

Decision No. _____

ORIGINAL

Decision No. 5025

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

GEO. H. COMPSTON, et al.,

Complainants,

-vs-

Case No. 995.

RICHFIELD LAND COMPANY and
RICHFIELD WATER COMPANY,

Defendants.

W. A. Fish and Robert D. Kellogg
for complainants.

J. D. Lederman for defendants.

BY THE COMMISSION:

O P I N I O N.

Complaint is made of the service of irrigation water on "Richfield Lands" near Richfield, Tehama County. The most important question is raised by the motion of defendants to dismiss the complaint upon the ground that the Commission has no jurisdiction, because, as it is alleged, neither defendant is a public utility.

Pleadings.

The amended complaint alleges that Richfield Land Company purchased and subdivided a tract of about 4,800 acres of land in Tehama County now known as "Richfield Lands," and constructed a water system to irrigate said

lands; that about 2,400 acres thereof have been sold, of which about 1,100 acres are under irrigation; that there is an inadequate supply of water for even the present acreage, with resultant losses to irrigators, that the available supply is not equitably distributed in proportion to acreage and with great losses through seepage; that the flat rate of \$2.00 per acre provided by contract is improperly applied to lands not actually irrigated, and that defendants threaten to refuse to deliver water until such charge be paid. The prayer is that defendants supply adequate service of the amount of water specified in its contracts, furnish additional water at equitable rates to be fixed and that they be restrained from charging for water for lands not irrigated.

The answer to the amended complaint denies practically all of the material allegations, except the incorporation of defendants, the subdivision and sale of the lands, and that 1100 acres are under irrigation, and contains a motion to dismiss the complaint for lack of jurisdiction.

Hearings were held by Examiner Westover at Tehama and San Francisco.

Prior to the first hearing, defendants made an offer, based on their engineer's report, hereinafter referred to, to the effect that the land company would pay to the water company \$16,000 to fully complete the system and turn over the management to the users. This offer was refused by complainants.

Jurisdictional facts.

The facts as shown by the evidence are as follows:

Defendant, Richfield Land Company, was incorporated in October, 1911, with an authorized capital stock of \$300,000

divided into 3,000 shares of the par value of \$100 each, for the purpose of acquiring and dealing in real estate, stocks and bonds, lending and borrowing money, conducting farming operations, merchandising and doing any and all other things necessary or convenient for the accomplishment of said purposes. It is not expressly authorized by its articles of incorporation to engage in the water business. It subsequently acquired and subdivided a tract of about 4,800 acres of land now known as Richfield Lands, located near Richfield, Tehama County.

Richfield Water Company was incorporated in November, 1911, with a capital stock of \$48,000 divided into 4,800 shares of the par value of \$10 per share for the purpose of engaging in the business of developing, producing and distributing water for domestic, industrial, manufacturing and irrigation purposes and constructing, maintaining and operating the necessary plants, canals and appliances therefor. The articles do not indicate an intent to limit the service of water to stockholders of the company nor to serve water without profit or upon a mutual basis. The articles are similar to those of the usual water company organized to sell water for profit to the general public. However, the by-laws show an intent to limit service to stockholders, and provide in Article XV that "stock shall be issued only to owners of the lands or portions of the lands" described as Richfield Lands; that shares shall be "appurtenant to the lands for which they are issued * * * which lands shall be described in the certificates * * * and shares of stock shall be transferable only with said lands, and pass as appurtenant thereto."

About January, 1912, a contract was made providing that defendant land company drill wells, install pumping plants and construct canals and ditches necessary for irrigation of the so-called "Richfield Lands," and that subsequently the land

company would convey to the water company the necessary sites to be selected by the land company for wells and pumping plants, rights of way for canals and ditches and all water rights owned or controlled by the land company with the plant and system. In consideration therefor, the water company agreed to deliver to the land company one share of its authorized capital stock for each acre of Richfield Lands placed under irrigation, the stock to be delivered from time to time as the irrigation ditches and supply system were extended, and the stock to be delivered by the land company to purchasers of Richfield Lands.

Pursuant to the agreement defendant land company constructed and put into operation a water system and operated the same. On August 3, 1916, it purported to execute and deliver to defendant water company a deed conveying the plant and system to the water company. During all of this time Richfield Land Company, which constructed and owned the water system, was engaged in delivering water for compensation generally within the Richfield Lands. The consumers to whom the water was delivered were not stockholders of the Richfield Land Company. They paid for the water at regular rates, which were charged and collected by the land company in its name. It was the practice of the company in selling lands within the Richfield tract to enter into a contract, under the terms of which the company agreed to sell and deliver to the purchaser a certain number of shares of the capital stock of the Richfield Water Company. The entire plan unquestionably contemplated that ultimately the supply of water should be upon a mutual basis, the system being owned by the water company and not the land company, and the water being delivered to stockholders of the water company. Whatever the ultimate purpose was, however, the evidence clearly shows, that as long as the Richfield Land Company owns and operates this water system it is not doing so as a mutual water

company, but is doing so as a public utility. The evidence clearly establishes the fact that the Richfield Land Company undertook to supply water generally for compensation within that tract known as the "Richfield Lands," and that it dedicated its water generally to the public on the "Richfield Lands," and we find these to be facts. The facts establish the status of the Richfield Land Company as a public utility under the provisions of section 2 of the Public Utilities Act and Chapter 80 of the Statutes of 1913. This being so, there could be no lawful conveyance of its public utility property to the water company without the consent of the Railroad Commission first being had under section 51 of the Public Utilities Act. No application to the Railroad Commission for authority so to transfer this water system has ever been made, and no consent of the Railroad Commission to any such transfer has been granted.

We believe the conclusion to be irresistible, therefore, that the land company is a public utility, and that the purported conveyance of August 3, 1916, is void under the provisions of section 51 of the Public Utilities Act.

We pass now to a consideration of the question of service.

Heretofore defendant has attempted to deliver water on the demand of individual consumers. This caused confusion and delay in the deliveries with the consequent poor service. The ditches are in poor condition due to deferred maintenance, improper care and the presence of gopher holes in the banks. Excessive seepage occurs due to this condition and also in sandy soils through which the ditches extend. Complainants contend that water is not delivered to the highest point of the land and that discrimination exists in the delivery. It is clearly shown that the service is poor; that with the system in its present condition and with the methods of

operation in vogue an adequate supply of water cannot be delivered.

Mr. H. T. Cory, Engineer for defendant, and C. H. Loveland, Assistant Hydraulic Engineer for the Commission substantially agree as to the remedies for this condition. These are - (1) establishment of a rotation schedule of deliveries, (2) lining approximately 2½ miles of canal, (3) construction of two flumes of standard design to replace flumes of unsatisfactory type, and (4) thoroughly cleaning and repairing canals and structures. By making these repairs and improvements and delivering water in a businesslike manner the water supply will be conserved and adequate, and satisfactory service can be rendered.

The amended complaint filed April 9th, 1917, prays for the establishment of a rate schedule. After carefully considering this matter it appears advisable to defer the rate fixing until such time as the service is improved. The Commission would then be enabled to consider all proper costs under full service conditions.

O R D E R

Public hearings having been held in the above entitled proceeding, briefs filed and the matter being now ready for decision.

IT IS HEREBY ORDERED as follows:

(1) Richfield Land Company is hereby ordered to deliver to its consumers an adequate and sufficient quantity of water for irrigation.

(2) Richfield Land Company is hereby directed to file with the Railroad Commission on or before January 30th, 1918, a schedule of rules and regulations providing therein, among other things, for a schedule of deliveries by rotation.

(3) Richfield Land Company is hereby ordered to reconstruct and repair its plant in accordance with the directions contained in the opinion which precedes this order.

(4) Richfield Land Company is hereby ordered to file detailed plans on or before January 30th, 1918, of the improvements and shall proceed with due diligence thereafter to execute these plans.

(5) Richfield Land Company is hereby directed to file with this Commission each month a detailed statement of construction and repairs until their completion.

It is hereby further ordered that the complaint be dismissed as to defendant Richfield Water Company.

Dated at San Francisco, California, this 9th
day of January, 1918.

Max Thelen
H. D. Koveland
W. H. Gordon
Edwin C. Edgerton
Frank R. Deane