

ORIGINAL

Decision No. 815

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

L. Y. MONTGOMERY, et al,  
Complainants,

vs.

THE FRESNO CANAL AND IRRIGATION  
COMPANY,  
Defendant.

Case No. 397.

N. C. Coldwell for complainants.  
W. A. Sutherland, Sutherland & Short,  
H. P. Brown and F. E. Cook for defendant.

TRILEY, Commissioner.

OPINION.

This is an action to compel adequate service on the part of the defendant company.

The complaint was filed on May 15, 1913. It alleges, in effect, that the complainants are farmers living in and about Laton, in what is known as the Laguna de Tache Grant, in Fresno County, California; that the defendant is a California corporation engaged in the business of appropriating water from the Kings River and distributing it to the complainants and other persons residing in the counties of Fresno and Kings; that the defendant heretofore contracted to supply water to complainants, in accordance with the terms of certain water right agreements heretofore entered into; that the defendant has failed to deliver to complainants the amount of water called for in said contracts; that defendant has distributed the waters to which complainants were entitled to other lands under contracts issued subsequent to those with complainants; that defendant has failed to keep its canals and ditches, dams, bulkheads and headgates in good condition, so as to render good service to the complainants; and that the waters turned into the defendant's canals

and ditches have not been equitably divided between the persons entitled thereto. The complainants ask that the defendant be compelled to distribute to persons living on the Laguna de Tache Grant all the water to which they are equitably entitled; that the defendant be required to perform fully all the terms and conditions of its contracts with the complainants; and that an equitable division of the water coming into the defendant's ditches supplying the Laguna de Tache be given to each person entitled to receive water from such ditches and canals. Attached to the complaint are the names of 500 persons other than those named at the head of the complaint, which persons also ask for an equitable and ~~xxx~~ adequate service from the defendant company. A part of the complainants were represented by Mr. N. C. Coldwell and a part living on what is known as the "Island Country" were not represented by an attorney. The relief herein given will apply to all the complainants, including those in the Island Country.

On May 26, 1913, the defendant filed its answer. After alleging that this Commission has no jurisdiction in the matter and that the defendant has not sufficient information with reference to the title of the complainants to their land, the answer denies that the defendant has not distributed to the complainants the amounts of water to which they were entitled, and denies that the defendant has failed to keep its canals and ditches, dams, bulkheads and headgates in proper condition. The defendant alleges that it has fully complied with its contracts; that the years 1912 and 1913 have been unusually dry and that the quantity of water required for irrigation has become greater and the amount of water lost in transmission through defendant's canals has largely increased over the amount so lost during normal years; that defendant has been prevented by hostile diversion and obstruction and court orders from appropriating from the Kings River the amount of water to which defendant is entitled and that it has used all due diligence to restore and protect the flow in its ditches of the amount of water to which defendant claims to be

entitled from the Kings River; that defendant has requested complainants to organize and co-operate with the defendant in the distribution of the water but that complainants have refused to do so; and that the defendant is ready and willing to carry out its contracts and to meet its obligations and that it has done so except when unavoidably hindered and prevented.

The public hearings in this case were held on June 24th and 25th at Hanford, and on July 21st at Fresno.

It appears that the complainants reside in what is known as the Laguna de Tache Grant, in Township 17 South, Ranges 20 and 21 East, and in Township 16 South, Ranges 19 and 20 East M.D.B. & M., and that they receive water from the defendant's system of canals and ditches, through what is known as the Grant Canal, which canal is at the lower end of defendant's system. The complainants presented evidence to show that they had not received the amount of water to which they were ratably entitled under their contracts. These contracts provide in part that if there is a shortage of water, the consumers of the company shall each receive his ratable proportion thereof. The complainants presented evidence to show that they had not received their ratable proportion for the reason, among others, that the defendant company had permitted persons living nearer the source of supply to take from its canals more than their ratable proportion of the water. The evidence shows that this contention is correct, and that the defendant company failed in its duty to make a ratable distribution of the water. The fact that it is difficult to secure convictions for unauthorized diversions of water from the defendant's system is no excuse for a failure on the part of the defendant to do all in its power to enforce an equitable distribution of the water in its canals.

The complainants also contended that the defendant's canals were not kept in proper condition. There was some evidence to the effect that at certain points willow trees and hog fences obstructed the flow of water in defendant's canals and ditches. This condition

exists to the same or to a greater extent with reference to the canals and ditches owned by the farmers themselves.

The complainants further contended that the defendant was selling water rights on other tracts which had recently been opened and that a portion of the water to which they were entitled was being diverted to such tracts. The evidence on this point was not definite, and in the absence of an opportunity to the defendant to meet this issue, I can make no finding on this point. The matter is taken care of in the order which follows this opinion.

On the third day of the hearing the defendant admitted that it had failed to give to a large portion of the complainants the water to which they were ratably entitled. While the defendant claimed that persons and water companies lower down on the Kings River were diverting more water than they were entitled to, and that consequently the defendant had been unable to divert into its canals the full amount of water to which it was entitled, defendant also at the same time admitted that it had not ratably distributed the amount of water which it actually had in its canals. Defendant offered to consent to the making of an order directing it in subsequent irrigating seasons to do its full duty to the complainants, both as to the ratable distribution of the water and as to the maintenance of its canals and ditches in proper condition. Defendant also agreed that it would not sell any additional water rights unless it should first have secured from this Commission an order authorizing such sale. The defendant, however, did not admit that water rights in excess of the capacity of its system had been sold. After a full discussion, both sides stipulated to the entry by the Commission of the order which follows this opinion.

I submit herewith the following form of order:

ORDER.

A public hearing having been held on complaint and answer in the above entitled proceeding, and the Commission being fully

advised in the premises, the Commission hereby makes the following findings of fact: X

1. That the defendant company on the date of the filing of the complaint herein had failed to deliver to a large portion of the complainants, including the persons whose names appear in Exhibit "B" attached to the complaint, the water to which they were ratably entitled under their contracts.

2. That the defendant company to some extent had failed to keep its canals and ditches in proper condition for the conveyance and delivery of water.

Basing its order on the foregoing findings of fact, and on the further findings contained in the opinion which precedes this order, and also the stipulation made by both parties in open court, consenting to the entry of the following order,

IT IS HEREBY ORDERED AS FOLLOWS:

1. THE FRESNO CANAL AND IRRIGATION COMPANY is hereby ordered to supply to the complainants in the above entitled proceeding, including the persons whose names are specified in Exhibit "B" attached to the complaint, and the residents in what is known as the "Island Country," during subsequent irrigation seasons, the full amount of water to which each of said persons is ratably entitled, and to adopt and enforce, subject to this Commission's authority, such reasonable rules and regulations as may be necessary to this end.

2. The Fresno Canal and Irrigation Company is hereby ordered to place and maintain its canals and ditches and appurtenances in proper condition for the conveyance and delivery of water and to provide and properly instruct a sufficient number of capable employees and to keep such records that it may be determined month by month whether the persons specified in Section One of this order are securing their ratable proportion of water.

3. The Fresno Canal and Irrigation Company shall dispose of no further water rights until an order of this Commission shall first have been secured authorizing it so to do.

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 24<sup>th</sup> day of July, 1913.

John M. Eckelmann  
W. G. Gordon  
Max Thelen  
Edwin C. Edgerton

Commissioners.