

BEFORE THE RAILROAD COMMISSION OF THE  
STATE OF CALIFORNIA

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ORIGINAL

Decision No. 3929

J. F. DAVID and NELLIE  
DUSOE,

Complainants,

-vs-

Case No. 1012

FARMER'S CANAL COMPANY,

Defendant.

Edson Abel, for Complainant

J. M. Mannon, Jr. and  
W. B. Beazley, for Defendant

BY THE COMMISSION.

OPINION

This is a complaint brought by two adjoining land owners in Kern County, for the purpose of compelling the Farmer's Canal Company to furnish them water "in the same quantity and at the same rate and under the same conditions as (water is furnished) to other users of said canal and company".

A public hearing was held in Bakersfield December 5th, 1916. It appears that complainants each own 80 acres of the S.E.  $\frac{1}{4}$  of Section 12, T.31S., R.27 E., M.D.B. & M.; that defendant, hereinafter designated and referred to as the "Canal Company", is a California corporation, engaged in the business of furnishing water for irrigation and other purposes to the owners of about 10,000 acres of land by means

of a canal and lateral ditches located in Kern County near the City of Bakersfield. That defendant corporation was originally organized in 1860, in order, among other purposes, "to provide, furnish and supply water for domestic stock, agricultural, mechanical, and manufacturing purposes to the stockholders of said corporation upon their lands lying adjacent to the canals and ditches of said corporation, and any surplus water, to sell and distribute to other parties". That complainants acquired possession of their land about two years ago, and in the spring of 1915 applied to the Canal Company for water.

There is some dispute as to the precise language used by defendant's secretary at that time, the latter claiming that he told complainants, if they would sign the regular applications, he would allow them to have water whenever the Company had any surplus, after supplying its regular consumers, while complainants claimed that he told them they could have water whenever there was water enough in the river. There is no question but that the Canal Company at all times refused to furnish complainants water unconditionally, and always had insisted that its regular consumers, which it claims have water rights, were entitled to a distinct priority over complainants.

On the whole, even from complainants' testimony, we are inclined to believe that defendant merely offered to furnish complainants its surplus water whenever it had any. Defendant asked them to sign an application and also a stipulation to the effect that they would not claim any water rights by virtue of any water they might receive under said application. Defendant even went so far as to accept an application and a deposit from complainants for the surplus water to be furnished them. Complainants never received any water from the Canal Company, however, the reason being, according to the testimony, that soon after the

application was made, the water in the river suddenly fell, and defendant had no longer any surplus available.

According to the testimony of Mr. F. C. Munzer, the Canal Company's secretary, the Company, while originally considering that it was obligated to furnish water only to its stockholders, later furnished water to certain other farmers in the neighborhood. Before he became secretary, which was 22 years ago, the Canal Company had ceased to take on any new consumers on the ground that the existing consumers, both stockholders and non-stockholders, had acquired certain water rights and that the Canal Company was then serving all the land which it could adequately supply with water.

Since that time the Company has consistently maintained this policy and has sold water to new consumers only when it had a surplus. The evidence further shows that complainants knew of the Canal Company's attitude in this matter before they bought or contracted to buy their land.

Mr. Munzer further testified that the Canal Company would treat all applicants for such surplus water upon an equal basis and in the order of the filing of their applications each season. In other words, the Canal Company does not recognize any priorities in the right to the use of surplus water whenever there is any. According to the testimony, however, during the last ten years, there has been surplus water during the summer only in the years 1906, 1909, 1914, 1916 and a part of 1915. In the other years all of the Canal Company's water was used by its regular consumers at 75 cents per cubic foot per second for 24 hours.

From all the evidence, we find that those regular consumers of defendant who, either personally or through their predecessors in interest, have been applying the water from defendant's canal to their lands for beneficial uses

for the last twenty-two years or more are entitled to be protected in the use of this water, and that the Canal Company is justified in refusing to permit any new consumer to use any of its water, except when it has a surplus over what may be needed by its regular consumers for beneficial uses upon the land heretofore served by the Company.

O R D E R

A public hearing having been held in the above-entitled proceeding and the case having been submitted, and being now ready for decision, and it appearing for the reasons set forth in the foregoing opinion that the complaint should be dismissed,

IT IS HEREBY ORDERED that the complaint in the above-entitled proceeding be and the same is hereby, dismissed.

Dated at San Francisco, California, this 13<sup>th</sup> day of December, 1916.

W. H. Boardman  
Edwin O. Edgerton  
Frank R. Debs  
Commissioners.