

Decision No. 7453

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

BUTTE COUNTY WATER USERS ASSOCIATION,
a Corporation, and A. J. LOFGREN,
Complainants,

vs.

SUTTER BUTTE CANAL COMPANY,
a Corporation,
Defendant.

Case No. 1431.

George F. Jones and Armfield & Eddy
for Complainants.

Douglas Brookman, Isaac Frohman and
A. E. Chandler for Defendants.

A. H. Hewitt for Sutter Water Users
Association, Intervener.

W. H. Carlin and Arthur E. Redington
for certain other Interveners.

MARTIN, Commissioner.

OPINION

The above entitled proceeding was brought by the Butte County Water Users Association, a corporation, composed of users of water from the system of the Sutter Butte Canal Company in Butte county, and what may be termed northern Sutter county, and A. J. Lofgren, a water user from the system of the Sutter Butte Canal Company, who resides in the vicinity of Richvale, Butte County, against the Sutter Butte Canal Company, a public utility water corporation which delivers water for irrigation in Butte

and Sutter counties.

The complaint alleges in effect that the Butte County Water Users Association is a non-profit, cooperative corporation organized under the laws of this State for the purpose of protecting their mutual and individual interests and to procure more adequate water and power service for irrigation and other purposes at just and reasonable rates; that A. J. Lofgren is and for more than five years last past has been a consumer purchasing water from defendant; that Sutter Butte Canal Company is a public service corporation engaged in the business of appropriating, diverting, distributing and selling water for irrigation purposes in the counties of Sutter and Butte in the State of California; that defendant proposes to deliver during 1920 and thereafter water for the irrigation of some 14,400 acres of land located in central Sutter county some ten miles distant from the canal system of defendant as it existed in 1919; that defendant has not available a sufficient supply of water to irrigate this land in addition to lands located in Butte and northern Sutter counties which require water for irrigation; that if defendant is permitted to deliver water for said 14,400 acres of land, all of the consumers whose lands are susceptible of irrigation from the system as it existed in 1919, and who are entitled to receive water therefrom during 1920, will be deprived of the amount of water necessary for the proper irrigation of their lands. Complainants pray for an order of this Commission restraining defendant from delivering water to said 14,400 acres of land, and limiting the number of consumers or acres of land which it has undertaken to supply to such area as the Commission shall find defendant may adequately supply during the irrigation season.

Defendant Sutter Butte Canal Company in its answer alleges in effect that it proposes to deliver water as a public utility corporation for the irrigation of all lands susceptible of

irrigation from its canals and laterals as they existed and were used during the irrigation season of 1919, with some small extensions, and in addition thereto to deliver water for the irrigation of some 14,400 acres of land lying in central Sutter county; that it has accepted the applications of the owners of said 14,400 acres of land and constructed ditches for the delivery of the water; that a sufficient supply is normally available to irrigate the lands desiring water under its system, and that if there is an insufficient supply of water for the irrigation of all of the lands under its system for which application has been made, it is its duty not to make or allow any priority or preference as to service as between localities or consumers which it has undertaken to supply with water. Defendant prays for an order of this Commission declaring the owners of said 14,400 acres of land in Sutter county to have been duly and regularly admitted by defendant to participate in its water supply, and that they, as consumers, are entitled to receive their ratable proportion of the available water.

Complaints in intervention were filed by the Sutter Water Users Association, a corporation composed of some of the owners of the 14,400 acres above referred to, and by certain other of these landowners as individuals. Among other things, they allege that relying upon their agreement with defendant they have leased a large portion of their lands and that practically the entire 14,400 acres has been prepared for rice planting at great expense, and that if the prayer contained in the complaint of Sutter Butte Water Users Association is granted, they will suffer great loss. They pray that this Commission direct the Sutter Butte Canal Company to deliver water for the irrigation of their lands without preference or priority as between themselves and other consumers.

It appears from the evidence that the Sutter Butte Canal Company was delivering water in 1919 to some 22,000 acres of land planted to rice in Butte and Sutter counties, and some 28,000 acres

of alfalfa, fruit, vines, beans and other crops; that during 1918 advances were made to the utility by certain landowners in central Sutter county for the extension of its canal system some eight or ten miles further south, for the purpose of supplying a large area of land in that locality; that subsequently a contract was drawn dated September 15, 1919, between the owners of some 14,400 acres of land and the Sutter Butte Canal Company, which provided for the construction by the said Sutter Butte Canal Company of laterals to deliver water to this land, the cost of these laterals to be deposited by the landowners in accordance with the rules and regulations of the Sutter Butte Canal Company, which are on file with this Commission. The Sutter Butte Canal Company agreed to construct this system and deliver water for the season of 1920 to these landowners for the irrigation of their lands. The signers of this agreement filed applications with the Sutter Butte Canal Company and paid the rates for service for the year 1920 as required by the orders of this Commission. These applications were filed with the Company shortly after September 15, 1919, and all of them were filed prior to January 1, 1920, which is the date set out in defendant's rules and regulations subsequent to which it is not obligated to accept applications for water for the coming irrigation season. There is also contained in the rules and regulations of the Sutter Butte Canal Company a rule which provides that if it is necessary to extend or enlarge ditches or laterals in order to supply the land desiring service, application must be made on or before October first of the year preceding the year in which the service is desired.

Pursuant to the agreement, the Sutter Butte Canal Company proceeded to construct the canals and ditches necessary for the irrigation of these 14,400 acres of land, and at this time have them practically completed at a cost of between \$200,000 and \$250,000.

Prior to January 1, 1920, applications for water were filed by the owners or lessees of some 55,300 acres of land in Butte and

Sutter counties. Included in these are applications for water for some 8,000 acres in Butte county which have never heretofore been irrigated with water from the Sutter Butte Canal Company's system.

An inspection of the records in the proceeding before this Commission relating to this company discloses that the Canal Company in its notices of appropriation stated that the purpose and place of intended use of the waters appropriated were for irrigation in Butte, Sutter, Glenn and Colusa counties. We further find that the Butte County Canal Company, predecessor in interest of the Sutter Butte Canal Company, obtained franchises from Sutter and Butte counties giving them 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.

It further appears that some time since, defendant purchased the right to use what is locally known as the Live Oak Drainage Canal, a canal extending from the system in northern Sutter county in a southwesterly direction to the vicinity of the lands referred to as the 14,400 acres in central Sutter county, and that water was delivered through this canal to certain lands, although only small in area, which are now included in the 14,400 acres or lie adjacent thereto. Furthermore, extensions have been made for the service of lands in Butte County located as far, if not farther, from the then system of this company as these lands are located from the system as it existed in the summer of 1919. These extensions were made without question, and indeed some of those persons now appearing as complainants in this proceeding are the owners of land which was as far distant from the system of the Sutter Butte or the Butte County Canal Company as it then existed when they contracted or agreed to take water from that company, and subsequent to the agreement the canals were constructed.

The history of the Sutter Butte Canal Company shows that it has been gradually enlarged and extended since its inception in

1904. The growth of the system until 1911, when the rice industry sprang into being, was very slow. Subsequent to that time, long extensions were made, and the system developed as it exists today. It appears therefore that the extension in question is but one further step in the development of this company's system to serve the area to which its supply is dedicated, and it is therefore found as a fact that the 14,400 acres in central Sutter County which are more fully described in the agreement on file with this Commission, entered into the 15th day of September, 1919, between the Sutter Butte Canal Company and certain land owners, and further, as approximately delineated on the map filed as Complainant's Exhibit No. 6 in this proceeding, is within the area to which the Sutter Butte Canal Company has dedicated its service.

The rules and regulations of Sutter Butte Canal Company provide that application must be made for water and filed with the company not later than January first of the year in which service is desired, and that if the application is not made on or before the date specified, the company may, at its option, refuse service. It is further provided in the rate schedule that for rice irrigation, \$1.00 per acre must accompany the application as a payment on rates.

The land owners last above referred to have complied with these rules and regulations and if defendant herein, at the time of the acceptance of these applications, could reasonably have expected that an adequate supply of water would be available during the 1920 season for the irrigation of this additional area, it follows that they are entitled to their fair share of the available water supply.

It was stipulated at the hearing that in a normal year the Sutter Butte Canal Company would have available a sufficient water supply for the irrigation of these Sutter county lands in addition to the land which it is obligated to serve in Butte county.

In view of the fact that the applications of these landowners were accepted in September, 1919, and that a study of the records of

rainfall and runoff would logically point to the conclusion that the company could at that time have reasonably expected a normal supply for the irrigation season of 1920, defendant was justified in accepting the applications for water to supply the territory in question.

It appears from the evidence that the fact that a contract was being made by the Sutter Butte Canal Company to deliver water to the 14,400 acres above referred to, was published widely in newspapers with a circulation throughout the entire territory served by the Sutter Butte Canal Company, and that it was a matter of common knowledge that this extension was being constructed. The Butte County landowners stood by without taking action at that time, when in all probability they believed a normal supply of water would be available for irrigation this year, and brought no action to restrain the Sutter Butte Canal Company from delivering water to these lands. The Sutter Butte Canal Company has proceeded to construct these laterals at a cost of between \$200,000 and \$250,000, and the landowners have gone ahead on the assumption that they would receive water, and leased and prepared their lands for rice cultivation. It would most assuredly be unfair to them, after the expenditure of such large sums of money, to restrain the Sutter Butte Canal Company from delivering water to them during the 1920 irrigation season.

The testimony relating to the quantity of water necessary to supply the area which it is contemplated will be irrigated this year, and the runoff records of the Feather River at Oroville show that if one cubic foot per second delivered at the land is sufficient to irrigate 50 acres of rice during August, and if a loss of 30 per cent. occurs in transmission, there will be a sufficient quantity of water available 80 to 90 per cent. of the time for the irrigation of approximately 38,000 acres of rice and some 32,000 acres of general crops. Furthermore, the Sutter Butte Canal

Company now has a permit from the State Water Commission for the diversion of 500 second feet additional at a point some 12 miles below the present intake. The record shows that there is a material quantity of water at this point, even when practically the entire flow of the Feather River is diverted at the intake of the Sutter Butte Canal Company. This is probably due to return water from irrigation and from the infiltration of water from sub-surface supplies.

It would be uneconomical, and would retard the development of this state if an irrigation company were restricted in its delivery of water to only that area for which it would have a sufficient supply in the driest years. A restriction such as this would prevent the cultivation of large areas of land which would otherwise be cultivated and produce a crop a very large proportion of the time. As a matter of fact, years of drought such as this do not ordinarily occur more frequently than from ten to twenty year periods and it would be unjustly restricting the expansion of the agricultural pursuits of the state if a company were permitted to serve only the area for which it would have available water during years of extreme drought and consequent minimum water supply.

Applicants applying to a utility for an extension of service, whose applications are accepted in good faith by the utility at a time when it could reasonably expect to have available a sufficient supply of water in addition to that needed for the lands theretofore served, should in justice receive their ratable proportion of the available supply if a shortage occurs, even though that shortage may occur prior to the actual delivery of any water to them.

ORDER

BUTTE COUNTY WATER USERS ASSOCIATION and A. J. LORGREN hav-

ing complained to this Commission against the delivery of water by the Sutter Butte Canal Company to a certain area located in central Sutter County, and Sutter Water Users Association and others having filed complaints in intervention; a public hearing having been held and the Commission being fully apprised in the premises,

It is hereby found as a fact that the owners of said 14,400 acres of land referred to in the opinion preceding this order are within the area to which the Sutter Butte Canal Company has dedicated its service and is entitled to receive its ratable proportion of the available water supply as consumers, during 1920 and thereafter,

And basing its order on the foregoing findings of fact and the further findings of fact and the statements of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED that the complaint of the Butte County Water Users Association, a corporation, and A. J. Loifgren be, and the same is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that Sutter Butte Canal Company be and it is hereby directed to deliver water for the irrigation of the 14,400 acres herein referred to for the season of 1920 and thereafter, in the same manner and without preference as between this 14,400 acres and the other area served by it.

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 21st day of April, 1920.

Eric C. Edgerton
Frank R. Denton
H. B. Brundage
Dwight Martin
Commissioners.