

ORIGINAL

Decision No. 5108

ES

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

\* \* \*

In the Matter of the application of (1) SANTA CLARA WATER & IRRIGATION COMPANY and FARMERS DITCH IRRIGATING COMPANY to sell to FARMERS IRRIGATION COMPANY and RIVER STREET DITCH COMPANY the so-called "Farmers Ditch and Water System", and the approval of an agreement adjusting rights in and to the waters of the Santa Clara River; (2) RIVER STREET DITCH COMPANY to issue \$10,000.00 par value of stock; (3) FARMERS IRRIGATION COMPANY to issue \$59,000.00 par value of stock, plus such an additional amount as the Railroad Commission may allow to pay incorporation expenses.

Application Number 3246

George E. Farrand and L.W. Andrews for Farmers Irrigation Company, Farmers Ditch Irrigating Company and River Street Ditch Company, applicants. W.H. Barnes and Hugh L. Weldon, for Santa Clara Water and Irrigating Company, applicant. Earl E. Moss for Vineyard Ditch Company, protestant.

BY THE COMMISSION.

OPINION.

In this application Farmers Irrigation Company, a new corporation, asks authority to buy the so-called Farmers Ditch and Water Rights, located in Ventura County, from Santa Clara Water and Irrigating Company and Farmers Ditch Irrigating Company. The two latter companies join in the application. A description of the property is found in "Exhibit 3" attached to the petition herein.

In order to pay for the aforesaid properties Farmers Irrigation Company desires to issue and sell \$59,000.00 of stock at par.

It also asks for authority to issue stock for organization and legal expenses in an amount to be determined by the Commission.

River Street Ditch Company asks for authority to issue and sell \$10,000.00 of stock at par, the proceeds to be paid to Santa Clara Water and Irrigating Company in return for certain rights and privileges which it expects to gain through the transfer.

The Commission is also asked to approve certain contracts and agreements between the above mentioned parties as hereinafter more fully set forth.

A hearing in this matter was held before Examiner Encell at Ventura on October 23, 1917. At the hearing, Earl E. Moss appeared as representative of the majority stockholder of Vineyard Ditch Company and asked leave and was granted permission to file subsequent to the hearing a statement as to the position of his client. Mr. Moss has recently advised the Commission that he does not desire to avail himself of this privilege.

The primary purpose of this application appears to be to settle certain questions long in dispute and litigation between the parties hereto. For an understanding of the situation, it seems necessary to describe briefly the location of the property proposed to be transferred and the relations existing between the parties directly or indirectly interested in said property.

The Santa Clara River flows across Ventura County in a general westerly direction. Near the city of Santa Paula in said county four ditches divert water for irrigation purposes. These ditches are:

(a).- Farmers Ditch upon north side of River, intake approximately 1-3/4 miles above Santa Paula, owned by Santa Clara Water and Irrigating Company. Certain rights therein are claimed by Farmers Ditch Irrigating Company.

(b).-- River Street Ditch upon north side of river; intake just above Santa Paula, owned by River Street Ditch Company.

(c).--Santa Clara Ditch, on south side of river; intake approximately 8 miles below Farmers Ditch, owned by Santa Clara Water and Irrigating Company.

(d).-- Vineyard Ditch, on south side of river; intake approximately 2 miles below Santa Clara Ditch, owned by Vineyard Ditch Company.

The Farmers Ditch first described, together with its appurtenant water rights, is the property now sought to be transferred. This ditch has passed through many changes of ownership and a detailed history of these changes will be found in Decision Number 1452, (Vol. 4, Opinions and Orders of the Railroad Commission of California, p. 810).

Santa Clara Water and Irrigating Company, the present owner of this ditch and water system, hereinafter sometimes referred to as Santa Clara Company, was incorporated on January 5, 1871, with an authorized capital stock issue of \$50,000.00 which was subsequently increased to \$250,000.00. Its annual report to this Commission for the year ending December 31, 1916 shows stock actually issued amounting to \$48,250.00. The company has an outstanding bonded indebtedness of \$100,000.00 of 6 per cent first mortgage gold bonds, dated February 1, 1906 and maturing February 1, 1926. These bonds are a first lien upon all the real property of the company including Farmers Ditch. In addition to operating the Farmers Ditch, the Santa Clara Company also operates the Santa Clara ditch located on the south side of the river. At the present time, irrigating waters for Vineyard Ditch Company are diverted by Santa Clara Company through its Santa Clara ditch under a temporary arrangement between the two companies. All of the bondholders of Santa Clara Company,

as well as the Metropolitan Bank and Trust Company of Los Angeles, trustee under the mortgage securing the payment of the bonds, have agreed to the sale and transfer of the so-called Farmers Ditch and appurtenant water rights. If the application is granted, Santa Clara Company proposes to retire \$50,000.00 of its bonded indebtedness. The balance of the funds received from the sale of the property will be applied to the reduction of note indebtedness.

Farmers Ditch Irrigating Company was incorporated on June 16, 1898, with an authorized capital stock of \$100,000.00, of which \$35,000.00 par value is outstanding and is owned by Limoneira Company, the latter corporation being engaged in farming and growing of oranges, lemons, walnuts and beans.

Farmers Ditch Irrigating Company was at one time the sole owner of the Farmers Ditch and Water Rights. On September 21, 1904, it transferred the ditch and water rights to one Leopoldo Schiappa Pietra, who on April 15, 1905, transferred his title to Santa Clara Company for a consideration of \$33,995.00. At the time Farmers Ditch Irrigating Company transferred the property to Schiappa Pietra it reserved 200 inches of water which it had undertaken to deliver for an indefinite period to certain lands then owned by a Mrs. Ramsey and now owned by Limoneira Company. This reservation also included the necessary right of way and easement for the transportation of said water. The same reservation appears in the deed from Schiappa Pietra to Santa Clara Company. Schiappa Pietra, and Santa Clara Company as his successor, also assumed to contract with Thermal Belt Water Company, a mutual water company, agreeing to furnish for a period of forty years 200 inches of water at a yearly rental of \$800.00.

In July, 1912, Santa Clara Company filed its application Number 136 with this Commission and asked authority to increase its rates to a uniform basis of 25 cents per day inch. At that time

it was delivering 200 inches of water to Thermal Belt Water Company at a yearly rental of \$800.00 and 200 inches of water to Limoneira Company without remuneration, under the contracts or reservations above referred to.

The Commission in Decision Number 1452 fixed the rates to be charged by Santa Clara Company as follows:

For water furnished Thermal Belt Water Company, ..\$2,000 per year;  
For water furnished Limoneira Company,..... 2,000 per year;  
For water furnished all other consumers,..... 20¢ per miners  
day inch.

After the making of the Commission's order, Thermal Belt Water Company, the Limoneira Company and Farmers Ditch Irrigating Company applied to the Supreme Court for a writ of review, which was granted. On January 23, 1917, the court affirmed the order of the Commission and on February 19, 1917, denied the application of petitioners for a rehearing.

Thereafter Thermal Belt Water Company declined to receive any water from Santa Clara Company and a contention then arose between it and Santa Clara Company as to whether Thermal Belt Water Company was obligated to pay for said water at the rate fixed by the Commission whether it took any water or not, it being the contention of Santa Clara Company that the order of the Commission with reference to the Thermal Belt Water Company was merely a modification of the lease to the extent that it modified the rate to be charged. Thermal Belt Water Company, on the other hand, contended that the order of the Commission invalidated the whole contract, made it a consumer merely and that if it did not take any water it should not pay the rate. Farmers Ditch Irrigating Company for its part contended that the order of the Commission and the order of the Supreme Court dealt merely with the question of the rate and that the Commission had no authority

to determine the title to the 200 inches of water. In answer to this Santa Clara Company contended that the Commission had complete jurisdiction not merely over rates, but also to try title, that it took jurisdiction, heard testimony and did determine that the said deed to Schiappa Pietra in so far as it attempted to reserve 200 inches of water and the necessary rights of way was such as to convey title absolutely to Schiappa Pietra and that having acquired title by his deed, he conveyed title to the Santa Clara Company and that the title to the Farmers ditch and all rights appurtenant thereto have vested and now vest in Santa Clara Company. Farmers Ditch Irrigating Company argues that this conclusion does not follow from the decision of the Commission nor from the decision of the Supreme Court but that on the contrary there has been at all times open to Farmers Ditch Irrigating Company its right to determine the title to the 200 inches of water in a court which would have jurisdiction to adjudicate questions of title to real property and states that it has considered the matter of a rescission of its contracts between it and Santa Clara Company upon the ground that it was understood that the effect of the deed was to reserve a part and to convey a part, and that if now it be held that that is not the true legal effect of these instruments, the parties were laboring under a common mistake of law, and further, that there was a failure of consideration moving from the purchaser to the Farmers Ditch Irrigating Company.

All of these issues have developed claims and counter-claims between the several parties, and it is for the purpose of attempting to bring about a complete settlement thereof without further litigation that the present application is made to this Commission.

As a result of negotiations between Mr. C.C. Teague, manager of the Limoneira Company, the Santa Clara Company and Farmers Ditch Irrigating Company, the Santa Clara Company has agreed to sell

its interest in the Farmers ditch and rights appurtenant thereto to C.C. Teague or his nominee for \$61,500.00; the Farmers Ditch Irrigating Company has agreed to sell its rights and interests under the reservation referred to in the same property to C.C. Teague or his nominee for \$7,500.00.

On or about July 23, 1917, Mr. C.C. Teague caused to be organized the Farmers Irrigation Company having an authorized capital stock of \$100,000.00 divided into 1,000 shares of the par value of \$100.00 each. He has selected the Farmers Irrigation Company as his nominee to finance the transaction referred to in the foregoing paragraph. It is proposed that the Farmers Irrigation Company issue and sell to Limoneira Company \$59,000.00 of stock at par for cash; \$51,500.00 of the proceeds to be paid to the Santa Clara Company for its properties and \$7,500.00 to be paid to Farmers Ditch Irrigating Company. It is further proposed that the River Street Ditch Company, owner of the River Street ditch, issue to the Thermal Belt Water Company, a mutual company, at par for cash \$10,000.00 of stock and use the proceeds to pay the balance due on the purchase of the Santa Clara Company properties by Farmers Irrigation Company.

River Street Ditch Company was incorporated on or about December 15, 1916, with an authorized capital stock of \$20,000.00 divided into 2,000 shares of the par value of \$100.00 per share.

By Decision Number 4241, dated April 11, 1917, it was authorized to issue and sell \$5,500.00 par value of stock to purchase property and pay for organization expenses. Ten-elevenths of the outstanding stock of the River Street Ditch Company is owned by Thermal Belt Water Company, which in turn is controlled by the Limoneira Company. As said, the River Street Ditch Company now desires authority to issue and sell at par to Thermal Belt Water Company additional stock in the amount of \$10,000.00. It desires to use the proceeds to pay in part for properties to be acquired by Farmers Irrigation

Company from Santa Clara Company. Mr. C. C. Teague justifies this payment upon the ground that if this application is granted, the River Street Ditch in common with the Farmers Ditch will be entitled to one-half of the water flowing in the Santa Clara River to which Santa Clara Water & Irrigating Company and River Street Ditch Company are now entitled. This he holds is an important consideration for the reason that the rights of the River Street Ditch Company have never been adjudicated and that the intake of the River Street Ditch Company is below that of the Farmers Ditch. He also calls the Commission's attention to the fact that if this application is granted there will be vested in the Limoneira Company the ultimate control of two public service corporations - Farmers Irrigation Company and River Street Ditch Company. The testimony shows that it is the intention of the two companies to make a joint diversion of the waters in the Santa Clara River to which they are entitled and by such joint diversion and joint operation reduce the operating expenses.

Under the circumstances of this case, we believe that the River Street Ditch Company may be permitted to issue \$10,000.00 of stock for the purposes indicated, with the understanding that the issue of this stock will never be urged upon the Railroad Commission or any other public regulatory body as a measure of value for the properties of River Street Ditch Company acquired through the issue of stock.

The parties to this application have entered into an agreement (Exhibit No. 4, attached to the petition) under the terms of which they will divide the waters of the Santa Clara River to which they are entitled. Mr. George E. Farrand, counsel for Farmers Irrigation Company testified that the parties hereto were not attempting to divide all the waters of the River but only such to which they are entitled. In general the agreement provides that the water shall be equally divided between



Farmers Irrigation Company and River Street Ditch Company on the one hand, and Santa Clara Water & Irrigating Company on the other hand.

The latter company agrees to protect the two former companies from any claims to said waters by Vineyard Ditch Company.

Mr. George C. Powers, engineer for and president of Santa Clara Water & Irrigating Company testified that in his opinion the Santa Clara Company will encounter no difficulty in satisfying the demands of the Vineyard Ditch Company and that he knew of no reason why this deal could not be consummated or that it will in any way prejudice public service. From data submitted by applicants it appears that the proposed division of the water as agreed upon is reasonable.

The Farmers Irrigation Company and River Street Ditch Company asked for authority to make a joint diversion of the waters to which they are entitled whenever they deem a joint diversion desirable. Such diversion should result in a material reduction of operating expenses. It is of course understood that the joint diversion will in no wise interfere with proper service.

Mr. George C. Powers, president of Santa Clara Water & Irrigating Company appraised the properties to be sold and transferred at \$136,190.10 as of October 1, 1917. He allows \$67,819.00 for rights of way and floatage rights ; \$43,290.10 for structures and \$25,000.00 for water rights. Mr. James Armstrong assistant engineer of the Railroad Commission appraised the structures at \$32,930.60 and the rights of way and floatage rights - at \$7,006.16, total \$39,936.76. Mr. Armstrong made no attempt to ascertain the value of the water rights to be acquired by Farmers Irrigation Company. He endeavored to find a historical reproduction cost less depreciation of the rights of way and structures. Mr. Powers, on the other hand, in appraising the property

used present day prices. This difference in method accounts primarily for the difference in the appraisal of the rights of way and structures. We believe that the property to be sold and transferred is reasonably worth the amount of stock to be issued in exchange therefor and that therefore it is unnecessary for the Commission to adopt either the appraisal of Mr. Powers or that of Mr. Armstrong.

In addition to issuing \$59,000.00 of stock to acquire properties, Farmers Irrigation Company asks authority to issue stock to pay organization expenses. These expenses are reported at \$1,591.01. To pay the same we believe that Farmers Irrigation Company should be permitted to issue at par \$1,690.00 of its common capital stock.

#### O R D E R

SANTA CLARA WATER & IRRIGATING COMPANY and FARMERS DITCH IRRIGATING COMPANY having applied to the Railroad Commission to sell to FARMERS IRRIGATION COMPANY the so-called FARMERS DITCH and WATER SYSTEM and FARMERS IRRIGATION COMPANY and RIVER STREET DITCH COMPANY having applied to the Railroad Commission for authority to issue stock and said companies having asked the Railroad Commission to approve a certain agreement to which reference has been made in the foregoing Opinion;

And a public hearing having been held;

And it appearing to the Railroad Commission that this application should be granted and that the money, property or labor to be acquired through the issue of the stock herein authorized is reasonably required for the purposes specified in the Order and that the expenditures for said purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED as follows:-

1.-Santa Clara Water & Irrigating Company is hereby authorized to sell and transfer to Farmers Irrigation Company for \$61,500.00, the so-called Farmers Ditch and Water System described in Exhibit "3" attached to the petition herein.

2.-Farmers Ditch Irrigating Company is hereby authorized to sell its interest in said Farmers Ditch and Water System to Farmers Irrigation Company for \$7,500.00.

3.-Farmers Irrigation Company is hereby authorized to issue at not less than par value <sup>for</sup> cash \$60,600.00 of stock and use the proceeds for the following purposes:-

a.-The sum of \$51,500.00 to pay in part for the properties to be acquired from Santa Clara Water & Irrigating Company.

b.-The sum of \$7,500.00 to pay for the properties to be acquired from Farmers Ditch Irrigating Company.

c.-The sum of \$1,600.00 to pay for organization expenses.

4.-River Street Ditch Company is hereby authorized to issue and sell at not less than par value <sup>for</sup> cash \$10,000.00 of stock and use the proceeds to pay in part for the properties to be acquired by Farmers Irrigation Company from Santa Clara Water & Irrigating Company.

5.-Santa Clara Water & Irrigating Company, Farmers Irrigation Company and River Street Ditch Company are hereby authorized to enter into an agreement substantially

in the same form as the agreement attached to the petition herein and marked Exhibit "4", said agreement relating to the division of the waters in the Santa Clara River to which said companies are entitled.

6.-Farmers Irrigation Company and River Street Ditch Company are hereby authorized to make joint diversion or diversions of a part or all of the waters of Santa Clara River to which said companies respectively are entitled through one or more ditches and to make joint use of a part or all of such ditch or ditches and under such arrangements as said companies may agree upon, provided that such joint diversion or diversions shall in nowise interfere with rendering proper service.

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

A.-The price which Farmers Irrigation Company and River Street Ditch Company are paying for the properties which are to be conveyed to them shall never be urged before the Railroad Commission or any other public authority as representing for rate-making or for any other purpose the fair value of said properties.

B.-Within thirty days after the date of the Order herein or after the execution and delivery of the instruments of conveyance herein provided for, Farmers Irrigation Company shall file with the Railroad Commission a certified copy of each and every deed of conveyance.

C.-Farmers Irrigation Company and River Street Ditch Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock herein authorized to be

issued, and on or before the twenty-fifth day of each month make verified reports to the Railroad Commission in accordance with the Railroad Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

D.-The authority herein given to convey property and issue stock shall apply only to such instruments of conveyance as have been executed and delivered and to such stock as shall have been issued on or before June 30, 1918.

Dated at San Francisco, California, this 5<sup>th</sup>  
<sup>February</sup>  
day of ~~January~~, 1918.

Max Thelen

H. S. Loveland

W. J. Gordon

Frank R. Derby

Commissioners.