey, running thence in a northwesterly direction across the N.E. quarter of Section 30 into the Southeast quarter of Section 19, thence in a general southwesterly direction through the southeast quarter of Section 19, northeast quarter, northwest quarter and southwest quarter of Section 30, thence in a general easterly direction through the south half of Section 30 to a point in the southwest quarter of Section 29 to the end of tunnel, being Station 1000 plus 25 of old canal survey, a total distance of 24,685 feet, or approximately 4.7 miles.

Beginning at a point in the southwest quarter of

Section 29, Township 14 North, Range 9 East, M.D.B. & M., being beginning of tunnel at Station 1004 plus 00 of old canal survey, running thence in a general southwesterly direction to the south line of Section 30, thence in a general southeasterly direction through the northeast quarter of Section 31 to the east line of said Section 31, thence in a general southerly direction along the east line of Section 31, thence in a general northeasterly direction through the southwest quarter and the northwest quarter of Section 32 to end of tunnel, being Station 1205 plus 00 of old canal survey, a total distance of 20100 feet, or approximately 3.8 miles.

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 30<sup>th</sup> day of September, 1916.

Max Thelen

Alex. Gordon

Francis J. ...

Commissioners.