

# ORIGINAL

Decision No. 4040

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the matter of the application	)	
of Rogers Development Company, a	)	
corporation, for an order authorizing	)	
the sale of a certain irrigating canal	)	Application No. 2641.
system, and of WEST RIVERSIDE CANAL	)	
COMPANY, a corporation, for an order,	)	
authorizing it to issue bonds in the	)	
amount of \$66,000.00	)	

In the matter of the application	)	
of WEST RIVERSIDE CANAL COMPANY, a	)	
corporation, to issue stock for prop-	)	Application No. 2664.
erty and have Commission fix rates for	)	
carrying water in the Canal of said	)	
Company.	)	

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C. L. McFarland for West Riverside Canal Co.  
and  
Wm. Collier and George Sarau for "350 Inch  
Water Company"; intervenor.

LOVELAND, Commissioner.

## O P I N I O N

At the hearing held on the above application at Riverside, on December 15, 1916, counsel for applicants and the "350 Inch Water Company", intervenor, stipulated that the applications might be combined for hearing and decision.

In these applications, Rogers Development Company asks authority to sell and convey to West Riverside Canal Company for \$25,000 and stock an irrigating canal and system, known as the North Riverside and Jurupa Canal, located in Riverside, and San Bernardino Counties. West Riverside Canal Company asks authority to issue, for purposes hereinafter indicated, \$99,300.00 par value of its common capital stock, \$66,000.00 face value of its six percent (6%) serial bonds and its note in

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the sum of \$3,500.00. The Canal Company also asks authority to execute a mortgage securing the payment of the bonds, said mortgage to be in substantially the same form as the mortgage attached to Application Number 2641 and marked Exhibit "C". It further requests this Commission to fix the rates which it may charge to those who use the canal.

The canal commonly known as the North Riverside and Jurupa canal was constructed in 1888 and 1889, for the purpose of irrigating some ten thousand acres of land located west of the city of Riverside. For a description of the canal and laterals, reference is hereby made to Exhibit "A" attached to this Opinion and Order.

The canal and laterals are nineteen miles in length and have a carrying capacity of from 2000 to 2100 inches. Rogers Development Company develops no water, but it and its predecessors in interest, have sold to the land owners, the right to carry or have their water carried through the canal. Counsel for the Canal Company alleges that these carrying rights were sold at the average rate of about \$50.00 per miner's inch.

Exhibit "D" attached to the application No. 2641 shows that the original cost of the canal with only earth construction was \$196,000.00. There was an additional expenditure of \$18,000.00 for concrete and cement work, making a total cost of \$214,000.00.

Mr. Hawley, Hydraulic Engineer of this Commission, has made an examination of the canal and reports the reproduction cost thereof at \$195,836 and reproduction cost less depreciation at \$180,731.

The canal heretofore has been operated under agreements by the terms of which the Rogers Development Company was supposed to repair and maintain the canal and collect the cost of maintenance from those owning flowage and capacity rights. The heavy floods of 1915 and 1916 caused so great a damage to the canal that Rogers Development Company was unable to finance its reconstruction.

To devise some means by which to make the necessary improvements, the owners of carrying rights appointed a committee consisting of J. F. Koster, Frank D. Lewis, E. L. Williamson, Myron Alquire, E. C. Kennedy, C. L. McFarland and John H. Gobruegge. The Committee has reconstructed the canal and laterals, and purposes to make certain additional improvements. Its financial report as of December 13, 1916, shows the following:

Money borrowed by Committee and for which the members are individually responsible, ..... \$15,000.00

Bills Unpaid:

J. W. Carroll,	\$500.00	
Hammond Lumber Co.	8,700.00	
Russ Lumber Co.	714.34	
Riverside Portland Cement Co.	289.47	
		<u>10,203.81</u>

Proposed Improvements:

Protection at Santa Fe Railway	\$ 750.00	
Protection below Colton Road	400.00	
New Flume	<u>5,000.00</u>	<u>6,150.00</u>

TOTAL ..... \$ 31,353.81

The Committee has caused the organization of West Riverside Canal Company, for the purpose of acquiring the canal system. The Company has an authorized common capital stock issue of \$100,000.00 divided into 2000 shares each having a par value of \$50.00.

The owners of flowage or capacity rights are asked to exchange such rights for stock in the new company, one share of stock to be exchanged for each inch of flowage or capacity right. The stock is thus to be issued as part payment for the canal and rights appertaining thereto. The evidence before the Commission shows that the owners of flowage or capacity rights, to the amount of 1,891.132 inches have signed the agreement to exchange their rights for stock in the new company. While no protest was filed in connection with this proceeding, the evidence shows that the owners of flowage rights of 100.844 inches have to date not signed the agreement. The owners of these rights will be given an opportunity to exchange their rights for stock in West Riverside Canal Company, on the same basis as those who have signed the agreement. If any refuse to make the exchange, West Riverside Canal Company proposes:

"That the same rates be charged to those who have not signed, as to those who have signed, provided, however that they designate by January 1st of each year, whether or not they intend to run any water in the canal during that year, and at that time, make the payment due in January. If no designation is made by January 1st of any year, and no payment made, then it shall be optional with the Board of Directors of the Canal Company whether or not any of the outstanding capacity or flowage rights be allowed to run water in the canal during that year."

The Articles of Incorporation of West Riverside Canal Company explicitly state that it is to act as a public utility under the jurisdiction of the Railroad Commission and the laws of the State of California, and that it is to issue carrying rights in the canal, represented by certificates of stock or certificates of such character in such form and representing such rights as the Board of Directors may from time to time decide upon, under the direction of the Railroad Commission. Thus far applicant has not submitted a copy of its proposed certificate of stock. It is, however, proposed /that these stock certificates shall not be negotiable in the ordinary sense. The Owners thereof shall have no right to dispose of them without at the same time disposing of the land for the benefit of which water is carried through the canal.

The applications contemplate the limitation of the use of the canal to the stockholders of West Riverside Canal Company. This Company has been organized not as a mutual company, but as a public utility. Being a public utility, the corporation, obviously, must assume all the responsibilities of a public utility, and as such cannot limit the use of the canal to its stockholders. I believe that the right to have water carried through the canal should be governed by an agreement, separate and apart from the stock certificate. Before a final order can be issued in this proceeding, West Riverside Canal Company, shall submit to this Commission for approval a copy of its proposed stock certificate, and a copy of the proposed agreement with those entitled to the use of the canal.

Applicant asks authority to execute to the Peoples Trust and Saving Bank of Riverside, a mortgage or deed of trust securing the payment of \$66,000.00 face value of 6% serial bonds. Bonds in the amount of \$3,000.00 are to mature August 1, 1921, and a like amount thereafter annually to and including August 1, 1942. The deed of trust, however, provides that on August 1, 1917, and annually thereafter to and including August 1, 1941, the Company will pay to the trustee for sinking fund purposes, the sum of \$2,000.00. The annual interest accruals on the sinking fund shall be added thereto. The sinking fund payments shall be applied to the payment of bonds. When bonds are called for redemption, they shall be paid in order of serial numbers commencing with the highest number of the bonds issued and outstanding, and then going back consecutively to the lowest number. Bonds are subject to redemption at any time after five years after August 1, 1916 upon the payment of a premium of 2% and the accrued interest thereon. As stated above, the bonds amounting to \$3,000. mature August 1, 1921. At that time the moneys in the sinking fund, if the provisions of the deed of trust are carried out, should likewise be

applied to redemption of bonds. Thereafter it will be observed that \$3,000.00 of the bonds mature annually and an additional amount of bonds of approximately \$2,000.00 will be subject to redemption through the operation of the sinking fund.

West Riverside Canal Company desires authority to issue \$66,000.00 face value of bonds and sell \$60,000.00 thereof at not less than 97 per cent of their face value plus accrued interest. In as much as the sale of \$60,000.00 of bonds will yield the company sufficient funds to meet its present needs, I am of the opinion that there is no necessity to authorize the issue of the remaining \$6,000.00 at this time. Of the proceeds obtained from the sale of the bonds, the company proposes to use \$25,000.00 to purchase the canal system and \$31,353.81 for the following purposes:

To pay notes, representing money borrowed to reconstruct canal .....	\$ 15,000.00
To pay bills payable, representing cost of materials used in reconstructing canal.....	10,203.81
For proposed Improvements.....	<u>6,150.00</u>
TOTAL .....	\$ 31,353.81

The evidence submitted in support of these applications shows that applicant will be called upon to expend approximately \$3,500.00 in addition to the aforementioned \$25,000.00 to obtain a clear title to the canal. It desires authority from the Commission to obtain this additional money by issuing its note for a term of one year or less and to secure the payment of the note by pledging stock of the La Sierra Water Company owned by Rogers Development Company.

If the canal company can borrow the \$3,500.00 by issuing its note for one year or less, it will be unnecessary for it to obtain permission from the Commission. If for any reason,

it should develop that applicant is unable to obtain the necessary \$3,500.00, under the terms and conditions, as anticipated at the time of this hearing, it may make Supplemental Application to the Commission for such authority as may be necessary in the premises.

Attached to Application No. 2664, (Exhibit "B" ) is a tentative schedule of rates which West Riverside Canal Company asks this Commission to approve. This schedule of rates provides for an annual charge of \$8.00 per inch to have water carried through the canal, of which \$5.00 is to be paid on or before January 10 of each year; \$1.50 on or before May 10 of each year; \$1.50 on or before August 10 of each year. The operating expenses, interest and sinking fund payments are estimated as follows:

Salaries and wages including office expenses, telephone etc., .....	\$4,800.00
Cleaning Canal and Incidental repairs..	2,400.00
Taxes.....	1,000.00
Interest on \$60,000. at 6% .....	3,600.00
Profit or Sinking Fund.....	<u>2,000.00</u>
TOTAL.....	13,800.00

It estimates that approximately 1750 inches of water will be carried through the canal at the rate of \$8.00 per inch, which would yield a revenue of \$14,000.00.

The rates proposed by West Riverside Canal Company are designed to take care only of the operating expenses, bond interest and sinking fund payments. Other than the \$2,000.00 sinking fund payment and the \$3,600.00 bond interest, they make no allowance for a return on the investment. While I am willing to recommend that West Riverside Canal Company be given authority to put its proposed rates in effect, I do

so only in contemplation of the existing conditions and facts as presented to this Commission in these proceedings. If hereafter different conditions arise, this Commission will make the necessary adjustments.

The "350 Inch Water Company", the intervenor, in these proceedings, requested that the Commission protect its right to carry its full amount of water, without loss from seepage or evaporation to the west line of Rubidoux Rancho. It is the intention of West Riverside Canal Company that all the users of the canal, shall be given the privilege of turning enough water into the canal to allow for seepage and evaporation. This will obviate any discrimination and protect the rights of the "350 Inch Water Company".

I herewith submit the following form of Order.

#### O R D E R

ROGERS DEVELOPMENT COMPANY having applied to this Commission for authority to sell an irrigating canal and system, described in Exhibit "A" attached hereto, to West Riverside Canal Company, and West Riverside Canal Company having applied to the Commission for authority to issue stock and bonds; to execute a mortgage or deed of trust in substantially the same form as the mortgage or deed of trust attached to application No. 2642, and marked Exhibit "C"; and to put into effect the rates set forth in Exhibit "B" attached to application No. 2664;



And a public hearing having been held;

And it appearing to this Commission that the purposes for which the stock and bonds are to be issued are not in whole or in part reasonably chargeable to the operating expenses or income; and that this application, subject to the conditions hereafter specified, should be granted;

IT IS HEREBY ORDERED that Rogers Development Company be and hereby is granted authority to sell to West Riverside Canal Company, the irrigating canal and system described in Exhibit "A" attached to this Opinion and Order, said Exhibit "A" containing a general description of the properties as described in the above mentioned applications.

IT IS HEREBY FURTHER ORDERED that West Riverside Canal Company be and hereby is granted authority to issue \$99,300.00 par value of its common capital stock.

IT IS HEREBY FURTHER ORDERED that West Riverside Canal Company be and hereby is granted authority to issue \$60,000.00 face value of its 6% serial bonds.

It is hereby further ordered that West Riverside Canal Company be and hereby is granted authority to execute a mortgage or deed of trust to Peoples Trust and Savings Bank of Riverside to secure the payment of \$66,000.00 face value of 6% serial bonds, said mortgage or deed of trust to be in substantially the same form as the mortgage or deed of trust attached to application No. 2641, and marked Exhibit "C".

IT IS HEREBY FURTHER ORDERED that West Riverside Canal Company be and hereby is granted authority to put into effect the rates shown in Exhibit "B" attached hereto, said rates to become effective upon the day the property,

hereby authorized to be sold shall have been transferred to West Riverside Canal Company.

The authority hereby granted is granted upon the following conditions and not otherwise:

1. The stock hereby authorized to be issued shall be issued as part payment for the canal system and rights appertaining thereto, described in Exhibit "A" attached hereto, said stock thereafter to be distributed to the owners of flowage or capacity rights in said canal system, on the basis of \$50.00 par value of stock for each inch of flowage or capacity right in said canal system.
2. The right to have water carried through the canal shall be governed by an agreement separate and apart from the stock certificate.
3. West Riverside Canal Company shall file with the Commission for approval, a copy of its stock certificate and also a copy of the agreement relating to the use of the canal.
4. The bonds hereby authorized to be issued shall be sold so as to net, West Riverside Canal Company not less than 97 per cent of their face value, plus accrued interest.
5. The proceeds obtained from the sale of the bonds shall be used for the following purposes:
  - a. To pay in part for canal system and rights appertaining thereto, described in Exhibit "A" attached hereto . . . . . \$25,000
  - b. To pay notes issued by Committee to obtain funds to reconstruct the canal . . . 15,000
  - c. To discharge Bills payable representing expenditures to reconstruct canal . . . . 10,203.81
  - d. To pay for proposed improvements. . . . 6,150
  - e. Amount to be expended as hereafter authorized . . . . . 1,846.19
6. At least eighty per cent of the stock hereby authorized to be issued, shall be issued concurrently with the bonds.
7. The approval herein given of said mortgage or deed of trust is for the purpose of this proceeding, only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage or deed of trust as to such other legal requirements to which said mortgage or deed of trust are subject.
8. The price authorized to be paid for the aforementioned canal system and rights appertaining thereto shall not be binding upon this Commission or any other regulatory body as a determination of its value in any rate, condemnation or other proceeding.

9. Within twenty days after the transfer of the properties hereby authorized to be sold, West Riverside Canal Company shall file with this Commission a certified copy of the deed of conveyance.

10. Within twenty days after the transfer of the properties hereby authorized to be sold and transferred, West Riverside Canal Company shall file with this Commission the rates hereby authorized to be charged, together with its rules and regulations.

11. West Riverside Canal Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and bonds herein authorized to be issued, and on or before the twenty-fifth day of each month the Company shall make verified reports to the Commission stating the sale or sales of said stock and bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable, is made a part of this order.

12. The authority herein granted is conditioned upon the payment by applicant of the fee prescribed in section 57 of the Public Utilities Act.

13. The authority herein granted shall apply to such properties as shall have been transferred and to such stocks and bonds as shall have been issued on or before June 30, 1917.

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 20th day of January, 1917.

Railroad Commission, State of California

JAN 20 1917

Assistant Secretary

Man Thelen

H. D. Loveland

H. G. Gordon

Edwin O. Edgerton

Frank R. Burton

Commissioners.

E X H I B I T

"A"

The property which Rogers Development Company proposes to sell to West Riverside Canal Company is described by applicants as follows:-

"That certain real property situate in the Counties of San Bernardino and Riverside, State of California, and described as follows: That certain irrigation ditch or canal commonly known as the North Riverside and Jurupa Canal, a plat of that portion of said canal lying within the boundary of said Riverside County, California, being on file in Book 8, page 43 of Maps, Records of Riverside County, California; and a plat of that portion of said canal located in San Bernardino County, California, being recorded in Book 19, pages 13 and 14 of Maps, records of said San Bernardino County, including therewith all the branches and laterals thereof, and all flumes, pipe lines, tunnels, siphons, aqueducts, wiers, wier-boxes, gates, valves, penstocks, bridges and buildings or other structures forming a part thereof or used in connection therewith, as well also as all tools, implements, apparatus and appliances of every kind and description and wheresoever the same may be situated now owned and used by the party of the first part in operating or maintaining, repairing or renewing said canal or in supervising, measuring,

distributing or regulating the flow of water into, through or from said canal; together with all rights of way, franchises, easements, licenses, and all other real property and rights in or to real property, held, owned, used or acquired by said parties of the first part for the use and benefit of said canal, or necessary or convenient in the use, operation, maintenance, repair or renewal thereof or in supervising, measuring, distributing or regulating the flow of water into, through or from said canal, excepting, however, from the intent of this deed the property known as the Horse-shoe Lake, now used as depository of surplus waters."

E X H I B I T

"B"

West Riverside Canal Company is authorized  
to collect the following rates:

On or before January 10th of each year. . .	\$5.00 per inch
On or before May 10th of each year . . . .	1.50 per inch
On or before August 10th of each year . . .	1.50 per inch
	<hr/>
Total each Year . . . . .	\$8.00 Per Inch.