

pany. By consent of all parties the proceedings were combined for hearing and decision.

Nature of Proceedings.

The complaint in Case No. 907 alleges in effect (1) that complainants, thirty-five in number, are users of water for the irrigation of their lands from the canals of the Sutter Butte Canal Company; (2) that defendant is engaged in the business of selling water for irrigation to the residents of Sutter and Butte Counties, California; (3) that the rates charged by defendant for water are unjust, unreasonable and discriminatory; (4) that defendant, as a condition precedent to the delivery of water, compels intending consumers to purchase a so-called "water right" obligating themselves thereby to pay \$10.00 per acre before service is commenced and for water in seasons when none is delivered; (5) that the rules, regulations and practices of defendant are discriminatory and unjust. Complainants ask that investigations be made, hearings had and just, reasonable and non-discriminatory rates, rules and regulations established.

Defendant, in its answer, denies all the material allegations of complainants and alleges that its rate schedule does not produce a revenue sufficient to yield it the expenses of maintenance, operation, depreciation and a fair return on the value of its property.

Complainant in Case No. 1062 alleges in effect (1) that he is the owner of 154 acres of land in the so-called Richvale Colonies, Butte County, irrigated with water from defendant's irrigation system; (2) that in 1914, defendant refused to deliver water for irrigation to complainant except upon condition that complainant execute a so-called water right contract; (3) that a charge of \$1540, being \$10.00 per acre, was demanded in payment for said water right as a condition

precedent to the extension of service, which charge is extortionate and unlawful; (4) that the charge provided by said contract when no water is delivered is unjust. Complainant asks that Sutter Butte Canal Company be ordered to make reparation by paying to complainant the sum collected together with interest thereon; that complainant shall not be required to pay the amount unpaid and that it be declared that there was no consideration whatever for the promise to pay same.

Defendant, in its answer, denies all the material allegations of the complaint, and alleges that the above mentioned contract and charges are in accordance with the legal rate schedule on file with this Commission.

The proceeding in Case No. 1083 is brought by 36 consumers of the Sutter Butte Canal Company who receive water through the lateral ditch system of the Gridley Land and Irrigation Company, which latter company is joined as co-defendant with Sutter Butte Canal Company.

The complaint alleges in effect (1) that the Sutter Butte Canal Company is a public utility water company delivering water to its consumers for compensation; (2) that the Gridley Land and Irrigation Company since its organization in 1909 has been operating a lateral ditch system for the purpose of conveying water from the main canal of the Sutter Butte Canal Company to the lands of complainants; (3) that the Sutter Butte Canal Company is obligated by its contracts and those of the California Irrigated Land Company and its successor, Irrigated Land Company of California, -realty companies formed to market lands in Sutter and Butte Counties, - to deliver water to the lands of complainants without additional charge for the distribution of water through this lateral ditch system; (4) that the ditches of Gridley Land and Irrigation Company are in bad

condition and an adequate quantity of water for irrigation has not been delivered; (5) that the property right to the ditches of the Gridley Land and Irrigation Company rests with the complainants herein because of adverse use and certain contracts with Butte County Canal Company and California Irrigated Farms Company; (6) that this Commission heretofore made an order establishing a rate for the delivery of water through the Gridley laterals which if enforced will deprive complainants of their rights to the ditch system; and, (7) that the so-called Gridley lateral ditches are a necessary part of the Sutter Butte Canal Company system.

Complainants ask that fair, just and non-discriminatory rates, rules and regulations be established; that the order heretofore made establishing rates for the so-called Gridley Lateral Ditch System be annulled; that the Sutter Butte Canal Company be required to take over and operate the Gridley Lateral Ditch System and that complainants be required to execute quitclaim deeds to the Sutter Butte Canal Company of whatever right, title and interest they may have in these lateral ditches.

Defendants deny all the material allegations contained in the complaint.

Applicant, Sutter Butte Canal Company, hereinafter referred to as Canal Company, in Application No. 2963, alleges, in effect, that its rates and charges do not produce a sufficient sum to return to it the necessary annual expenses, depreciation and interest and asks that just and remunerative rates and practices be established.

History of Properties.

The first attempt to construct an irrigation system to supply the district now served by the Sutter Butte Canal Company was made by F. R. Fleming. On July 29, 1902, he filed

a notice of appropriation of 100,000 miner's inches of the waters of the Feather River, the point of diversion to be in approximately the same location as the present intake of the Sutter Butte Canal Company. He obtained promises of financial assistance provided he could show that a market existed for this water to the extent of 10,000 acres, and proceeded by a canvass of the district to obtain purchasers among the ranchers for 10,000 so-called water rights.

Mr. Fleming failed in this, and transferred his rights to D. C. McCallum who filed further appropriations of water. In 1903, these rights were transferred to the Butte County Canal Company, a corporation, incorporated February 20, 1903, under the laws of this State. The articles of incorporation are of the usual type of a public utility water company and state that the purpose of organization was, among other things, to acquire, own, sell, lease or otherwise dispose of water and water rights, to construct, maintain, lease, operate and conduct canals and water ditches; to locate, condemn or otherwise acquire rights of way, franchises, water and water rights or to sell, lease, or otherwise dispose of same for domestic, irrigation or any or all other purposes; to collect tolls and rents for the use of such water so furnished.

This Company was promoted and financed by Willard M. Sheldon and associates, who proceeded to interest the ranchers in the use of water for irrigation.

In the attempt to sell water, public meetings were held and newspaper and poster advertising resorted to. Solicitors and ranchers who were particularly desirous that the ditch be constructed, assisted in selling the so-called water rights by a house to house canvass. By these methods, the owners of

between 10,000 and 15,000 acres agreed to purchase a water right and buy water.

The Company then proceeded with the construction of a portion of its main canal and lateral ditch system. It obtained franchises from Butte County on September 6, 1904, and Sutter County on January 3, 1905, giving it the right to operate a ditch system for the purpose of distributing and selling water to the inhabitants of said counties.

The Sutter Butte Canal Company was incorporated under the laws of the State of California on January 5, 1911, as a public utility water company, and on January 16, 1911, purchased its plant from the Butte County Canal Company and has operated, extended and enlarged the system since that date.

During the period 1904 to 1911, when this system was owned and operated by the Butte County Canal Company, irrigation centered in the district east of Biggs and Gridley, Butte County, and in the vicinity of Live Oak, Sutter County. The irrigated area increased very slowly between 1904 and 1911. Alfalfa, beans, peaches and grapes were the principal crops grown.

In order to increase the irrigated area and to profit by the sale of real estate, the owners of the Canal Company caused the Sacramento Valley Farms Company to be organized for the purpose of dealing in lands. This Company acquired, subdivided and placed on the market a large tract of land in Sutter County lying south and west of Live Oak. That portion of the Canal Company's plant known as Chandon and Sunset system was partially constructed by this Company to bring the water from the main canal to the lands which they proposed to market. In the latter part of 1911, the assets and liabilities of this Company were acquired by the Canal Company, the purchase price being the issuance to the stockholders of the Sacramento Valley

Farms Company of 4232 shares of the capital stock of the Sutter Butte Canal Company and the assumption by that company of certificates of indebtedness amounting to \$197,000. A considerable area of real estate and all ditches constructed were acquired in this transaction.

In the effort to further increase business, experiments were conducted in rice growing on the adobe lands west of Gridley and Biggs and in the vicinity of Richvale. These experiments proved successful and in 1911 rice was cultivated to an appreciable extent.

The large use of water per acre by rice materially increased the sales of this Company and opened a field for future development which had hitherto been unknown. The rice industry increased very rapidly until in 1913 some 12,000 acres were irrigated from this system. Coincident with this development, real estate concerns sprang up for the subdivision and sale of these adobe lands. The Canal Company contracted with these concerns for the delivery of water. Principal among these real estate concerns was the Richvale Land Company, organized for the purpose of subdividing and selling a large tract of adobe land, now known as Richvale Colonies, for rice cultivation. This company contracted with the Canal Company to deliver water to this tract. The Richvale Land Company constructed a distribution ditch system throughout the tract, it being the intention of the company to deliver water until such time as a large percentage of the land was disposed of and then organize a mutual water company. This tract was, in large part, sold and successfully cultivated to rice, the Land Company meanwhile operating the distribution system, charging the ranchers the sum of 50 cents per acre for this service. Water was purchased from the Sutter Butte Canal Company delivered at the end of its canal.

The service rendered during 1913 and 1914 was very poor, and a complaint was filed with this Commission entitled, A. J. Lofgren et al vs. Richvale Land Company and Sutter Butte Canal Company, Case No. 789. As a result of this complaint, Sutter Butte Canal Company and the Richvale Land Company reached an agreement whereby the former company acquired and operated this distribution ditch system.

The rice industry has more than tripled the income of this company and bids fair to make it one of the most prosperous irrigation companies in the State.

In 1917, water was sold for the irrigation of 12,800 acres of rice, 600 acres of alfalfa, 7,000 acres of beans, 3,000 acres of orchards, 6,000 acres of corn and 1,200 acres of vines, gardens and miscellaneous crops, or a total of 36,000 acres irrigated.

The so-called Gridley Laterals involved in Case No. 1083 were projected by the California Irrigated Farms Company, a corporation, organized for the purpose of subdividing and marketing real estate.

This company purchased a large body of land, known as Fagan Ranch, surrounding the town of Gridley and acquired so-called water rights from the Butte County Canal Company as a necessary part of its campaign for the marketing of this land. In 1905, it proceeded to construct a system of laterals, now known as Gridley Laterals or Gilstrap System. These laterals extended from the main canal of the Butte County Canal Company to and throughout the tract.

The Company purposed to turn over these laterals to the purchasers of lands and pursuant to this plan, there were organized and incorporated in 1906 two ditch companies known as Gridley Colony Ditch Company and the Gridley Ditch Company.

These companies operated and maintained said lateral ditches during 1906, 1907 and a part of 1908. In this year, a dispute arose and during the remainder of the year and in 1909 the Irrigated Land Company of California, successor to the California Irrigated Land Company, took over and operated these ditches. During this period, the Irrigated Land Company extended the ditches and served additional consumers.

In 1909, Gridley Colony Ditch Company, Gridley Ditch Company, Irrigated Land Company of California and the Butte County Canal Company deeded their right, title and interest in these laterals to W. E. Gilstrap, who later caused the Gridley Land and Irrigation Company to be incorporated and transferred his rights to it. Mr. Gilstrap and his successor, Gridley Land and Irrigation Company, were in possession of, operated, enlarged and extended these ditches until May 9, 1917, at which time the ditches were seized by the land owners supplied with water from them and have since been held and operated by them ~~subsequently~~ pending the adjudication of this proceeding.

Description of Properties.

The Sutter Butte Canal Company obtains its water supply by diversion from Feather River at a point on its westerly bank in the S.W. $\frac{1}{4}$ of Section 33, T. 19 N., R. 3 E. Water is diverted by means of a timber crib dam and is transmitted and distributed by earthen canals to the lands irrigated. The main canal, having a capacity of approximately 1300 cubic feet per second, extends from this point in a southwesterly direction, a distance of 20 miles. Water is delivered by the main canal to a series of main laterals and is thence distributed by small laterals to its consumers. The entire canal system aggregates some 120 miles in length.

The system of the Gridley Land and Irrigation Company consists of approximately 30 miles of earthen canals extending from the main canal of the Sutter Butte Canal Company to the irrigated land surrounding the town of Gridley.

The present rates of the Sutter Butte Canal Company are those set out in the so-called water right certificates or contracts.

There are six forms of agreement outstanding. The first of these was issued by the Butte County Canal Company, the principal provisions being as follows:

(1) The Canal Company agrees to furnish water at the rate of one cubic foot per second for each 160 acres for the purpose of irrigating the following described land. (Then follows the description of the land).

(2) The consumer on this part is to construct and maintain a ditch extending from the Company's ditch to his land and agrees that said ditch may at the option of the first party (Canal Company) be taken over, enlarged and operated by it, provided such use does not interfere with the delivery of water to said lands, and grants to the Canal Company a right of way through these lands and right of entry thereon.

(3) That portion of the contract relating to rates follows:

"It is further Understood and Agreed, that the water covered by this contract shall be and become appurtenant to the land herein described, and can only be conveyed by and with a conveyance of said land; and all the covenants and conditions herein shall run with said land.

"The parties of the second part, in consideration of the construction of said main canal, and ditch rights and delivery of water agree to pay annually to the party of the first part, at its office, in gold coin of the United States, on the first day of September, for each and every year hereafter, the sum of Sixty (60) Dollars, (That is to say at the rate of \$1.50 per acre annually), the first annual payment hereunder to become due and payable on the first day of September in the year in which water is first delivered at said gate, and shall be paid

annually thereafter; provided the amount herein agreed to be paid annually, shall, beginning with the eleventh annual payment and thereafter be reduced to the amount of Forty (40) dollars annually, (that is to say at the rate of \$1.00) per acre annually).

"All amounts becoming due under this contract shall be promptly paid when due, but if for any cause they should remain unpaid they shall draw interest at the rate of seven per cent per annum, compounded annually, if any amount hereunder shall remain due and unpaid for a space of six months the party of the first part may thereafter at any time while said amounts remain due and unpaid, upon written notice to the owner of said lands, release itself from further obligations to deliver water under this contract.

"It is Further Understood and Agreed, that all sums due or to become due under this contract in favor of the party of the first part shall be and become a lien upon the lands herein described, and may be foreclosed as any other lien including costs and charges and all necessary and reasonable expenses, and Attorney's fees connected therewith."

No charge was made from the holders of this type of contract as a condition precedent to the extension of service. The charge of \$1.50 per acre per year for the first ten years included the so-called water right charge.

Other contracts of the same form were issued which provided for a charge of \$1.00 per acre per year and a payment of \$5.00 or \$6.00 per acre for water right or initial payment at the time of the execution of the contract.

The second principal form of contract is that used by the Sutter Butte Canal Company. It is essentially the same as that issued by the Butte County Canal Company. The rate was changed to \$2.00 per acre per year. A water right or initial charge of \$10.00 per acre was generally made from the consumers under this form.

When rice irrigation became an important part of the business of the Company, a supplemental contract was issued providing for an additional charge of \$3.00 per acre per year during years when water is used for the irrigation of rice or

a total charge of \$5.00 per acre per year for this service.

Where water is pumped from the ditch by the consumer a 50 cent reduction is made to partially compensate for the additional expense. A like reduction is made under a contract between the Sutter Butte Canal Company and the Gridley Land and Irrigation Company. The reduction being made in consideration of the latter securing water right contracts for the Sutter Butte Canal Company.

The more recent contracts of the Sutter Butte Canal Company provide a rate of \$5.00 for rice and \$2.00 for all other crops, but are similar to the preceding in other respects.

In January, 1916, the Canal Company filed with the Commission a short term form of contract for water for rice irrigation. This form provides for a charge of \$7.00 per acre per annum. No initial payment is required of the consumer and the period of the contract is fixed at one or more years at the option of the consumer. The cost of facilities necessary is advanced by the consumer but is considered in the nature of a loan which is returned at such time as the income from the lateral reaches a sufficient amount that the Company could reasonably be required to construct the extension.

Following is a summary of the contracts outstanding:

Table I.

Summary of Sutter Butte Canal Company's
Contracts Outstanding.

\$1.00	Flat rate		7990 acres
1.50	Rate for 10 years - then \$1.00 rate	4293	"
2.00	Flat rate	12122	"
2.00 and \$5.00	Rate	18159	"
<u>Contracts under Gilstrap System:</u>			
\$1.50	Flat rate	437	acres
2.00	" "	520	"
1.50 and \$4.50	Rate	<u>837</u>	" <u>1794</u> acres
Total			44358 "

Table I. (Cont'd)

Brought Forward	Total	44358	acres
Deduct for Roads, Canals, Drainage, Ditches and Lands not Irrigable		<u>3415</u>	"
Total irrigable area at long term contracts		40943	"
Short term contracts, \$7.00 per acre per year		<u>7440</u>	"
	Grand Total	48383	"

Note: \$4.50 and \$5.00 rates apply only in those seasons when additional water is taken for the irrigation of rice.

The rates collected in 1917, including the short term contracts, follow:

Table II.

Rates Collected by Sutter Butte Canal Company in 1917.

<u>Rate</u>	<u>Area</u>
\$1.00 per acre per year	10631 acres
1.50 " " " "	15066 "
2.00 " " " "	16360 "
5.00 " " " " (rice)	5384 "
7.00 " " " "	<u>7440</u> "
Total area charged	41321 "

Of the total area charged, 36,000 acres were actually irrigated.

Conduct of Proceedings.

Public hearings were held in these proceedings in Gridley on June 6 and 7, 1917, and in San Francisco on November 26, 27, 28, 30 and December 1, 1917.

At the hearing it was stipulated by all concerned that all proceedings heretofore had before this Commission to which Sutter Butte Canal Company or Gridley Land and Irrigation Company was a party, the annual reports and data filed pursuant to General Order No. 38 of this Commission on file with this Commission be considered as a part of these proceedings. A list follows:

1. In the Matter of the Application of Sutter Butte Canal Company for an order authorizing it to issue and deliver certain of its bonds and ratifying and approving certain acts and things on the part of said corporation heretofore done and performed. Application No. 239.
2. Gridley Water Users Association, et al. vs. Sutter Butte Canal Company, et al. Case No. 426.
3. In the matter of the Application of Gridley Land and Irrigation Company to increase rates to be charged for irrigation water. Application No. 1506.
4. James Faris vs. Sutter Butte Canal Company. Case No. 753.
5. A. J. Lofgren et al vs. Sutter Butte Canal Company, et al. Case No. 789.
6. In the Matter of the Application of Sutter Butte Canal Company, a corporation, and Richvale Land Company, a corporation, for order authorizing said Richvale Land Company to make certain grants and conveyances to Sutter Butte Canal Company. Application No. 1770.
7. In the Matter of the Application of Sutter Butte Canal Company, a corporation, for authority to issue certain promissory notes in renewal of notes now outstanding. Application No. 2007.
8. In the Matter of the Application of Sutter Butte Canal Company to renew promissory note. Application No. 2044.

Canal Company a Public Utility.

The Canal Company alleges that it is, and has been since its organization, a public utility and that its predecessor, the Butte County Canal Company, was a public utility. There was no denial of this allegation in the pleadings or by evidence of any of the parties to the proceedings. Nevertheless, the evidence bearing on this phase will be briefly reviewed.

The Canal Company claims its entire water supply by appropriation. The waters of the Feather River taken by the Canal Company are claimed under notices of appropriation filed by F. R. Flemming, D. C. McCallum, E. A. Bridgeford and Butte

County Canal Company at various times between 1902 and 1905.

The notices stated that the purpose and place of intended use were for irrigation in Butte, Sutter, Glenn and Colusa Counties.

The Butte County Canal Company was incorporated as a public utility water company, its articles of incorporation providing, among other things, as follows:

"To acquire, own, bond, exchange, lease, sell or otherwise dispose of * * * * * waters or water rights, to conduct, maintain, lease, operate and construct canals and water ditches; to locate, condemn, claim, divest or otherwise acquire rights of way, franchises, water and water rights or to sell, lease or otherwise dispose of the same for domestic, irrigation or any or all other purposes; to collect tolls and rents for the use of such water so furnished."

The Company obtained franchises from Sutter and Butte Counties which granted to the Butte County Canal Company the right to construct, maintain and operate a system of canals, to cross highways, etc., for conducting water to be distributed and sold to the inhabitants of said counties for irrigation and other purposes.

The history of the Canal Company shows that an advertising campaign was conducted, public meetings held and canvass of the district made in the effort to obtain patrons of its irrigation system, the Company holding itself out to serve all comers within the district. During the construction of the main transmission canal the company exercised its right of eminent domain and by that method acquired rights of way through the so-called Looney Lands. Since that date, it has in at least two instances exercised this right in acquiring rights of way.

The Company issued so-called water right certificates and contracted with the ranchers for the delivery of water at a certain specified rate.

On January 6, 1911, the Sutter Butte Canal Company was incorporated and shortly thereafter acquired the system of the Butte County Canal Company.

Its articles of incorporation are those of a typical public utility water company and provide that the purposes for which the company was formed are, among others -

"To purchase, appropriate, divert or otherwise acquire, own, bond, exchange, lease, sell* * * * or in anywise deal in waters or water rights, rights of way, dams, canals and ditches,

"To construct, maintain, lease, operate and conduct canals and water ditches in the State of California or elsewhere with all the necessary distributing dams, gates, flumes and levees,

"To locate, condemn, claim, divert or otherwise acquire rights of way, franchises, water and water rights or to sell, lease or otherwise dispose of same for domestic, irrigation or any or all other purposes.

"To acquire, purchase, lease, mortgage, construct, equip, operate and maintain canals, flumes, ditches, pipe lines and water systems for the distribution of such waters for agricultural, domestic, manufacturing, mining, power and commercial purposes and for the supply of counties, cities and towns and the inhabitants thereof."

The Canal Company has filed with the Railroad Commission all its rates, rules and regulations and its annual reports subsequent to March 23, 1912. Numerous informal complaints have been filed with this Commission and been acted upon without either the Canal Company or any consumer, whether the holder of a water right contract or otherwise, objecting on the ground that the Canal Company was not a public utility subject to the jurisdiction of this Commission.

On July 12, 1913, a large number of water users filed complaint with the Railroad Commission against the Canal Company alleging that complainants were water users and contract holders and that the Canal Company is a public utility, and praying that the Canal Company be required to take over and operate certain lateral ditches. Gridley Water Users Association, et al. vs.

Sutter Butte Canal Company, et al., Case No. 426, Vol. 7,
Opinions and Orders of the Railroad Commission of California,
p. 619.

Other formal complaints by consumers and applications by the Canal Company have been filed with this Commission and decisions rendered thereon. These proceedings are enumerated above. The decisions in these proceedings, both formal and informal, have directly affected practically every consumer of the Canal Company, and these consumers have in no instance questioned the jurisdiction of the Commission.

I find as a fact that this Company and its predecessor, Butte County Canal Company, were organized as public utilities, appropriated water for the irrigation of certain lands and that the water so appropriated is now applied to those lands; obtained franchises from Sutter and Butte Counties as public utilities; have held themselves out to serve anyone within the area of service for compensation, and by advertising and otherwise have solicited business generally from everyone within this area.

The fact that this Company entered into so-called water right contracts does not prevent it, even as to the lands covered by such contracts, from being a public utility subject to the jurisdiction of the Railroad Commission. Palermo Land and Water Co. vs. Railroad Commission, 173 Cal. 380; Limoneira Company, et al vs. Railroad Commission, 174 Cal. 232.

Canal Company's Finances.

The articles of incorporation of the Canal Company provide for the issuance of 21,500 shares of stock of the par value of \$1,250,000 of which there are outstanding 12,198 shares.

A summary of the indebtedness of this Company on October 31, 1917, follows:

Table III.

Sutter Butte Canal Company's Securities
Outstanding October 31, 1917.

6% First Mortgage Bonds	\$350,000.00
5% Butte County Canal Company bonds	32,500.00
Notes payable, 6% and 7%.	<u>290,616.79</u>
Total indebtedness	\$673,116.79

The following stock assessments have been levied and collected:

Assessment No. 1, levied Dec. 28, 1911, \$10 per share	\$125,000.00
" No. 2, " Nov. 8, 1912, \$10 " "	122,700.00
" No. 3, " Mar. 24, 1914, 5 " "	61,350.00
" No. 4, " July 17, 1915, 5 " "	<u>60,990.00</u>
Total	\$370,040.00

Mr. R. A. Pabst, one of the Commission's auditors, reports the assets and liabilities of this Company and its profit and loss statement as of December 1, 1916, as shown on the books of the Company, in Commission's Exhibit No. 1, as follows:

Table IV.

Assets and Liabilities of Sutter Butte
Canal Company as of December 31, 1916.

A S S E T S .

Fixed Capital Installed Prior to Jan. 1, 1913 (Schedule A-5)	\$1,088,721.32
Fixed Capital Installed Since Dec. 31, 1912 (Schedule A-6)	<u>154,738.06</u>
Total Fixed Capital	\$1,243,459.38
Cash	3,787.59
Notes Receivable (Schedule A-7)	4,662.04
Due from Consumers and Agents	39,606.43
Miscellaneous Accounts Receivable	1,493.11
Interest and Dividends Receivable	7,679.25
Other Current Assets	4,983.00
Miscellaneous Investments	334,114.01
Materials and Supplies	3,921.12
Sinking Funds (Schedule A-11f)	1,361.38
Treasury Securities	65,200.00
Other Suspense	7,994.47
Corporate Deficit	<u>663,093.62</u>
Total Assets	\$2,381,355.40

L I A B I L I T I E S .

Capital Stock (Schedule A-12)	1,250,000.00
Funded Debt (Schedule A-13)	428,000.00
Notes Payable (Schedule A-15)	307,791.99
Consumers' Deposits	5,927.15
Miscellaneous Accounts Payable	2,590.45
Interest Accrued	16,503.75
Taxes Accrued	502.06
Assessments	<u>370,040.00</u>
Total Liabilities	\$2,381,355.40

Table V.

Sutter Butte Canal Company's Profit and
Loss Statement for Year 1916.

<u>INCOME</u>		
Water Charges	\$ 123,744.83	
Interest Revenues	9,649.25	
Rents from Real Estate Owned	<u>5,912.01</u>	
Total Income		\$139,306.09
<u>EXPENSES</u>		
Pumping Expenses	7,216.44	
Distribution Expenses	33,509.03	
Commercial Expenses	1,288.08	
General Expenses		
Salaries	8,400.00	
Office Expenses	2,018.42	
Law Expenses	3,738.21	
R.R. Expenses	5,470.52	
Injuries & Damages	2,545.52	
Other General Expense	90.00	
Insurance	989.10	
Extraordinary Repairs	44.75	
Taxes	<u>3,777.50</u>	69,088.37
Interest		42,456.67
<u>NON OPERATING EXPENSES</u>		
Rent Expenses	1,996.15	
Miscellaneous Non Operating Expenses	1,781.25	
Miscellaneous Rent Deductions	89.00	
Expenses Unprovided for Elsewhere	<u>545.00</u>	115,956.44
PROFIT FOR YEAR'S OPERATION		23,349.65
<u>ADDITIONS TO SURPLUS</u>		
Bad Bills Collected	91.40	
Profit on Bonds Purchased by Trustee	762.50	
Rebate on Interest on Note	<u>2,775.00</u>	3,628.90
<u>DEDUCTIONS FROM SURPLUS</u>		
Discount for payment of Securities not Bearing Interest	904.30	
Discount on Notes Sold	35.05	
Loss on Real Estate Sold	127.50	
Uncollectible Water Bills	9,711.15	
Accounts Receivable Written Off	23.21	
Suspense Accounts Written Off	11.50	
Refund of Overpayments	<u>94.90</u>	10,907.61
Net Profit for Year		\$16,070.94

In 1916, the sum of \$6,205.00 was put into a sinking fund for the purpose of redeeming the Company's outstanding securities. The interest charge on these securities is \$40,308.00 annually, which, together with the sinking fund, requires the payment from the annual income of the Company of \$46,513.00

From the financial standpoint, it is necessary that this Company have an income of approximately \$120,000.00 to meet maintenance, and operation expense and depreciation and interest on outstanding securities in order to break even without considering dividends or profits to stockholders.

VALUATION.

Appraisal of Canals and Structures.

Appraisals were submitted by George S. Nickerson for the Canal Company and R. W. Hawley and C. H. Loveland for the Commission.

A tabulated summary of these appraisals follows:

Table VI.

Comparative Summary of Appraisals of Canals and Structures.

<u>Item</u>	<u>Company's Engineer</u>		<u>Commission's Engineers</u>
	<u>Reproduction Cost</u>	<u>Present Value</u>	<u>Est. Cost New</u>
Diversion Dam	\$41,020.00	\$32,816.00	\$29,364.00
Main Headgate	21,731.00	19,179.00	14,700.00
Excavation			
Main Canal	213,172.00	213,172.00	183,837.00
Laterals	308,478.00	308,478.00	278,693.00
Structures			
Main Canal	47,061.00	37,585.00	40,647.00
Laterals	165,944.00	147,195.00	149,232.00
Equipment and Tools	7,249.00	7,249.00	8,749.00
Net addition for new construction	10,862.00	10,862.00	10,862.00
Total	\$815,517.00	\$776,536.00	\$716,084.00

The Nickerson appraisal is based on average prices of materials and labor during the years 1913 to 1916, inclusive. That of the Hydraulic Division of the Commission is based upon prices obtaining during the five years directly preceding the recent abnormal increase due to war conditions. The principal difference in these appraisals is the estimated cost of earth-work. The average price of excavation estimated by the Commission's Hydraulic Division is 2 3/4 cents higher than the cost of excavation on the Sacramento Valley Westside Canal Company system which the evidence shows is similar to that of Sutter Butte Canal Company. Further, the estimate of the Commission's Hydraulic Division of that portion of this Company's system known as the Chandon Lateral System, is larger than the cost, as shown by cost records of the Company. Mr. Nickerson's estimate of earth-work cost is some \$59,000.00 in excess of that by the Hydraulic Division.

After carefully considering the testimony relating to these appraisals, I believe that the estimate by the Commission's Hydraulic Division is fair.

Real Estate.

Mr. Nickerson, for the Canal Company, estimated a value of \$137,655.00 for rights of way, the price per acre being \$100.00 and \$150.00. This is based on the present value of lands adjacent to the Canal plus an addition of 11 per cent for engineering, legal expenses and interest during construction.

It appears from all the evidence that the rate per acre is a fair estimate of the value of adjoining property. The addition of 11 per cent for overhead is manifestly unjust and not in accord with the law as set out in the decision of the highest court in the land. In the Minnesota Rate Case, 230 U.S. 352, the Supreme Court of the United States says:

"The company certainly would have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity without additions by the use of multipliers or otherwise to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and in this view we also think it was error to add to the amount taken as the present value of the lands the further sums calculated on that value, which were embraced in the items of 'engineering, superintendence, legal expenses', 'contingencies' and 'interest during construction'".

Thus the court fixes the maximum to be allowed for real estate and certainly the Canal Company will be treated fairly if the average value of adjacent land is included and especially in view of the fact that the record shows that a considerable portion of the right of way was donated or was purchased at prices of grain land before irrigation increased the value to that claimed herein.

Pursuing the method in the past employed by this Commission, I recommend that the sum of \$124,039.00 be included for real estate and rights of way.

Franchise Value, Going Concern and Development of Business.

The Canal Company claims that the elements enumerated above have a substantial value.

Mr. Gordon Hall, President of the Canal Company, testified that the total investment was approximately \$1,114,000 and adding interest compounded at 8 per cent, the total sum of which it is claimed the investors in the Canal Company have been deprived is \$1,750,000.

There is included as a part of this expenditure the sum of \$11,000 for the development of the rice business which was expended by the Company in obtaining a government rice experiment station at Biggs.

The sum of \$11,000 is made up of a lease for \$1.00 per year for 20 years on 56.24 acres of land, extension of ditches, delivery of free water and cash donations.

The taking over and operating of the Richvale laterals, at the request of the Commission, it is contended cost the Canal Company \$20,000.00. No definite data was submitted as to the cost and apparently no deduction was made for the appraised value of that portion of the system.

The purchase of the assets of the Sacramento Valley Farms Company at a cost of \$197,000.00 is another element of the claimed development expense. A description of this transaction is included hereinbefore. There is included in this sum \$26,398.00 spent on construction work, the balance being largely non-operative lands. The annual report of this Company for 1916 shows the book value of non-operative lands to be as follows:

Real estate owned.	\$71,792.24
First mortgages on real estate	35,450.00
Second mortgages on real estate.	9,370.79
Contracts for the sale of real estate, total not to pass until final payment	<u>30,853.21</u>
<i>total</i>	
Total	\$147,466.24

The canal system was purchased for \$400,000.00 in bonds, which has since been reduced to \$350,000.00 supposedly out of earnings, \$50,000.00 borrowed from the Crocker National Bank of San Francisco which is still outstanding and \$40,000.00 in cash. The Sacramento Valley Farms Company was purchased by the issuance of notes to the amount of \$197,000.00. The holders of these securities are in large part stockholders of the Canal Company.

The total outstanding interest bearing indebtedness is \$673,116.79, as shown in Sutter Butte Exhibit X. The annual interest charge thereon is \$40,308. This interest has been paid with the exception of \$23,133.39 accrued interest as of October 31, 1917.

It is now asked that not only compound interest at 8 per cent on actual cash advanced be included as development expense, but also compound interest on bonds and notes for which interest at 6 per cent has already been paid out of earnings.

We find this Company at this time still in its development stage. It has an adequate water supply available for a much larger acreage than is now irrigated, and by the enlargement and extension of its existing facilities can deliver water to this additional area. Apparently the Canal Company realizes this for it makes no claim for the inclusion of these elements of value for the purpose of these proceedings, expressly reserving the right, however, to ask for their inclusion in the future.

This system being still in its development stage, it would assuredly be unfair to the present consumers to compel them to reimburse the Company for any deficit in the past below what might now be considered a reasonable rate. The rate schedule which I shall recommend be established will be adequate to produce an income sufficient to return to the Company interest on the value of these elements at such time as the system has reached its full development.

Water Rights.

The Canal Company filed an appraisal of its properties, but in such appraisal made no reference to water right values. There was some slight testimony on the part of witnesses for the Company regarding these values. Mr. Hall, the president of the Company, in the course of his testimony, suggested three methods upon which a rate base could be established. In the course of his discussion of method No. 2 in this regard, Mr. Hall stated:

"If one were to allow any value to the water right and put it as low as \$100 for one second foot and give us 1500 second feet appropriation, that would be \$150,000 and actual disbursements for development of business which might come under going concern or what not - those sums added together, no interest on these items, the total is \$1,751,945".

This was all of the testimony of Mr. Hall regarding water right values. The only other witness whose testimony related to water right values was Chas. T. Tullock, Superintendent of the Canal Company. Mr. Tullock, in response to a question by counsel for the company as to whether the witness heard and concurred in the opinion of Mr. Hall as to the value of the water right of the Sutter Butte Canal Company on the Feather River and as to whether or not Mr. Hall's judgment of such value was reasonable, declared that in his opinion the same was reasonable but stated that his recollection was that Mr. Hall had declared \$150 per cubic foot for 1500 feet as the value of the water right of the Company. Mr. Tullock stated in substance that he based his opinion upon his experience and upon knowledge of a transaction of San Joaquin Land and Irrigation Company for a water right on the Stanislaus River. Mr. Tullock admitted that he did not know the amount of the cost attending the acquisition of the water rights by the Sutter Butte Company, and in reply to the following question from counsel for one of the protestants -

Question. "Should my clients, the water users, be charged a return value on that \$225,000?"

Answered, "Well, I don't know that that would come up for rate fixing at the present time. I don't know that it would. It might be beneficial in the future."

The testimony of Mr. Hall, above quoted, and the testimony of Mr. Tullock, the substance of which is given, constitute all of the evidence in the records in support of water values. It is far from certain from such evidence that it is

the intention or desire of the Company to have water right values included in the rate base in the present proceedings.

If it is the desire of the Company to have such values included, then it must be very apparent that the evidence in support of such contention falls far short of that which should be required upon which to predicate a finding of value of water rights. This statement is made having fully in mind the rule declared by the United States Supreme Court in San Joaquin and Kings River Canal and Irrigation Company vs. County of Stanislaus, 233 U.S. 454, in which case the Court declares that water rights acquired by appropriation should be given consideration. Such pronouncement, in my opinion, does not constitute a mandate to the regulatory body to enter the region of speculation or guess as to such values, but the obligation still rests upon the party claiming the existence of such values to establish same by satisfactory evidence. Such evidence is absent in the present proceedings.

Cost of Plant.

The books of the Company show no cost of constructing the entire system, but the various proceedings and documents in evidence disclose the following:

Table VII.

Cost of Plant.

Gross purchase price	\$530,722.00
Less credit for sale of water rights	<u>27,310.00</u>
Net purchase price	\$503,412.00
Purchase Sacramento Valley Farms Co.	197,000.00
Construction account 1911-1916, inc.	<u>262,281.00</u>
Total	\$962,693.00

The item of \$262,281.00 represents only the sum expended on construction of plant and not any sum which may have

been advanced by stockholders for deficits in maintenance and operation expenses, damages, or promotion of business.

Contained in the item of \$197,000.00, is the sum of \$26,398.00 which is the amount spent by the Sacramento Valley Farms Company in the construction of canals and structures. This sum does not, however, include the cost of rights of way for the so-called Chandon or Sunset lateral ditches.

The Canal Company has now acquired from the Gridley Land and Irrigation Company a portion of its system at a cost of approximately \$10,000.00 and it has now become a part of the operative system. ~~Locality of the system is~~ The Canal Company must immediately proceed to improve and repair this system. The estimated cost of the work is \$10,641.00, or a total investment of \$20,641.00. I recommend that this sum be included in the rate base.

It is hereby found as a fact that the sum of \$871,764.00 is a fair value of the system of Sutter Butte Canal Company to be used for the purposes of these proceedings.

Depreciation Fund.

Mr. Nickerson, for the Canal Company, submitted the sum of \$10,565.60 as the annual depreciation of the plant of this Company, arriving thereat by the so-called straight line method. The Commission's Hydraulic Division, in its appraisal, using the sinking fund method of depreciation, reports the sum of \$7,572. The merits of the various methods of arriving at a sum to be set aside annually for this purpose have been discussed fully by this Commission in numerous proceedings, among which is Town of Antioch vs. Pacific Gas and Electric Co., Vol. 5, Opinions and Orders of the Railroad Commission of California, 19, 39, 40, and it is unnecessary to discuss it

further herein. The Canal Company has never set up a depreciation reserve, but has included cost of replacements in maintenance and operation expenses.

Maintenance and Operation Expense.

Tabulations showing the maintenance and operation expenses of this Company were prepared by C. M. Gilleem for the Canal Company and by R. A. Pabst, one of the Commission's auditors. The data submitted by both the Company and the Commission check sums shown in the annual reports.

The total operating expenses for 1916 were \$69,088, and it appears from the testimony that 1916 is a fair criterion of future expense.

Certain modifications of this sum are necessary to arrive at an amount equal to the annually recurrent expenditures and those extraordinary expenditures, occurring at irregular intervals, which should be amortized over a period of years.

There is included in the data submitted showing the expenses for the year 1916, the sum of \$4,590 which was expended to replace structures which outlived their usefulness.

This charge was made in this manner on the assumption that it was in the nature of a depreciation allowance. There has been computed an annuity sufficient to meet ^{necessary replacement of plant} ~~the~~ and if the above sum is also included the one would duplicate the other.

On every irrigation system of this kind, there occur small breaks in canals, seepage on adjacent cultivated lands and numerous other damages which must be paid. The record shows that during the past six years, this Company has expended \$23,204. for this purpose or an average annual amount of

\$3,875. ^{annual} The sum of \$4,000 is included for this expense.

The records of runoff of the Feather River show that excessive floods occurred in 1907, 1909 and 1914.

This river is peculiarly located in that the district to the west of the river slopes away from the river. At times of excessive floods the water escapes from the river bed proper and spreads over the surrounding country. Debris and silt are carried into the canals, structures are washed away, embankments are weakened and extensive repairs are invariably necessary on the diversion dam.

This flood condition occurs also on numerous sloughs and small streams in the district through which the canals extend. The flood of 1914 necessitated repairs costing \$17,363. The records of cost of repairs due to previous floods are not available.

In 1912, during the excessively low water, a portion of the dam was burned and it was repaired at a cost of \$10,610.

The record shows that the utility has at least exercised reasonable diligence in attempting to reduce or eliminate this extraordinary expense. The dams, canals and structures were not only repaired, but the stability was increased and better and more permanent structures were constructed. A part of these expenditures are, therefore, properly chargeable to capital account. The available records of cost are not in sufficient detail to separate construction costs from extraordinary maintenance. Mr. Tullock testified that the expense in repairing this damage would equal an annual allowance of at least \$6,000 to \$7,000. Mr. George L. Dillman, consulting engineer, testified that \$9,000 annually would be a reasonable allowance. A careful analysis of the expense incurred in repairing the dam and canals in 1914 indicates the following segregation:

	<u>Capital Expense</u>	<u>Extraordinary Maintenance</u>
Temporary Bridge and miscellaneous	\$	\$ 903.00
Break in canals, removing silt, etc.		2,349.00
Bridges on main canal	3,914.00	1,000.00
Small repairs and auto expense		221.00
Work on dam	<u>7,976.00</u>	<u>1,000.00</u>
	\$11,890.00	\$5,473.00

Records of past occurrence show that since 1907 damage has been done to the system every second year. I am of the opinion that \$3,000 is a liberal annual allowance to be included for this item.

Increased Federal and State taxes have materially increased that item over the 1916 taxes. Sutter Butte Exhibit Q shows 1917 taxes as \$7,132.36 less \$570 on annual depreciation, or a net tax of \$6,666.36 and it appears fair that this increase in taxes ~~xxxxxx~~ be included.

There is included in the 1916 expenses an item of \$5,471 for Railroad Commission expense which is a part of the expense incurred in preparation for this hearing. This is not an expense which recurs annually. The total expense of this Company in preparing for this proceeding was \$10,791.91, as set out in Sutter Butte Exhibit R. I shall recommend that this expense be amortized over a period of ten years and that in addition there be included the sum of \$700 which is the approximate average of the three preceding years.

The Canal Company states that it is and will be necessary to maintain two guards at its dam during the continuance of the war at a cost of \$1800 annually. This expense is not a continuing thing, and I believe should be amortized over a period of years. The sum of \$800 is included.

Under the heading "harassing litigation" there is submitted a claim for an annual allowance in maintenance and operation expense of \$20,000. There are five examples of this expense cited; of the five, one only is in the form of judgment, the balance being still pending. One item of this claimed expense is litigation involving the title to rights of way of the Richvale system acquired from the Richvale Land Company. This item is properly chargeable to capital and is included in the appraisalment of rights of way.

All record of expenses heretofore have been entered on the records of the Company and must necessarily have been included in the records of maintenance and operation expense available. A fair sum to cover this expense has been included above.

The rendering of a judgment in an action for damages necessarily carries with it a finding of negligence and notwithstanding the utility may still urge its freedom from liability, we are compelled to accept the final judgment of the Court as conclusive as to negligence.

The question arises whether or not the Company shall be permitted to pass along to the consumers who are in no wise at fault, the penalty imposed by law upon the utility for negligence legally established, or is such a loss one which the utility would have to charge to profit and loss and not be recouped in rates. I am of the opinion that only such damages as may be reasonably anticipated in the course of operation with reasonable care should be allowed in a rate base and the sum of \$4,000 included above for damages is adequate to care for such expenses of this nature as are properly chargeable to maintenance and operation.

In view of increased costs of material and labor, the average cost of maintenance and operation for some years will undoubtedly be materially increased. The Canal Company claimed that it would amount to an appreciable sum. This increased cost has been considered and allowance made herein.

Mr. Gordon Hall, President of the Canal Company, stated that heretofore no salaries had been received by any of the officers of the Company although he had devoted at least one-half of his time to this Company. I believe, that for a company of this size which has a General Superintendent at a salary of \$6,000 per year in charge of its operations, it is too much to ask that another general officer be paid a salary of \$6,000 per year. The general plan of operation and financing is a matter for the board of directors and such fees as is customary should be included for their services. While it is evident that the President of this Company is attentive to its business, a salary of this kind is a burden which I believe the consumers should not bear at this stage of the development of the Company.

The Canal Company has now acquired and will operate a portion of the Gridley Land and Irrigation Company's system. The estimated cost of maintaining and operating this system is \$2,000 annually. The Company is incurring this expense at the request of the consumers.

It is hereby found as a fact that the sum of \$72,995 is a fair sum to include for the annual maintenance and operation expense of this Company.

A tabulated summary of the annual charges follows:

Interest on \$871,764 at 8%	\$69,741.00
Depreciation Annuity	7,572.00
Maintenance and operation expense	72,995.00
Total	\$150,308.00

It is found as a fact that the above sum is a fair and just amount to be annually produced by the Canal Company's rate schedule.

Income.

A summary of operating revenue from Sutter Butte Exhibits U and W and Commission's Exhibit #1, follows:

Table VIII.

OPERATING REVENUE.

<u>Year</u>	<u>Revenue</u>
1911	\$19,928.00
1912	30,243.00
1913	50,617.00
1914	85,686.00
1915	94,268.00
1916	130,258.00
1917	124,610.00

It is obvious that the gross revenue of this Company has not equaled the annual charges as set out herein.

A tabulation follows showing the total area charged under the outstanding contracts and the irrigated and non-irrigated portions of this area for the years 1916 and 1917.

Table IX.

WATER CHARGES 1916 and 1917.

<u>Rate per acre per annum</u>	<u>LANDS CHARGED</u>		<u>LANDS CHARGED</u>	
	<u>Area</u>	<u>Amount</u>	<u>Area</u>	<u>Amount</u>
		1916		1917
\$1.00	10561	\$10561	10631	\$10631
1.50	417	626	320	480
1.50 (Gilstrap System)	577	865	1186	1779
2.00	12123	24246	16360	32720
4.50	607	2732	---	---
5.00	10470	52350	5384	26920
7.00	5554	38878	7440	52080
Total	40309	\$130258	41321	\$124610

LANDS CHARGED (Not Irrigated).

1.00	521	\$521	741	\$ 741
1.50 (Gilstrap and Sutter Butte)	152	228	747	1120
2.00	1636	3272	3833	7666
Total	2309	\$4021	5321	\$9527

LANDS CHARGED (Irrigated).

1.00	10040	10040	9890	\$9890
1.50	265	398	215	323
1.50 (Gilstrap System)	577	865	544	816
2.00	10487	20974	12527	25054
4.50	607	2732	---	---
5.00	10470	52350	5384	26920
7.00	5554	38878	7440	52080
Total	38000	126237	36000	115083

Under the present rates one consumer may be paying \$1.00 annually per acre while his neighbors is paying \$1.50 or \$2.00 per acre for the same service. This discrimination is due to the fact that the predecessor of the Sutter Butte Canal Company issued contracts providing for a \$1.00 and \$1.50 rate while the Canal Company issued its contracts for \$2.00 for the same class of service.

That the Commission can not permit this discrimination to continue is obvious. The rates to be established in this proceeding must be uniform and non-discriminatory in their application.

The revenue of this Company will be materially reduced by the elimination of the area which has heretofore been paying a annual charge but has not used water for irrigation, and which does not carry the initial charge payment.

This phase was discussed by Commissioner Thelen in Decision No. 4478, In the Matter of the Application of Madera Canal and Irrigation Company for an order authorizing increases in rates charged for water sold for irrigation, Application No. 2381, decided July 23, 1917, who states in part as follows:

"This commission has jurisdiction to establish the rate to be paid for water sold by a public utility or the rate to be paid by a customer desiring to establish the relationship of customer and utility, (a minimum rate for readiness to serve), but not a rate to be paid by a person who does not desire to purchase water or to be placed in the status of customer of a public utility water company with the right to call on the utility for water whenever he desires to do so."

It is a difficult matter to satisfactorily estimate the area that will be cultivated to rice in the future. It appears from the evidence that at the time rice was first grown in this vicinity little was known concerning water grass and its eradication. The land became impregnated with this weed to such an extent that it was found impossible to grow rice without discontinuing its cultivation for one or more years to eradicate this noxious weed. Thus in any year a sufficient area of land might

be lying fallow or use only sufficient water to sprout the water grass which is a part of the procedure by which it is eradicated, to materially affect the income of the company. It appears, however, that experience has taught that if the land is kept clear of this grass by exercising care and especially during the first year of its cultivation to rice this hazard can be materially reduced, if not in fact eliminated, at a reasonable expense per acre. The following tabulation shows the area cultivated to rice and other crops 1914 to 1917, inclusive:

Table X:
Area Planted to Rice and other Crops
1914-1917, inclusive.

Crop	1914 Acres	1915 Acres	1916 Acres	1917 Acres
Rice	11700	12550	16631	12800
Other crops	19800	21750	21369	23200
Total	*31500	*34300	38000	36000

* No deduction for non-irrigated area.

Mr. Tullock estimated that the rice area irrigated in 1918 will approximate the area irrigated in 1917.

The present national food problem has undoubtedly stimulated the cultivation of large areas additional to those which would have been cultivated in a normal period. This is especially true of rice. On the other hand, this is a business in its development and the growth was rapid even before the war emergency existed. In computing rates the area that it could be reasonably expected that the Company would irrigate with the expense as set out above will be used.

The Canal Company claims that its average loss due to uncollectible bills is 8 per cent of the gross income, and that this will continue.

This loss appears abnormal. The record shows that the

percentage while large in 1912, 1913 and 1914 was reduced by 50 per cent in 1915. The percentage of uncollectible bills was greatly increased due to the burning of the dam and floods. This has been cared for under damages.

The Company henceforth will be operating under a new schedule of rates, rules and regulations such as it has been the practice of this Commission to put into effect and as set out in Decision 2689, in the matter of the practice of Water, Gas and Telephone utilities requiring deposits before rendering service, which provides means for the reduction of this loss to a minimum.

Such allowance will be made in estimating income from rates for this element as seems fair and reasonable under the conditions obtaining.

A small portion of the area served by this company is above the level of the ditches and it is necessary to render the additional service of pumping.

I believe that it is unjust that this expense be borne by the consumers at large and shall recommend that a charge of \$1.00 per acre for rice and 50 cents per acre for other crops be established for this service.

Form of Rate.

Messrs. Hawley and Loveland both testified that the only method whereby the burden of the expense of this system can be equitably distributed among the consumers is through the establishment of a measured rate schedule whereby each consumer will pay on a quantity basis for the water used. The Canal Company asks that both a flat rate and measured schedule be established leaving it optional with either party whether or not a measuring device be installed. In regard to the advisability of selling water on a measured rate base, I can do no better than quote Commissioner Thelen in Decision No. 4478, In the Matter of the Application of Madera Canal and Irrigation Company for an order

authorizing increases in rates charged for water sold for irrigation, Application No. 2381, decided July 23, 1917, as follows:

"While I appreciate that the consumers under this system have long been accustomed to a rate based on the number of acres irrigated and hence naturally cling to it, I am convinced that the acre-foot rate is fundamentally right and should be adopted under this system. The acre-foot rate is right --- (1) Because it is fundamentally just that each consumer should pay for what he receives, which can be done only by measuring the water; and, (2) because the sale of water by measure creates prudence in the use of water and checks waste, increases the amount of water available to the community and thus helps to develop a larger acreage and to increase the general prosperity.

"The canal company is willing to install and operate the necessary measuring devices in connection with an acre-foot rate and asks authority to do so.

"I am satisfied that after a fair test, the consumers under this system will agree that the acre-foot form of rate is more just and constructive than the acre rate heretofore in effect."

Rate Schedule.

After a careful consideration of all the evidence in these proceedings, I find as a fact that the following are fair and reasonable rates to be charged by Sutter Butte Canal Company for water delivered from its canals and laterals.

Flat Rate.

Rice	\$7.00	per acre per year
Grain irrigation	.50	" " " irrigation
Plowing for water grass (1st irrigation)	1.00	per acre
Subsequent irrigation	.50	per acre per irrigation
All other crops	2.50	per acre per year

Measured Rate (Rice Irrigation)

Where water is measured, the rate shall be as follows:

Minimum charge per acre per year

Rice Irrigation	\$4.00 for 3 acre feet or less
Grain, water grass or plowing	.75 for $\frac{1}{2}$ acre feet or less
All other crops	2.00 for $1\frac{1}{2}$ acre feet or less
Excess at the rate of \$1.25 per acre foot.	

Heretofore the relation between the Canal Company and its consumers has been established by contract.

The Canal Company now asks that in view of the fact that the consumers have paid the so-called water right or initial charge that it would be unfair to increase their rate without considering this fact and request that the rates which have heretofore been charged, as set out in the Sutter Butte contracts (\$5.00 per acre for rice and \$2.00 for all other crops), remain in effect. It is obvious from the foregoing analysis of the rate that this is an appreciable reduction. Complainants in Case No. 1083 also ask that consideration be given the fact that they have made an advance payment on rates and that a lower rate be established for them and anyone who desires to enter the same class by paying an initial charge, than for the consumer who pays from year to year without making this advance payment.

A large portion of the users of water from this system have paid an initial charge of \$10.00 per acre and whether this payment was for water rights or in the nature of an advance payment on rates as a part of the water rental, the consumers have paid it and it seems unfair that new consumers who have not made a similar advance should receive service at the same cost as those who have made this payment. As stated by Commissioner Thelen in Decision No. 2531, In the Matter of the Application of James A. Murray and Ed Fletcher, and La Mesa, Lemon Grove and Spring Valley Irrigation District, Application No. 1432, Vol. 7, Opinions and Orders of the Railroad Commission of California, p. 373:

"On the other hand, in the absence of a decision by the Supreme Court of this State holding that these moneys can be recovered, the Railroad Commission would be inclined in so far as it could, on the facts of this case, to give effect, in equity, to the moneys thus paid and to regard them, in so far as it can do consistently with the establishment of uniform rates and the prevention of discrimination, as advance payments on rates, so that the consumers holding these contracts will have the normal rates which they otherwise would be compelled to pay, reduced to the extent of reasonable interest on the moneys which they have paid."

This question was also discussed by Commissioner Eshleman in Decision No. 536, being Application of James A. Murray and Ed Fletcher, Application No. 118, Vol. 2, Opinions and Orders of the Railroad Commission of California, p. 501:

"Before leaving this subject, however, I think it well to say that contracts entered into in good faith between public utilities and their patrons that are not forced or compelled in any way and are based upon an adequate consideration should be adopted so far as is consistent with adequate regulation as the basis for the rates for the service performed by a public utility for its patrons."

I can see no reason why these contract rates should not be continued in effect without discrimination if a rate schedule be established that will permit of a prospective consumer receiving the same rate by paying an initial charge or paying a higher rate if without this charge. I believe it would but work justice to those consumers of the Canal Company who have paid this initial charge to establish the lower rate. The existing discrimination between the various contract holders should be removed, however, and I recommend that in addition to the schedule set out above there be established a rate schedule including an initial charge.

Of the 40,943 acres under contract, slightly in excess of 30,000 have contracted at the \$2.00 per acre rate. All the contracts for rice irrigation provide for the payment of \$5.00 per acre per year.

The rate of \$5.00 for rice irrigation and \$2.00 for all other crops with an initial payment of \$10.00 is substantially in accord with the rule declared in the Cuyamaca case, supra.

I find as a fact that the following are just and reasonable rates:

Initial Payment	\$10.00 per acre
Rice Irrigation	5.00 " " per year
All other crops	2.00 " " " "

The rules and regulations herein provided cover all

service for one or two years in order to eradicate water grass and if no notice is given of the proposed discontinuance the Company would proceed in the fall of the year to expend moneys in the repair of that lateral or enlarge it in order to deliver water to a supposedly increased area whereas in reality the area during the next succeeding year would be much decreased thus burdening the Canal Company and the other consumers with that unnecessary and useless expense.

All parties at the hearing agreed that notification of the Canal Company at the date above mentioned would work no hardship on consumers other than those cultivating rice. Mr. Kunn contended that many owners of rice land did not have their land leased before January 1st of each year and therefore could not know before that time whether they would irrigate or not and that the rice market fluctuated to such an extent that rice growers could not know before early spring whether they would plant rice or not. After carefully considering this phase, I believe that prospective consumers, the service of whom will require the extension or enlargement of existing facilities, should be required to give the Canal Company as much time as possible to complete its preparations and on the other hand it would work a hardship on some consumers if a hard and fast rule were made requiring them to give notice by September 1st.

I shall, therefore, recommend that a rule be put into effect requiring prospective consumers for whose service it is necessary to enlarge or extend a canal and existing consumers whom the Canal Company has given at least thirty days notice that prospective business may require the enlargement of existing facilities, to file application for water for the next succeeding year on or before October 1st, and the Canal Company not be obligated to serve those who do not apply before this date. All other consumers

must file application on or before January 1st of each year. The Company may, however, deliver water to those who apply subsequent to these dates provided it has water available and can prepare the ditches for its delivery.

If any question arises in the future as to whether or not it is feasible for the Canal Company to deliver water to a belated applicant and if this Commission's attention is directed to it, such relief can be given as is justified in the specific case.

The contracts heretofore in effect provide for payment of the entire rate on September 1st of each year. Although there was no objection to this at the hearing, I am of the opinion that the payment of the entire charge/works a hardship on the consumer and I shall recommend that the payments be made as follows:

Flat Rates (Rice Lands)

- \$1.00 per acre to accompany application.
- 3.00 per acre payable on or before February 1st.
- 3.00 per acre payable on or before July 1st.

Other Crops.

- \$.50 per acre to accompany application.
- 1.00 per acre payable on or before February 1st.
- 1.00 per acre payable on or before July 1st.

Measured Rates

Rice Lands

- \$1.00 per acre to accompany application.
- 3.00 per acre payable on or before February 1st.

Use over 3 acre feet per acre payable at end of month of use.

Other Crops.

- \$.50 per acre to accompany application.
- 1.50 per acre on or before February 1st.

Use over 1½ acre feet per acre payable at end of month of use.

Measuring devices are not at present installed on this system. It should be the privilege of either the consumer or the Company to apply the measured rate, which rate must remain in effect until this Commission's consent is obtained to the substitution of another

form of rate. The cost of the measuring devices must under the decisions of this Commission ultimately be borne by the utility. However, where the consumer asks to be served under the measured rate, I believe the Canal Company should be permitted to require a deposit to cover the cost of installation, which deposit must be returned to the consumer at the end of one year, either in cash or as a credit on rates.

Cases 1062 and 1083.

There now remains to be discussed those portions of the complaints in Cases 1062 and 1083 which are not directly involved in rate fixing.

The complaint of Trenter et al., Case No. 1083, in addition to bringing into question the rates of the Canal Company involved the question of title to the so-called Gilstrap ditches and asks that the Commission compel Sutter Butte Canal Company to take over and operate these ditches.

This matter was presented for this Commission's consideration in the complaint of Gridley Water Users Association et al. vs. Sutter Butte Canal Co., Gridley Land and Irrigation Company, California Irrigated Land Co., Irrigated Land Company of California and W. E. Gilstrap, Case No. 426, Vol. 7, Opinions and Orders of the Railroad Commission of California, p. 618, and again, In the Matter of the Application of Gridley Land and Irrigation Company to increase rates to be charged for irrigation water, Application 1506, reported in Vol. 11, Opinions and Orders of the Railroad Commission of California, p. 672.

For a full discussion of this matter, reference is made to those decisions.

During the course of this hearing a tentative agreement was reached between complainants in Case 1083, Sutter Butte Canal

Company and Gridley Land and Irrigation Company, to the effect that Sutter Butte Canal Company would acquire these laterals from the Gridley Land and Irrigation Company upon the execution by complainants of a certain agreement and deeds for right of way of which complainants claim ownership. This agreement was admitted in evidence as Tranter Exhibit No. 9, and provides in effect that the Sutter Butte will acquire from Gridley Land and Irrigation Company, maintain and operate these laterals upon the execution of deeds to all rights of way from owners of lands through which these laterals pass. The Sutter Butte Canal Company has done all that can be reasonably expected of it to consummate this agreement but certain land owners, and especially those adjacent to the so-called Lateral No. 1 ditches of this system, have refused to execute these deeds. The Canal Company upon the execution of the above mentioned contract caused a survey to be made of these laterals and obtained an abstract of title of the various parcels of land involved at considerable expense. I am now informed that a sufficient percentage of the land owners on that portion of the system known as Lateral No. 4, comprising approximately one-half of the system, have executed these deeds and that the Canal Company has now acquired that lateral and will operate it commencing with the present irrigation season.

Permission to transfer this portion of the so-called Gilstrap System was granted by this Commission in Decision No. 5125, In the Matter of the Application of Sutter Butte Canal Company and Gridley Land and Irrigation Company for order authorizing said Company to sell a portion of its system to Sutter Butte Canal Company, Application No. 3508. The Canal Company stands ready to take over the remaining portion of this system, and now complainants have refused to do their part in the very things

which they sought, through the power of this Commission, to force Sutter Butte Canal Company to do. I shall recommend that this complaint in Case No. 1083 be dismissed in so far as it relates to the taking over and operation of these laterals by Sutter Butte Canal Co and the Gridley Land and Irrigation Company, although I am of the opinion that consumers and utility can hope to secure satisfactory service only when service is rendered direct to the individual consumer and not through an intermediary.

Complainant Henry E. Sutter in Case No. 1062, asks that this Commission order Sutter Butte Canal Company to return the moneys collected in payment for a so-called water right or advance payment on rates. This charge was made in 1914 and was for the payment of \$1540.00, being at the rate of \$10.00 per acre for 154 acres. The Canal Company contends that this payment was demanded in accordance with its tolls and charges on file with this Commission at that time and is a part of its rate schedule and that the rates, including the so-called water right charge do not produce the revenue to which it is entitled. It is further contended that these rates have had the approval of this Commission by being filed and adopted as rates and being the legal rates in effect no charge could be made without the authority of this Commission.

The complainant, on the other hand, contends it is a charge made as a condition precedent to the extension of service and that it is unlawful for a public utility to make such charge. It is a well established principle in this State that a utility can not demand payment ~~at~~ for a water right in addition to the established rates as a condition precedent to service. San Diego Land and Town Company vs. National City, 74 Fed. 79, 86; San Joaquin and Kings River Canal and Irrigation Co. vs. Stanislaus County, 191 Fed. 875, 891 and Byington vs. Sacramento Valley West Side Canal Co., 170 Cal. 124.

This contract was made subsequent to the effective date of the Public Utilities Act and had the tentative approval of this Commission by being filed and permitted to be effective as a rate; therefore, the return of the money collected could not be considered reparation due to the utility unlawfully deviating from its legal schedule of rates. The preceding computation of rates shows that the annual charges provided in the contract together with the so-called water right payment approximates a fair rate for the service rendered.

O R D E R.

Public hearings having been held in the above entitled proceedings and said proceedings having been regularly submitted and being now ready for decision,

The Railroad Commission of the State of California hereby makes the following findings of fact:

(1) The Railroad Commission finds that the rates, charges, rules, regulations, contracts and practices in the service of water of Sutter Butte Canal Company are unjust and unreasonable in so far as they differ from the rates, charges, rules, regulations, contracts and practices herein established.

(2) The Railroad Commission hereby finds that the rates, charges, rules, regulations, contracts and practices herein established are just and reasonable rates, charges, rules, regulations, contracts and practices.

Basing its order on the foregoing findings of fact and each statement of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED as follows:

(1) Sutter Butte Canal Company is hereby ordered to establish and file with the Railroad Commission, on or before twenty (20) days from the date of this order, the following rates for water:

Schedule No. 1.

Flat Rates

Rice Irrigation	\$7.00	per acre per year
Grain	.50	" " " irrigation
Water grass or plowing	1.00	" " first "
Water grass or plowing	.50	" " each subsequent irrigation.
All other crops	2.50	" " per year.

Schedule No. 2.

Measured Rates.

Minimum charge per acre per year

Rice irrigation	\$4.00	for 3 acre feet or less
Grain and water grass	.75	for $\frac{1}{2}$ " " " "
All other crops	2.00	for $1\frac{1}{2}$ " " " "
Excess at the rate of	1.25	per acre foot.

Schedule No. 3.

Initial charge \$10.00 per acre

Annual Charges

Flat Rates

Rice Irrigation	5.00	per acre
All other crops	2.00	" "

Measured Rates

Minimum

Rice \$3.00 per acre per year for 3 acre feet or less
All other crops \$1.50 per acre per year for $1\frac{1}{2}$ acre feet or less.
Excess at the rate of \$1.25 per acre foot.

(2) Sutter Butte Canal Company shall file and put into effect within twenty (20) days from the date of this order, revised rules, regulations and contracts to conform with the findings herein and with the rules laid down by the Commission in its Decision No. 2879, Vol. 8, Opinions and Orders of the Railroad Commission of California, p. 372.

IT IS FURTHER ORDERED that in all other respects these proceedings be and the same are hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission

of the State of California.

Dated at San Francisco, California, this 25th day
of March, 1918.

Max Thelen

H. Howard

W. Gordon

Edwin C. Edgerton

Frank DeVlin

Commissioners.