

Decision No. 8563

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

WESTERN STATES GAS AND ELECTRIC )  
 COMPANY, a corporation, )  
 Complainant, )  
 vs. )  
 JOSEPH SWANSBOROUGH, )  
 Defendant. )

CASE NO. 1376.

Chickering & Gregory by W. C. Fox, for  
Complainant.

E. Fitzgerald for Defendant.

LOVELAND, Commissioner.

O P I N I O N

The above entitled matter is a proceeding brought by Western States Gas and Electric Company asking that the Railroad Commission fix and determine the rights of one Joseph Swansborough, who is named herein as defendant, with relation to his rights to the use of certain water for irrigation.

Complainant herein is a corporation engaged principally in the business of furnishing electricity and gas to the public. It generates a large portion of the electrical energy so sold by means of its hydro-electric power development, and in connection with this it also supplies water to consumers for irrigation and domestic purposes, as a public utility. Said complainant is the

owner of what is known as Summerfield Ditch and water rights therefor, from which ditch water has been supplied for irrigation and domestic purposes to certain consumers, including defendant herein. However, it is alleged in the complaint that since 1912, when complainant herein became owner of the ditch in question, no new consumers have been taken on for service therefrom.

It is further alleged in effect that defendant herein until the present complaint was instituted, had not exceeded a maximum use of water in any one year of 106 miner's inch days, and that on the 23d day of September, 1919, said defendant called at the office of complainant at Placerville, and demanded five inches of water additional to the 106 miner's inches which he had used during that season, and tendered payment therefor, which application and payment were accepted by complainant's representative.

Complainant takes the position that under its present system of operation all the water available from the Summerfield Ditch, other than the total of the maximum amounts heretofore furnished to each irrigation user in any one year, is dedicated to hydro-electric development through its American River power plant, for the purpose of furnishing electricity to the public, and further alleges that if additional water is supplied for irrigation and domestic uses, the capacity and output from said power plant will be decreased in direct proportion thereto.

It appears that Western States Gas and Electric Company is furnishing water for irrigation and domestic purposes from its Summerfield Ditch to some seven consumers. The Summerfield Ditch is 25 miles long and approximately five cubic feet per second in capacity. Through this ditch the company diverts water from Slab Creek and the supply thus obtained is used to augment the flow of its main ditch, which diverts water from the American River, and supplies the American River hydro-electric power plant of said com-

pany in Placer County.

The Summerfield Ditch was built in the early fifties for the purpose of conducting water for placer mining, but after mining operations were discontinued, the ditch was operated for a number of years for the sole purpose of supplying irrigation use. This condition prevailed until about 1905, when the American River power plant was constructed, and thereafter the principal use of water from this ditch was for the generation of hydro-electric energy.

Defendant herein is the owner of a ranch consisting of some 340 acres. Some 79 acres have been improved and from 12 to 15 acres have been irrigated during the past few years. This land is easily susceptible of irrigation. Defendant states that he does not desire to irrigate in excess of 25 acres, but that 106 miner's inch days, which complainant claims is the maximum amount to which he is entitled, is insufficient for his purposes. Complainant takes the position that the maximum use of water in any one year by consumers results in a dedication, and thus the fact that Joseph Swansborough's highest use of water during any one year was 106 miner's inch days, is construed by complainant to establish the amount to which he is entitled. Defendant contends, however, that although he has not used in excess of 106 miner's inch days during the past year, he has theretofore used more than that amount.

After a careful consideration of all of the facts pertaining to this case, I am of the opinion, in view of the peculiar circumstances surrounding the delivery of water to defendant herein, that the Western States Gas and Electric Company should deliver an additional <sup>5 miners inches of</sup> water ~~supply~~ to Mr. Swansborough, and I recommend to them that they proceed to do so. However, this is a proceeding brought by Western States Gas and Electric Company, and in my opinion it is not one in which that company should be directed to serve Mr. Swansborough, and I shall therefore recommend that the complaint

herein be dismissed.

ORDER

Western States Gas and Electric Company having made complaint against one Joseph Swansborough, as entitled above, a public hearing having been held and facts having been developed as outlined in the opinion which precedes this order,

IT IS HEREBY ORDERED, that the above entitled complaint be and it is 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 19<sup>th</sup> day  
*January* 1921  
*of December,* 1920.

T. S. Leonard  
Frank R. Helm  
W. B. ...  
Dwight Martin  
Commissioners.