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Decision No. ✓

ORIGINAL

Decision No. 3701

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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In the Matter of the Application of GRIDLEY LAND AND IRRIGATION COMPANY to increase rates to be charged for irrigation water.) Application No. 1506.

W. H. Gilstrap for applicant.
W. E. Duncan, Jr., for Gridley Water Users Association.

DEVLIN, Commissioner.

O P I N I O N.

This is an application by the Gridley Land and Irrigation Company, hereinafter referred to as applicant, a public utility corporation, for an order authorizing it to increase its rates charged for the delivery of water for irrigation, from 50 cents to $1.00 per acre per year.

Applicant alleges in effect that the rates are inadequate and unjust and do not return to it the necessary cost of maintenance, operation, annual depreciation and a fair return upon its investment.

Protestant, the Gridley Water Users Association, is an organization of a large number of persons owning land and using water for irrigation which is obtained from applicant's canals. The purpose of the organization is to protect the interests of its members and to promote agriculture.

A public hearing in this proceeding was held in Gridley on August 5, 1915. Briefs have been filed and the matter is now ready for decision.

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The system is composed of unlined earthen canals which divert water from the main canal of the Sutter Butte Canal Company at two points and waters lands in the vicinity of Gridley, Butte County, locally known as the Gridley Colonies. The aggregate length of the canals is 30 miles.

This system was inaugurated in 1905 by the California Irrigated Land Company and was later enlarged and extended by the Irrigated Land Company of California, its successor in interest.

In 1906, 1907 and a part of 1908, the Gridley Colony Ditch Company and the Gridley Ditch Company operated the ditches. These companies were mutual organizations composed of resident irrigators who had derived title to these lands through the California Irrigated Land Company or Irrigated Land Company of California. In the summer of 1908, a dispute arose between the irrigators and the Irrigated Land Company of California, and the irrigators refused to stand further expense of operation of the canal system claiming that it was the duty of the Irrigated Land Company of California to deliver water to their land. During the remainder of that year and in 1909 the cost of maintaining and operating the system was borne by the Irrigated Land Company of California.

In 1909, W. H. Gilstrap and, through him, the applicant took over the maintenance and operation of the system. Applicant has since enlarged and extended it, controlled the operation and expended moneys for maintenance and necessary replacement of structures. There is at present approximately 6,000 acres susceptible of irrigation from this system without further extension or enlargement.

The claim was advanced by protestant that applicant is not the owner of the ditches in question and that the Butte County Canal Company and its successor in interest, the Sutter Butte Canal Company, is the owner and is obligated under its contracts to deliver water through these laterals; the protestant urges that this Commission refuse to fix rates for applicant and suggests that in lieu of such action that this Commission by its order require the Sutter Butte Canal Company to take over and operate the laterals of applicant. I consider that the following language used by Commissioner Edgerton in Case No. 426, Gridley Water Users Association, et al. vs. Sutter Butte Canal Company, et al., Vol. 7, Opinions and Orders of the Railroad Commission, p. 619, speaking of this same system where this same question was raised, makes proper reply to this request of protestant:

> "I believe it is not for this Commission to determine where the title to these laterals actually rests. Gridley Land and Irrigation Company, which claims ownership and is actually operating these laterals, is of course a public utility and subject to the jurisdiction of the Commission in the operation of these laterals."

A petition for rehearing has been filed in said Case No. 426, and an order on petition for rehearing in said case denying said petition for rehearing and reaffirming the declaration of Commissioner Edgerton, as above quoted, is being made concurrently with this opinion and order.

The pronouncement might be supplemented by the observation that the evidence in this case shows that applicant has for a period of about seven years operated the system of laterals, the ownership of which is challenged by protestant, and has during said period delivered water to the water users thereon and has maintained the canal, spillways and structures. The canal system

is commonly known in that community as the Gilstrap system, and as counsel for protestant aptly puts it, "Applicant is Gilstrap incorporated".

It should not be understood that this Commission under no circumstance will consider the question of ownership of utility property when asked to exercise its jurisdiction over same, as conditions can readily be conceived where a fraudulent claimant of ownership of a utility, without possession or substantial claim of right or title might improperly invoke the power and authority of the Commission to the detriment and wrongful injury of a utility. Other conditions may likewise require that the Railroad Commission, in the exercise of its jurisdiction, must pass on questions of title. On the other hand it must be obvious that if a mere challenge of title of either real or personal property of a utility must be litigated and adjudicated by this Commission in passing on the question of valuation and in fixing rates that the usefulness and activity of the Commission in this respect would come to a speedy end.

It would serve no useful purpose to discuss the many contracts concerning water right, rights of way, conveyances and other transactions in connection with the canal system in question, and it seems sufficient to say that finding, as we do, the applicant in possession of the laterals in question for many years past and exercising acts of ownership over same under claim of ownership, that this Commission should indulge in the presumption that the applicant is the owner. Subdivision 12 of Section 1963, C.C.P., declares among disputable presumptions "that a person is the owner of property from exercising acts of ownership over it or from common reputation of his ownership".

I deem it the duty of this Commission under the circumstances of this case to fix just and reasonable rates for applicant pursuant to the application before us.

If any question arises as to title to property, breach of contract or other similar question by which protestant claims that it has been injured or damaged or its rights invaded, such question should, in my opinion, be litigated in the courts.

In computing the rate to be established, the issues involved have been considered in three divisions, as follows:

1. Value of Property.
2. Maintenance and Operation.
3. Annual Charges.

These will be taken up in the order named.

1. Value of Property.

Appraisals were presented by Edwin C. Miller for applicant and by C. H. Loveland for the Commission.

Following is a comparative tabulation of these appraisals:

Item	Estimated Cost New	
	Applicant's Engineer	Commission's Engineer
Bridges, Culverts, syphons and flumes	$7,806.00	$7,684.00
Weirs and turnout gates	3,694.00	5,405.00
Tools and appliances	---	600.00
Excavation and embankment	20,214.00	21,792.00
Real Estate	26,000.00	9,735.00 *
Engineering	1,500.00	----
Total	$59,214.00	$45,216.00

*Included as a part of overhead.

No great difference exists between the appraisals submitted, other than real estate, and therefore it will be unnecessary to discuss them except in that particular.

Mr. Miller used $200.00 per acre as the cost of the right of way, and Mr. Loveland $150.00 per acre. All the evidence submitted concerning transfers of land both by applicant and protestant showed that the land in the district

through which the canals extend was sold for from $75.00 to $100.00 per acre within the past five years. There is also a difference of opinion as to the area needed for right of way. Mr. Miller has not deducted the area for public highways and has used a much wider right of way than appears to be actually in use.

The actual cash outlay by applicant in payment for the system and for improvements is $16,634.00. In view of all the conditions affecting this system since its inception, and the method of its acquisition, I am of the opinion that this Commission will be doing justice to all concerned if interest is allowed on this sum.

2. Maintenance and Operation.

Only one complete estimate of the annual cost of maintenance and operation was submitted at the hearing, although partial estimates were made by applicant.

The Commission's engineer estimated that $2,812.00 is a fair annual allowance for maintenance and operation. After carefully considering all the evidence, I find as a fact that the sum of $2,812.00 is a fair annual allowance for maintenance and operation.

3. Annual Charges.

In 1914 there were 5,319 acres irrigated which at 50 cents per acre would provide an income of $2,660.00.

The annual charges which applicant is entitled to have returned to it in rates are as follows:

Maintenance and Operation.....	$2,812.00
Depreciation Annuity.....	903.00
Interest on $16,634 @7%.....	1,164.00
Total.....	$4,879.00

It is evident that the present income is inadequate. It now remains to compute a rate that will admit of the utility earning such compensation as under all the circumstances is just to it and to the public.

The evidence shows that there are 5,959 acres under the system on which so-called water rights are located, of which 5,319 were irrigated during 1914. Of this irrigated area, 600 acres are planted to rice, which requires from two to three times as much water as alfalfa, and therefore in apportioning the burden among the various classes of use, rice irrigation should undoubtedly bear a greater share of the cost than other crops.

In the matter of rates it is found that the rate of $1.00 per acre per year proposed by applicant will produce $5,319.00 annually if the 1914 use is continued, and it is obvious from previous computations that this rate would produce a larger return than applicant is entitled to. Based on the area irrigated, a rate of $1.80 per acre per annum for land planted to rice and 90 cents per acre per year for all other crops will yield an ample return to the utility.

I submit herewith the following form of order:

O R D E R.

A public hearing having been held, evidence submitted and briefs filed in the above entitled proceeding, and the Commission being fully apprised in the premises, and the matter being now ready for decision,

IT IS HEREBY FOUND AS A FACT that the rates charged by the Gridley Land and Irrigation Company for irrigation water are unremunerative and unjust rates, and that the rates set out in this order are remunerative, just and reasonable.

And basing this order on the foregoing finding of fact and on the further findings of fact set out in the opinion preceding this order,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the following be and are hereby declared to be the rates to be charged by the Gridley Land and Irrigation Company, to-wit:

Per acre per annum planted to rice.....	$1.80
Per acre per annum, all other lands.....	.90

IT IS FURTHER ORDERED that in all other respects the above entitled application be and the same is hereby dismissed.

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 October, 1916.

Max Thelen

Edwin O. Edgerton

Frank R. Devlin

Commissioners.