

Decision No. _____

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Delivery)	
of Water by Water Utilities)	
during the Emergency created)	Case No. 1075.
by War.)	(On Railroad Commission's
	own Motion).

- Frank Adams, for College of Agriculture, University of California.
- A. E. Chandler and W. A. Johnstone for State Water Commission.
- Harrison and Harrison for Coneland Water Company.
- Chickering and Gregory for Western States Gas and Electric Co.
- W. F. Dubois for Excelsior Mining and Water Company.
- C. P. Cutten for Pacific Gas and Electric Company.
- Henry Ingram and Charles T. Tulloch for Sutter-Butte Canal Co.
- W. G. De Celle for Yolo Water and Power Company.
- George S. Nickerson for North Fork Ditch Company.
- John M. Clayton for Lake Hemet Water Company.
- Fred J. Schleen for Stockton and Mokelumne Canal Company.
- H. A. Jastro for Kern County Land Company.
- H. F. Jackson for Coast Valleys Gas and Electric Company.
- Jos. R. Ryland for San Jose Water Company.
- J. A. Irving and W. A. Caldwell for El Dorado Water Users' Association.
- Mrs. M. Andrews and Mrs. Linderman for Housewives' Committee of San Francisco.

BY THE COMMISSION.

O P I N I O N.

This proceeding was instituted by the Railroad Commission on its own motion to meet an emergency created by the war.

The purpose of the proceeding is set forth in the order instituting the investigation, which order reads as follows:

"WHEREAS, the emergency created by the war in which the United States is now engaged requires increased production of food supplies; and,

"WHEREAS, a number of water utilities have informed the Railroad Commission that they will be willing to deliver sur-
the
plus water for/irrigation of additional lands for the production of food, provided that their rights be not prejudiced; and,

"WHEREAS, this matter has also been drawn to the attention of the Railroad Commission and action thereon requested by Thomas F.

Hunt, Dean of the College of Agriculture of the University of California, after conference with representatives of such water utilities; and,

"WHEREAS, the Railroad Commission is of the opinion that the situation requires an investigation by the Commission on its own motion to the end that an appropriate order or orders may be made by the Commission to meet the war emergency,

"IT IS ORDERED that an investigation into the matter of the delivery of water by water utilities during the emergency created by the war be instituted by the Railroad Commission, on its own motion, and that a public hearing be held on Friday, April 27, 1917, at 10 o'clock, in the office of the Railroad Commission, 833 Market Street, San Francisco, California, before the Railroad Commission en banc, at which time and place all interested parties may appear and be heard."

A public hearing was held in San Francisco on April 27, 1917, before the Commission en banc.

Representatives of water utilities at this hearing stated that their companies are willing to supply their surplus water for the irrigation of additional lands, at reduced rates or free, during the emergency created by the war, provided that their rights are safeguarded.

It appeared further that quite a number of California water utilities have surplus water which can be made available for the irrigation of thousands of acres of additional land.

It appeared that there is need for prompt cooperation between land owners, irrigators and water utilities and that there will be a large demand for labor to take care of and harvest the crops.

It also appeared that a number of water utilities serving water primarily within cities and towns have, during the last few days, filed with the Railroad Commission substantial reductions in their rates for water used in large quantities, so as to encourage kitchen gardens and the cultivation of vacant lots.

The water utilities suggested two legal difficulties as to which they apparently need an order of the Railroad Commission.

The water utilities fear that if they deliver any water for the irrigation of additional lands, such delivery will amount to a dedication of the water to the land so that the water cannot later be withdrawn from the land. While most water utilities having surplus water naturally desire to sell such water for the irrigation of additional lands, there are a number of instances in California in which disputes exist with reference to whether water has been dedicated for use for irrigation and with reference to the area within which it may be thus used. In such instances, the situation may be met by permitting the water utility to require from each irrigator who receives surplus water which is to be used for the purpose of assisting in the present emergency, that he sign a stipulation specifying that he desires the water for the purpose of assisting in the emergency created by the war and that he, his successors and assigns, will never urge that the delivery of the water by the water utility under these circumstances amounts to or is evidence of a dedication or will prejudice the legal rights of the water utility.

The water utilities also fear that the doctrine of discrimination may apply against them so that if they deliver surplus water, free or at reduced rates, for additional irrigation they will be required to deliver water to all customers free or at reduced rates.

In the first place, it may well be doubted whether the doctrine of discrimination can apply to the delivery of water under the circumstances herein set forth, for the reason that the delivery of water under these circumstances is, in effect, the delivery of water to the Government for the purpose of helping to meet a national emergency and hence is not properly comparable to the delivery of water to existing consumers for use on lands already under irrigation. In any event, section 17 of the Public Utilities Act specifically authorizes the Railroad Commission to make its order authorizing deviations from the established rates of water utilities and other classes of public utilities.

The water utilities may reasonably require users of water delivered under the conditions herein set forth to sign applications stating, in each instance, the name of the irrigator, the land which he desires to irrigate, the amount of water which he desires to use and the crops which he intends to plant. Within thirty days after service to any such irrigator is initiated, the water utility shall report to the Railroad Commission the name of the irrigator, the land to be irrigated, the amount of water desired, the crops to be raised and the charge, if any, to be made by the water utility.

Water delivered under the terms of the order herein shall continue to be delivered by the water utility to the extent of its ability as long as the crop for the use of which the water is requested requires irrigation unless discontinuance is authorized by the Commission, but in no event shall the obligation

to deliver such water continue for more than six months after the termination of the war.

If any situation not covered by the order herein arises, the matter may be drawn to the attention of the Railroad Commission and will receive prompt consideration.

O R D E R.

The Railroad Commission having, on its own motion, instituted this investigation into the delivery of water by water utilities during the emergency created by the war, and a public hearing having been held,

IT IS HEREBY ORDERED as follows:

1. All water utilities are hereby authorized to deliver their surplus water, free or at reduced rates, for additional irrigation during the emergency created by the war.
2. Such water utilities, if deemed by them necessary to protect their legal rights, may require the land holders and irrigators desiring to receive water for the purposes and under the conditions specified in the opinion which precedes this order, shall first sign a stipulation agreeing that they, their successors and assigns, will never claim that such delivery of water has amounted to or is evidence of a dedication or that it has in any way prejudiced the legal rights of the water utility.

3. Within thirty days after the delivery of water has been initiated by any water utility ^{to any irrigator} under the authority hereby granted, the water utility shall report to the Railroad Commission the name of the irrigator, the amount of water applied for, the land on which the water is to be used, the crop or crops to be planted and the terms and conditions, including the rate, if any, under which water is to be delivered by the water utility.

Dated at San Francisco, California, this 28th
day of April, 1917.

Max Thelen
W. H. Boardman
Alex Gordon
Edwin O. Edgerton
Francis R. Perkins
Commissioners.