

Decision No. 7749.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

Elon Dunlop,
Complainant,

v.

The Diamond Ridge Water Company,
Defendant.

Case No. 1268

Diamond Ridge Water Users' Association,
Complainant,

v.

Diamond Ridge Water Company,
Defendant.

Case No. 1364

J. A. Riley,
Complainant,

v.

Diamond Ridge Water Company,
Defendant.

Case No. 1400

Frank X. Walsh,
Complainant,

v.

Diamond Ridge Water Company,
Defendant.

Case No. 1401

Elon Dunlop, in propria persona.
B. D. Marx Greene and E. J. Sinclair,
For Diamond Ridge Water Users Association.
Frank F. Atkinson, for J. A. Riley, Frank
X. Walsh and The Farmers' Protective Assn.
John W. Dorsey and W. E. Cashman for Defendant.

LOVELL, Commissioner:

O P I N I O N

The above mentioned proceedings are primarily directed against the water service rendered by the Diamond Ridge Water Company for irrigation and domestic use. By stipulation, the four proceedings entitled as above were combined for hearing and decision.

The Diamond Ridge Water Company owns and operates a water

system comprising about 35 miles of ditch and flume in a district known as "Diamond Ridge" which lies between the North Fork of Cosumnes River and Webber Creek in central El Dorado County. This system, like most of the ditch systems in the Sierra foothills, was built many years ago to supply water to mines. This class of service has now been entirely discontinued and a small irrigation and domestic use has been developed.

With the exception of two small reservoirs with a total capacity of approximately 30 acre feet, this company has no means of storing water whatsoever and is dependent for its supply entirely upon the stream flow in Camp Creek and the North Fork of the Cosumnes River.

In dry years, such as 1918 and 1919, the flow in these streams is insufficient to furnish a full supply to the company's consumers and at times diminishes to such an extent that service is cut off altogether.

The complaints in these cases allege in effect that for a number of years the company has not properly maintained and operated its ditches and that the result has been a great loss of crops and inconvenience to its consumers; that due to the irregularity of the supply, consumers cannot safely increase their present acreage, and that prospective consumers are discouraged from purchasing land and placing same under irrigation; that the company has made no attempt to develop a continuous supply by means of storage; that the employees of the company have been discriminatory and unfair in their dealings with consumers and have not properly attended to their duties; that the charges of the company in a number of cases are deviations from the schedules of the company as filed with this Commission; that the ditches and flumes of the company have not been properly cared for, resulting in a great loss of water and, finally, that the company has no established rules and regulations governing service to its consumers.

Public hearings were held in these matters at Placerville on

January 21st and 22nd, February 3rd and 4th and March 17th and at San Francisco on March 25th, 26th and 27th, 1920.

At these hearings evidence was introduced relative to the condition of the company's ditches, dams, flumes and reservoirs, also regarding the relationship between the company's employes and its consumers. The condition of the company's system during the years of 1918 and 1919 was gone into in great detail. The complainants submitted evidence to show that during these two dry years, the company's flumes and ditches were in poor repair resulting in a serious waste of water and the curtailment of supply to its consumers.

The distance which this company is compelled to carry water is great as compared with the small acreage which it supplies and the result is an unusual loss in transit due to evaporation, seepage, leakage, etc. However, I am convinced that with reasonable effort a considerable saving can be made by certain improvements, such as lining or boxing of ditches at points where leakage is serious due to the geologic formation through which it passes, the lining of its flumes by some approved method widening certain stretches of ditch so that the entire ditch will for all practical purposes be of approximately the same cross-section.

It developed that the two small reservoirs, located at the lower end of the company's system near Diamond, are in a state of disrepair. The gates are dilapidated and the waste gates have been undermined and washed out, rendering them useless. It was shown that proper repairs could be made of the outlet gates and waste gates to these two reservoirs at a small cost, thus enabling the company to raise the water levels and to store an amount of water, which though not great, would be of considerable value in times of shortage. These repairs should be made at once.

This Commission in its Decision No. 1310 in the proceeding entitled, Elon Dunlap versus Diamond Ridge Ditch Co., Case No. 528, decided February 28, 1914, Volume 4 of Opinions and Orders of the California Railroad Commission, page 317, directed defendant herein

to submit plans for improving and repairing its system. In that proceeding defendant declared that it was the purpose of the Company to construct a wholly new impounding and irrigation system, to supersede the then existing system. This reconstruction has never taken place. Subsequent to Decision No. 1310 supra, certain improvements were installed by the Company, and it appears from the evidence that the system is now in better condition than at that time. However, certain additional improvements and repairs are necessary in order to properly conserve the available water supply.

Attention is directed to the fact that the income heretofore received by defendant is insufficient even to meet operating expenses, and the tendency is for a company operating with so large an annual deficit to render inadequate service and to neglect necessary repairs.

There is now pending before this Commission an application filed by defendant herein, asking authority to increase its rates. The area served, however, is so small that it will undoubtedly be practically impossible to establish a rate which will yield to defendant herein revenue sufficient to meet its expenses and an interest return. Defendant has however dedicated its system to a public use, and in reliance upon this dedication its consumers have proceeded to develop their ranches. The evidence shows that no real effort has been made to increase the business from its present system, and I am of the opinion that the poor service rendered has had a very material effect in reducing its business.

Defendant herein purchased this property as a speculation, intending to finance the purchase of a large tract of land, to be later subdivided and sold at a large profit through the use of the water rights purchased with this system and the construction of impounding facilities. Defendant admitted that it was holding this for a speculation and that its speculative value was considerable. This however, is no just reason why present consumers should be permitted to suffer for lack of water, and indeed, a far-sighted policy would be to render

adequate service to these consumers, thereby securing their aid in the larger scheme and inducing others to settle, thus promoting the development which defendant is and has been attempting to finance. Present consumers should, however, be required to pay equitable rates and produce for the utility a sum equal to what the service is reasonably worth.

Complainants herein submitted a questionnaire to a large number of landowners, including defendant's present consumers, and submitted this questionnaire at the hearing herein, in an attempt to show that if reasonable diligence is used on the part of defendant to deliver an adequate quantity of water, business is readily available and the system can be developed.

It appears to me that if those signing the questionnaires will actually contract with the defendant so that it will be assured of a reasonable income because of its additional expenditures, defendant can afford to construct more or less extensive improvements to its system and provide for an additional water supply. I recommend that a definite agreement be drawn to accomplish this end.

This Commission will gladly use its good offices in furtherance of such a development, which will work for the welfare of the community and the water company. The order herein will provide that an additional water supply be obtained, conditioned upon some such agreement being consummated; and at such time as a sufficient area contracts to use water to provide an adequate income to defendant herein to enable it to construct these additional facilities, a supplemental order will be issued directing defendant to proceed immediately with this construction.

I further suggest that complainants prepare and sign such contract and submit the same to this Commission, which can then take up the matter with defendant and give consideration to the matter of either

arriving at an agreement regarding the additional construction work to be carried on, or issue further order requiring defendant to proceed.

There is in this vicinity a possibility of all getting together and working out a constructive program which will materially benefit all concerned and be one step towards the development of the entire project which defendant has been trying to put through for a number of years.

Mr. R. W. Hawley, a consulting engineer and a witness in behalf of complainants, submitted a report at the hearing, which purported to show that it is feasible and economical for defendant herein to construct a dam and so increase its present available water supply that some 3500 additional acres could be irrigated, and that the additional expenditure would be justified by the revenue which defendant could reasonably expect to receive from its consumers.

Mr. N. B. Ellery, engineer for defendant, maintained that Mr. Hawley had greatly under-estimated the cost of the proposed development, and furthermore, that the project as planned would not be feasible.

After carefully considering all of the evidence, I am of the opinion that it is feasible to work out some plan whereby water can be impounded and delivered to the locality in question, provided the area is not so scattered that the transportation and delivery cost is prohibitive, and further, provided that those desiring to receive water give some adequate assurance to the company, in the form of a contract or otherwise as outlined above, that water will be used in sufficient quantities to justify the expenditure.

The evidence shows that the Rules and Regulations under which defendant operates are very vague, and that many controversies arise because of this. Furthermore, there has been no adequate supervision of the operation and repair of this system. The haphazard manner of operation which has been permitted to exist in the past cannot continue if defendant hopes ever to make this project a financial success. The man in charge is, in addition to his position as superintendent of the

system, a jeweler in the city of Placerville, and gives a very large proportion of his time to that business. Furthermore, numerous disputes have arisen between the management and the consumers, which have continued to such an extent that extreme personal enmity exists, and I am of the opinion that such enmity will continue to exist against defendant until the operating force is changed and new men placed in charge of the system. Consumers of an irrigation company must exercise forbearance toward the management, especially in times of water shortage, and the management must deal with consumers in an impersonal manner, and eliminate rather than aggravate their grievances.

I suggest to defendant that a competent man be employed to have direct charge of the operations of this system. The man so employed should preferably come from another locality, and can replace not only the present superintendent but also one of the present ditch tenders. Thus the cost of operation would be very little increased, if at all.

It appears that during the summer of 1919 the company's domestic consumers in the town of Diamond were compelled to pay a flat rate of \$2.00 per month, instead of \$1.00 per month as theretofore. This increase was unauthorized, and the excess amounts so collected should be returned to the consumers.

I recommend the following form of order:

ORDER

Public hearings having been held in the above entitled proceedings, and such 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) Certain portions of the irrigation system owned and operated by the Diamond Ridge Water Company are in such condition owing to lack of repair that it is impossible to economically convey water through the system for the needs of said company's consumers.

(2) The conditions under which said Diamond Ridge Water Co. operates its system and the manner in which it deals with its consumers

are unsatisfactory.

Basing its order on the foregoing findings of fact and on the statements of fact contained in the proceedings,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the Diamond Ridge Water Company is hereby ordered to submit to this Commission for its approval, within fifteen (15) days from the date hereof, a plan for the repair of said water system, to include a plan for the lining of flumes where necessary, the widening of certain portions of ditch, the repair of certain of its flumes and reservoirs, and such other repairs and construction as are needful.

2. The Diamond Ridge Water Company shall, within fifteen (15) days from the date of this order, file with this Commission a draft of the proposed rules and regulations covering service of water through its system. These rules and regulations shall be put in effect as amended and approved by the Commission, and the form of any contract entered into between defendant herein and its consumers shall be submitted to this Commission for its approval prior to the execution of said contract.

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 19th day of June, 1920.

Edwin O. Edgerton

H. J. Loveland

H. T. Brundage

Irving Martin
Commissioners.