

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

STEVINSON WATER USERS' ASSOCIATION,
JOHN D. CARLSON and J. E. MOUNT,
Complainants,

-vs-

JAMES J. STEVINSON, a corporation,
and THE EAST SIDE CANAL AND IRRIGATION COMPANY, a corporation,
Defendants.

Case No. 855.

L. L. Dennett, for complainants,
James F. Peck, for defendants.

BY THE COMMISSION.

O P I N I O N

The Commission on March 31st, 1917, made its order in this proceeding requiring the East Side Canal and Irrigation Company, a corporation, hereinafter referred to as defendant, to make certain improvements in its irrigation system. These improvements in the language of the order were to be as follows:

"IT IS HEREBY FURTHER ORDERED that The East Side Canal and Irrigation Company be, and the same is hereby directed to remove, within sixty (60) days from the date of this order, all sand and other material obstructing the company's main canal between the intake at the San Joaquin River and the slough known as Sand Slough.

"IT IS HEREBY FURTHER ORDERED that The East Side Canal and Irrigation Company shall make to this Commission every fifteen (15) days until the fulfillment of this order, verified reports in detail of the progress of the work herein ordered to be performed."

Throughout the irrigation season of 1917, repeated complaints were informally received by the Commission to the

effect that service being rendered by defendants was inadequate due to their failure to obey that portion of the Commission's order hereinabove set forth. Whereupon, the Commission did on the 7th day of December, 1917, issue its order that a further hearing in this proceeding be had before Examiner Encell at Merced, California, on Friday, December 14th, 1917, at which time and place The East Side Canal and Irrigation Company should appear and show cause if any it had why the order heretofore made in this proceeding on March 31, 1917, had not been fully carried out and why the Railroad Commission should not proceed to make such further order as to it may seem proper to the end that such order may be fully carried out and adequate service rendered by said company to its consumers.

A further hearing was held in this proceeding in accordance with said Order to Show Cause. The position taken by defendant at this hearing was that the things required by the Commission's order to be done had been done by the water flowing through the canal and discharging at a structure known as Sand Slough Waste Gates. One Cannon, an employee of defendant and witness in this proceeding, testified that in his opinion the water sluicing through the canal did actually remove the sand from the canal bed, but before the water receded, replaced it with an equal amount of sand. Counsel for defendant furthermore took the position that in order to effectively remove the cause of the choking up of their main canal with sand it would be necessary to dredge the bed of a portion of the San Joaquin River for a distance of approximately seven to nine miles above the head gate.

The opinion of the Commission with respect to the contention of defendant in relation to this ditch was fully set

opinion

forth in the original/ ~~order~~ herein. A portion of that opinion is as follows:-

"The East Side Company introduced evidence to the effect that its canal was large enough to carry several times as much water as the company could procure, and that, accordingly, it could carry all the water obtainable, even though it might be badly filled with weeds and tules. The evidence showed unmistakably, however, that the deposit of sand above referred to materially reduced the amount of water which flowed into the ditch from the river at the time of the year when most needed, and there is no question in our minds but that if the canal be cleared of this sand, and kept clear, the water users of Stevinson Colony would receive a more adequate supply. Under existing conditions, the evidence showed, there was often a shortage of water, especially during dry seasons.

"There was a distinct conflict of evidence as to whether the canal would fill again immediately if cleaned out by mechanical means, the East Side Company's witnesses contending that it was impracticable to clear the same by mechanical means, and that if it were so cleared, it would fill up again to its present height within ten days or two weeks. Complainants' witnesses offered contrary evidence and Milo E. Brinkley, one of the Commission's engineers, who had made an examination of the canal, testified that in his opinion it was entirely feasible to clean out the canal by means of a drag scraper, and that if the canal were so cleaned out, it would not fill up in a single season, and, accordingly, the water supply available for the East Side Company's consumers would be materially improved.

"Considering all the evidence, we find that the East Side Company's efforts to clean out the sand by running the flood waters through the canal two miles to Sand Slough are decidedly uncertain and inadequate and have not kept the canal clear in the past; and we are of the opinion that the East Side Company's water users should not be required to depend upon such a questionable method of removing this obstruction, but that the East Side Company should be required to remove the sand by means of a drag scraper or some other suitable mechanical process within sixty days from the date of this order. There is no means of determining with certainty whether or not sand will again fill up the canal as soon after being removed as to render its removal in the manner suggested impracticable, except by actually removing the sand and observing the results; and in view of the conflict of testimony and the fact that the East Side Company's method of dealing with this problem has not been satisfactory or adequate, and as the cost of the removal of the sand, as above suggested, is by no means prohibitive, we feel that the following order will impose no undue burden upon the East Side Company."

No testimony of a different character than that referred to in the portion of the opinion hereinabove quoted was introduced at the further hearing. An examination of the original opinion in this case makes it clear that the Commission was not of the opinion that the sand could be sluiced out of the main canal, and the opinion furthermore makes it clear that in the opinion of the Commission the canal should be kept clear of sand. The Commission has not heretofore insisted upon the use of mechanical appliances for the reason that it realized the great difficulty with which equipment of any sort could be obtained during the preceding year. The use of teams in removing the same would require the water to be turned from the canal when it was needed for irrigation of crops. The testimony shows, however, that subsequent to about September first, there has been no water flowing in the canal in any great amount, and that the sand could therefore during a period from September first, to about March first, be removed by teams without interfering with the use of the canal for the irrigation of land. It is the duty of the defendant to serve complainants herein with an adequate supply of water. In our opinion this can be done only by keeping defendant's main canal clear of sand, weeds and tules. It is the plain purpose of the order hereinafter set forth to require defendant to remove from its main canal and to keep clear therefrom all sand, weeds and tules. In view of the finding in the previous decision, that the removal of the sand from the canal bed will appreciably increase the water available for irrigation, and from the fact that it will thereby aid in a marked degree to the production of crops during the present National Emergency, we believe that complainants herein and the defendant company should co-operate to make possible the irrigation of as extensive an area as possible. Any information which can be given by complainants to the company which will help the defendant to determine where teams, men and equipment can be had, should be given to the company.

O R D E R

IT IS HEREBY ORDERED that The East Side Canal and Irrigation Company proceed forthwith to remove the accumulations of sand and all foreign material which now obstructs or anyway lessens the capacity of said company's main canal between its intake on the San Joaquin River and that point on its main canal known as Sand Slough Waste Gate.

IT IS HEREBY FURTHER ORDERED that when The East Side Canal and Irrigation Company, a corporation, shall have removed the sand and other material from the company's main canal between its intake on the San Joaquin River and Sand Slough Waste Gates as hereinabove ordered, that the said East Side Canal and Irrigation Company shall keep said main canal clear at any and all times from sand and any other foreign material between the company's main canal at its intake on the San Joaquin River and the point on said main canal known as Sand Slough Waste Gate.

IT IS HEREBY ORDERED that The East Side Canal and Irrigation company file a statement with this Commission within 15 days from the date of the order, setting forth therein the means ~~by~~ which it intends to employ to carry out the above provision of the within order, and that The East Side Canal and Irrigation Company file with this Commission its verified report at intervals not to exceed fifteen days from February 1st, 1918, which reports shall set forth the work done by

defendant in compliance with the within order, until
all of said improvements hereinabove directed to be made
shall be completed, the date of which completion shall
not be more than 90 days from the date of this order.

DATED at San Francisco, California, this 4th
day of February, 1918.

Max Thelen

H. S. Donald

Wm. Gordon

Frank Rubin
Commissioners