

Decision No. 8841

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.
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ORIGINAL

In the Matter of the Application of)
Emma E. Rose, Anna G. Lane and Hobart)
Estate Company, a corporation, for)
leave to discontinue operation of the)
Douglas Ditch in El Dorado County,)
California.)

Application No. 3006.

Fairplay Water Users' Association,)
Complainants,)

-vs-

Case No. 1128.

Emma E. Rose, Anna G. Lane and Hobart,)
Defendants.)

McCutchen, Willard, Mannon & Green,
by Allan P. Matthew, for Applicants
and Defendants.

Abe Darlington and Henry S. Lyon,
for Protestants and Complainants.

BY THE COMMISSION.

OPINION ON PETITIONS FOR REHEARING

The Railroad Commission rendered its opinion and order in above entitled proceedings on January 9th, 1918, by Decision No. 5058 (Vol.15, page 52, Opinions and Orders of the Railroad Commission of California), wherein applicant was authorized to discontinue service of water through what is known as Douglas Ditch and its laterals provided either of the two conditions as set forth therein were complied with, which stated in brief are:

(1) That applicant abandon the ditch and convey the property and rights for a nominal consideration to any party desiring to operate same.

(2) Upon filing statements from all users of record either

waiving their rights to service from the ditch or agreeing that service be abandoned.

And it was further ordered that in case either of said conditions were not complied with prior to March 1st, 1918, applicant was to repair the Douglas Ditch and provide for and maintain adequate service to the consumers.

Applicant filed a petition and also an amended petition for a rehearing in the above proceedings, contending that in view of the evidence the Commission should have permitted the abandonment of the ditch unconditionally and asks for a reversal of the order as made in said Decision No. 5058. Also, the protestants and complainants filed with the Commission their answers thereto to the effect that said decision should stand as ordered and the petition for a rehearing be denied.

The evidence shows that during July, August and September, 1916, prior to the date of filing of the application herein to discontinue operation of Douglas Ditch and following the Commission's investigation of an informal service complaint made by certain water users, by agreement the Fairplay Water Users' Association took over the operation and maintenance of the ditch at a nominal rental, but unsuccessfully, and applicant was compelled to assume control again.

After due consideration of the evidence the Commission on November 12th, 1918, rendered its Decision No. 5910, (Vol. 16, page 212, Opinions and Orders of the Railroad Commission of California) denying a rehearing and modifying the previous order to the effect that all interested parties make an effort to agree on terms for a discontinuance of service from said ditch and within 30 days to file reports either jointly or separately stating the result and that thereafter an appropriate order would be made by the Commission.

Subsequent thereto reports were filed by both applicant

and defendants to the effect that an agreement as to terms for discontinuance of said ditch could not be reached, although applicant had made an offer to purchase approximately 10 acres of land which has been irrigated from the ditch for the sum of \$500, on condition that Fairplay Water Users' Association consent to the discontinuance of the service of water through the Douglas Ditch.

Thereupon it appearing to the Commission that an agreement on the latter basis could be reached, its "First Supplemental Order directing the Deposit of Funds" was issued on June 26th, 1919, being Decision No. 6459 of the Railroad Commission of California.

Upon receipt of said Decision No. 6459, Fairplay Water Users' Association petitioned for a rehearing of above entitled proceedings which was granted and a public hearing was held at Fairplay before Examiner Satterwhite, of which all interested parties were notified and given an opportunity to appear and be heard, and the evidence having been taken and briefs filed, said proceedings have been submitted and are ready for decision.

The evidence shows that Douglas Ditch was built by applicants' predecessor about 1856, primarily to supply water for mining purposes at Indian Diggins and vicinity which use ceased about 1911. While water was sold generally to the public during this period, the demand for irrigation use and the acreage irrigated in any one season was small. Furthermore, during the years 1911 to 1917, after mining use had been discontinued, the total area irrigated, consisting of scattered parcels, did not exceed 10 acres per season. It was shown that the expense of maintenance and operation of said ditch, a large item being the repair of flumes, had been over \$2000 per year since mining ceased in 1911, and the revenue, all from irrigation use, was less than \$100 per year.

Testimony at the rehearing brought out that applicant had

for many years operated Douglas Ditch in connection with the Tyler and Simpson ditches as a high level ditch system delivering water into a distributing reservoir for the supply of the town of Plymouth and the Plymouth Mine. Douglas Ditch was depended upon for its late summer flow to supplement the low flow of the other ditches. However, when the Plymouth Mine was operating the summer supply was always inadequate for this mine and town and it was necessary and customary to curtail the irrigation use.

Plymouth Mine was closed down for a number of years, but renewed operations about 1912 with an enlarged mill requiring a large constant water supply. Therefore, the supply from the Enterprise Ditch or low level system was introduced by applicant to provide this service.

Applicant continued to operate both ditch systems for the supply of the town and Plymouth Mine until 1916, when an electric pump unit was installed on Enterprise Ditch for the supply of the town and then the high level ditch system was cut off from the town reservoir. Thereafter Douglas Ditch was operated solely for the small irrigation service heretofore mentioned.

Further, Douglas Ditch was operated after discontinuance of mining use mainly in an endeavor to get sufficient water into Tyler and Simpson ditches for the supply of the town of Plymouth, which supply was found to be insufficient by reason of the large seepage losses.

Enterprise Ditch diverting from both middle and south forks of Cosumnes River traverses a different soil formation from Douglas Ditch with comparatively small seepage loss and the ditch system is about half the length of the high level system.

A considerable portion of Douglas Ditch consists of hill-side wooden flumes frequently damaged by slides in the winter months.

and which must be maintained and renewed at heavy expense. The reported seepage losses are approximately 60 per cent of the quantity turned in at the intake.

Notwithstanding the testimony of witnesses, that a considerable additional area would be irrigated from Douglas Ditch, if the water was available, it is evident, with the character of the ditch system and the present available supply, that adequate irrigation service for this use could not be provided without large additional capital expenditure to eliminate seepage losses or to provide storage facilities. Further, if the necessary improvements were made to provide adequate service for additional acreage, an unreasonably high and prohibitive water rate would result in order to return the necessary annual charges.

By reason of the topography of the area in the vicinity of the ditch with comparatively few scattered tracts of small area capable of irrigation from the ditch and their inaccessibility to markets, it is evident that these areas cannot be irrigated economically or advantageously.

Further, from the evidence the crops heretofore raised on the small area irrigated were purely for local consumption and none were cultivated for the general market.

Considering the facts set forth herein and the further facts regarding the limited use of water from the ditch, the large expense of operation and maintenance and the small and inadequate revenue from the present consumers as heretofore set forth in the opinion, in Decision No. 5058, supra, applicant will be permitted to abandon service from said Douglas Ditch and its laterals.

O R D E R

Petition for rehearing in the above entitled proceedings

having been brought, a public hearing having been held and the Commission being fully apprised in the premises,

IT IS HEREBY FOUND AS A FACT that public necessity does not require that Emma H. Rose, Anna G. Lane and Hobart Estate Company, a corporation, shall continue the operation of that portion of a public utility water system known as Douglas Ditch and located in El Dorado County;

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

IT IS HEREBY ORDERED that the order heretofore made by this Commission in its Decision No. 5058, dated January 19, 1918, in the above entitled proceedings be and it is hereby rescinded and set aside.

IT IS HEREBY FURTHER ORDERED that Emma H. Rose, Anna G. Lane and Hobart Estate Company be and they are hereby authorized to discontinue the operation of the so-called Douglas Ditch located in El Dorado County.

IT IS HEREBY FURTHER ORDERED that in all other respects than as herein provided the petition for rehearing be and it is hereby denied.

Dated at San Francisco, California, this 9th
day of April, 1921.

Frank D. Denny
J. D. Loveland
H. B. Brundage
James Watson

Commissioners.