

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

ORIGINAL

Decision No. 5163

In the Matter of the Application
of FAIR OAKS IRRIGATION DISTRICT
to fix the compensation to be paid
for the water distributing system owned
by O. A. ROBERTSON in Fair Oaks.

Application No. 2944

Frank E. Atkinson of Elliott
& Atkinson, for Fair Oaks Irrigation
District.

White, Miller, Needham and Harber,
for O. A. Robertson, Fair Oaks Water
Service.

BY THE COMMISSION.

O P I N I O N

This is a proceeding to fix and determine the
just compensation to be paid by Fair Oaks Irrigation District
for a certain water distributing system which is now being
operated in the County of Sacramento, State of California
under the name of O. A. Robertson Fair Oaks Water Service.

Following is a description of the property in-
volved herein which description was submitted by the counsel
for Fair Oaks Irrigation District and utility.

All that certain water distributing
system, together with all pipes, main line
and laterals, valves, water connections, taps,
and meters of every kind, nature and descrip-
tion; together with all materials, equipment,
tools, and personal property, water rights,
water contracts, privileges and other property
of every kind, nature and description belonging
thereto and used in connection with said water
pipe system; together with all rights of way
acquired and belonging to said system now being
situated and located in Fair Oaks Tract, Fair
Oaks Townsite, Fair Oaks Addition No. One and else-
where in the County of Sacramento, California.

All of which property is more particularly described in the Decree of Foreclosure, rendered by the Superior Court of the County of Sacramento, State of California, and dated the 20th day of October, 1916, in the action entitled, "Sacramento Valley Bank & Trust Company, new trustee, vs. American Irrigation Company, et al", suit No. 18534, and also described in that certain Commissioner's Deed, dated December 11th, 1916, made by F. J. Holland, commissioner, to O. A. Robertson and recorded January 25th, 1917, in volume 461 of deeds, at page 204 of the records of Sacramento County.

Hearings were held at Sacramento on September 21, and 22nd, 1917 at which hearings testimony was introduced on behalf of the Irrigation District, the Utility, and the Commission's Engineers for the purpose of establishing the value of the distributing system sought to be purchased. A further hearing was held in San Francisco at which time certain differences as to the amount of property involved in the various laterals as set forth by the appraisal of the Commission's Engineers and the appraisal of the Engineers for the utility, were explained and the correct amount set forth. At that time counsel for both parties presented their arguments as to what they considered a just and reasonable compensation for the property involved.

O. A. Robertson Fair Oaks Water Service is engaged in supplying water for irrigation and domestic purposes to the territory in and around Fair Oaks, Sacramento County, California. The present water system now owned by the O. A. Robertson Fair Oaks Water Service is a development of a water system started in 1896 by the Howard-Wilson Publishing Company of Chicago, which company was the owner of practically all of the lands which are within the boundaries of Fair Oaks Irrigation District. As a colonization project the Howard-Wilson Publishing Company owned both the land in-

involved and the water for the irrigation of said land. Certain testimony was offered in this proceeding which tended to show that the purchasers of the land from the Howard-Wilson Publishing Company not only paid a price which included a sufficient sum to pay for the irrigation system, its pipe lines and laterals, but also that there had been a direct representation on the part of the Howard-Wilson Company that this water system and its water rights were the property of the colonists. This line of testimony was introduced for the purpose of showing an equity on the part of the present land owners in the system. No claim is made that the owners of the land have any legal title in the utility property. In fact the application of the Irrigation District recites that the water distributing system is now owned by O. A. Robertson.

It is unnecessary to recite the history of this Irrigation System in any great detail. It is sufficient to say that from 1896 down to 1916 the property and the Irrigation thereof were handled through various sales agents and successors of Howard-Wilson Company and that finally for a non-payment of the interest on certain outstanding bonds for which the distributing system stood as security, O. A. Robertson representing certain bondholders purchased this system in 1916, at a sale on foreclosure and has ever since and now is the owner thereof. The cost of this system to O. A. Robertson at the foreclosure sale was \$37,571.47. This purchase price was contributed by the owners of \$52,000.00 worth of bonds. Testimony was adduced by counsel for the Irrigation District showing this original cost to the present owners which fact must be given some consideration in determining what

would constitute a just compensation for that property, but serious consideration cannot be given to the proposition that the price paid for property at a forced sale should determine the value of that property or the just compensation to be paid to the owner thereof.

In addition to the testimony offered by the Irrigation District upon the question of equitable matters to be taken into consideration and the original cost to the utility, an appraisal was presented by Stephen E. Kieffer an Engineer called as witness for the District. This inventory was based upon the original cost as far as possible and where these costs were unavailable a reproduction cost new was the basis for the appraisal. In addition to the valuation upon these theories, Mr. Kieffer also testified that in his opinion the actual value of the system to the Fair Oaks Irrigation District was less than the appraised value for the reason that some of the pipes of the present system must be removed and replaced in order that the property bought may render efficient service to the Irrigation District. This so called actual value to the Irrigation District was fixed by him at \$60,993.00.

Appraisals of the property were also presented at the hearings by Geo. S. Nickerson and Albert Givan, engineers, representing O. A. Robertson and by Milo H. Brinkley, one of the Commission's Hydraulic Engineers. A summary of these appraisals is as follows:

	<u>Reproduction Cost</u>	<u>Reproduction Cost Less Depreciation</u>
Nickerson	\$140,645.00	\$89,329.00
Kieffer	-	72,477.00
Commission's Engineers	127,890.00	73,484.00

In a subsequent estimate, corrections were made to Nickerson's estimate, raising his figure for Reproduction Cost less Depreciation to \$90,673.00. Corrections to Kieffer's estimate made his figure \$73,293.00. Nickerson included in his appraisal an estimate for right of way, amounting to \$4,551.00, no estimate having been made for right of way by the other engineers. This right of way estimate not only included land through private property, but also in the public highway, it being contended that values for right of way in the highway should be included, since the property owners owned to the center of the highway, the public highway being in the nature of an easement. The right of the company to lay pipe lines on the property and on the highway is an easement and not ownership in fee. The owner of the land continues to use the surface of the soil as before. It appears to be inequitable to base the value of such right of way on the value of adjoining lands, since the company does not own the surface of the soil which determines the value of the land for agricultural use and aside from evidence on the question of value for agricultural purposes no evidence was presented which may be used to determine the value of these rights of way. We will, however, give some consideration to this right which has some value in determining a just and reasonable compensation to be paid for the property herein involved.

In addition to the difference on the question of rights of way a difference has arisen between Mr. Nickerson and Mr. Brinkley's figures in that Mr. Nickerson allowed an over-head of 15% as against 13% allowed by Mr. Brinkley and also in that Mr. Nickerson has allowed a longer life to the main pipe of the system and has included a larger number of fittings than has Mr. Brinkley. The inclusion of these fittings

in Mr. Nickerson's report was due to the revised inventory made by agents of the utility with which Mr. Brinkley had not had access. In addition to the estimate of Mr. Nickerson, he included a list of personal property which amounted to \$1,017.00 to which amount was added the sum of \$541.00 for pipe line. In the order accompanying this opinion we shall base our findings on the value of the system exclusive of personal property. By personal property we mean the property owned by the utility which is not used directly for conveying water, which consists of stock on hand, such as pipe, meters, valves, fittings and accessories and miscellaneous tools. This is done at the suggestion of the parties because there will be prior to the taking over of the property by the Irrigation District certain additions or deductions from the list of personal property as presented by the Engineer for the Utility.

The annual reports of this utility show that no net earnings have resulted from its operation and before the rate increase granted to it in 1916, the operating expenses were greater than the revenue. During 1916 all of the earnings above operating expenses were to go back into the system in accordance with the order of the Commission in that rate case. Notwithstanding various additions and betterments to the property, the depreciation has been such that the valuation of the property by the Commission's Engineers in 1917 was less than the one in 1916. The utility has always been and now is a liability rather than an asset upon its owners when viewed from an earning standpoint. In the decision of this Commission in the application of the City of Los Angeles to determine the compensation to be paid to Southern California Edison Company for its electric distributing system, the Commission says:

"As we read the authorities, they show conclusively that although the capital-

ation of net earnings is improper in the determination of the just compensation to be paid, Courts and Commissions which are charged with the duty of fixing and determining the just compensation to be paid in eminent domain proceedings, must consider the net earnings of the property however taken and must give to this factor the weight to which they may find it fairly to be entitled."

After quoting from various authorities they further say:

"We conclude from the foregoing authorities that while it is not proper in this proceeding to capitalize the net earnings of the Edison Company from the property to be taken, it is nevertheless our duty to give consideration to the Company's earnings from such property and to give to this element the weight to which in our opinion after a careful review of the evidence, it is entitled."

In accordance with that decision some consideration will be given to the net earnings of the utility in this case as will be given to rights of way and to the cost of the physical structures. This property, however, is to be acquired as a whole and the finding on the question of value in this proceeding must be a finding of the value of the properties and rights as an unit. The necessity of making this single ultimate finding of value is not only prescribed by Section 47 of the Public Utilities Act, but is also in accordance with the decisions elsewhere. As was said in the Case of Brunswick and Topsham Water District v. Maine Water Company, 99 Me. 377.

"There is only one value. It is the value of the structure as being used."

As was said in a similar situation by this Commission in the matter of the Application of Marin Municipal Water District

for an order of the Railroad Commission determining the just compensation to be paid to Marin Water and Power Company for its lands, property and rights.

"It must be perfectly evident, however, that property such as that owned by the water company in this proceeding does not have a market value, in the usual sense in which those words are used. It is not bought and sold on the market like a bushel of wheat, but is a property devoted to a particular use and subject only to occasional sale".

With all these considerations in mind the Commission must now find what in its opinion is a just and reasonable compensation to be paid for the property.

F I N D I N G S.

FAIR OAKS IRRIGATION DISTRICT, an irrigation system, incorporated under the laws of the State of California, having filed with the Railroad Commission a petition setting forth the intention of said irrigation district to acquire under eminent domain proceedings or otherwise the properties of the O. A. Robertson Water Service, a public utility operating within the boundaries of said irrigation district and asking the Railroad Commission to fix and determine a just compensation to be paid to O. A. Robertson as owner of said O. A. Robertson Water Service thereof.

A public hearing having been held and Fair Oaks Irrigation District and O. A. Robertson having been accorded full opportunity to present such evidence as they may desire to submit and each of said parties having presented such evidence and the Railroad Commission of the State of California being fully

apprised in the premises.

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT
that the just compensation to be paid by Fair Oaks Irrigation
District to O. A. Robertson for all the said company's water
distributing system as aforesaid, is the sum of \$62,500.00.
Said property for which said compensation is hereby fixed
as just and reasonable is described in the opinion preceding
this finding and excepting therefrom the personal property as
herein above set forth.

By order of the Railroad Commission.

Dated at San Francisco, California, this 27th
day of February, 1918.

Max Shuler
H. B. Howard
Alfred Gordon
Edwin O. Edgerton
Frank R. Doherty
Commissioners.