

Decision No. 9698

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.
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ORIGINAL

John E. Sexton,

Complainant,

vs.

CASE NO. 1550.

Western States Gas and Electric
Company, a corporation, and El
Dorado Water Company, a corpora-
tion,

Defendants.

W.W. McNair and Thomas Lloyd Lennon,
for complainants.
Chickering & Gregory, by Evan Williams,
for Western States Gas and Electric
Company.
R.W. Hawley and B.D. Marx Greene, for
El Dorado Water Company.

MARTIN, Commissioner.

O P I N I O N

This is a proceeding brought by John E. Sexton, who owns and operates the Pacific Channel Mine at Pacific, in El Dorado County, against the Western States Gas and Electric Company, (hereinafter referred to as the Electric Company) a public utility corporation, engaged in the business of selling gas, electricity and water, and the El Dorado Water Company, (hereinafter referred to as the Water Company) a public utility corporation, engaged in the business of selling water for domestic, irrigation and mining purposes in El Dorado County.

The complaint alleges in effect that the water supply of

defendant Electric Company was dedicated to mining and other uses during the years 1873 to 1876, inclusive; that the water has been used continuously since that time for public use including mining; that plaintiff's mine is located near this company's main canal, is within the area served and is of the class for which the water was dedicated; that repeated demands have been made for water to operate a mill at the mine, which demands have been refused; that the Pacific Channel Mine is a drift gold gravel mine, and that it requires forty miner's inches of water for twenty-four hours every third day to operate the mine to advantage; that said defendant has sufficient unused water running at all times in its main ditch to supply plaintiff without depriving any of its consumers of water, and that more than forty miner's inches of water is permitted to waste from the canal below plaintiff's mine, which waste finds its way into the same natural channel that it would reach after being used by plaintiff.

The complaint further recites that on or about May 31st, 1919, defendants herein entered into an agreement whereby the Water Company assumed the obligations of the Electric Company for service of water for mining purposes and that because of this agreement plaintiff has also applied to Water Company for water and was refused, wherefore plaintiff asks this Commission for an order directing one or both defendants to furnish the quantity of water applied for from the surplus waters in the canal.

The answer of the defendant Electric Company alleges in effect that it purchased the El Dorado ditch system about December, 1916, and furnished water to the then users until about May, 1919, when defendant sold that portion of the ditch system below the 14 Mile House Tunnel to defendant Water Company, and since that date has delivered water to the Water Company for resale and distribution according to

the contract entered into at the time of the transfer; that the use of its system is confined to the wholesale delivery of water to the Water Company and to the generation of hydro-electric energy, to which latter use the system has been dedicated for many years, leaving no water available for mining purposes. Defendant denies that all the water appropriated by its predecessors was dedicated to the use of mining in 1876, and that it has been used by the public continuously except the water appropriated and used through the El Dorado Ditch; denies that there is any unused water at any time running through the main ditch or that any water is permitted to waste. It is alleged that any quantity of water supplied complainant would decrease the quantity furnished the Water Company and defendant's hydro-electric plant. It is further alleged that plaintiff has available a sufficient and independent supply of water in the mine.

The answer of the defendant Water Company alleges that it purchases and receives water at wholesale from defendant Electric Company near the 14 Mile House Tunnel; that it owns a canal system for distributing this water below the said tunnel; that plaintiff's mine is located above the tunnel and above its distribution system, so that it is impossible to supply plaintiff with water.

Hearings in the above proceeding were held in Placerville and in San Francisco.

The evidence shows that defendant Water Company does purchase its water wholesale from defendant Electric Company, and that it receives and distributes the water below plaintiff's mine, so that it is not possible to furnish water to plaintiff by means of any part of the system owned by the Water Company.

The evidence further shows that the ditch system was constructed in about 1875-6 for the purpose of providing water for hydraulic mining. Upon the cessation of this industry it became necessary to develop new uses of water. Accordingly, water was

furnished for irrigation, domestic and mining purposes. Since 1907 efforts have been made to convert the system to hydro-electric uses, and several corporations have been formed for that purpose. These projects failed through inability to finance them until the property was acquired by the Western States Gas and Electric Company. This company, defendant herein, was operating a hydro-electric plant on the south fork of the American River below the town of Placerville, and after an investigation of the properties, purchased the system for the purpose of operating it as a hydro-electric property in conjunction with its original system. The intentions of this defendant caused the water users on the system to form the El Dorado County Water Users Association, and to file a complaint before this Commission to determine the obligations of the Electric Company to the users. The Commission's decision in the matter held that all the water controlled by the Western States Gas and Electric Company had been devoted to public use and that there is no preference on the question of public use between irrigation and hydro-electric use; that the obligation of the utility was not limited merely to the water delivered to past consumers but that it could be required to make reasonable additions to its system to provide new service; that the utility could devote water to hydro-electric purposes when service to existing consumers is provided for.

To avoid litigation and the service of water to others, the Western States Gas and Electric Company sold to the El Dorado Water Company, a company formed by the Water Users Association, that portion of the El Dorado Ditch System below the 14 Mile House Tunnel for \$25,000 in bonds of the new company, and agreed to deliver to that company 40 second feet or 1600 miner's inches of water for irrigation use and 5 second feet or 200 miner's inches for mining use. The sale and service agreement were authorized by this Commission in its Decision No. 6436, dated June 25, 1919. The Electric

Company is now selling water to the Water Company on a wholesale basis, according to the terms of this agreement, and the latter is the only consumer now being served with water from the El Dorado Ditch.

In support of their contention that there was no surplus water available for any other use the Western States Gas and Electric Company submitted evidence showing the maximum safe capacity of the ditch to be 1800 miner's inches which is the amount they have contracted to deliver to the El Dorado Water Company. By the terms of the contract 200 inches of water may be delivered to the El Dorado Water Company for mining uses. The evidence does not show that the Water Company has ever furnished any water for mining uses out of the supply available. The only water which it has ever distributed is from the 1600 inches available for agricultural uses.

The records of the deliveries of water by defendant Electric Company to the Water Company show that in 1919 the demand did not reach the limit of 1600 miner's inches available for irrigation under the contract. In 1920 the demand for 1600 miner's inches existed from June 26th to July 5th, inclusive, and August 1st to August 24th, inclusive; and in 1921 from June 21st to July 1st, inclusive. It further appears that the defendant Electric Company generally carries 1600 miner's inches in the canal because from an operating standpoint it is necessary to maintain that steady flow in order to meet the varying demands of the Water Company. When the maximum quantity is not being required by the Water Company the excess is spilled and finds its way to the river from which it is diverted through the power house for generation of electric power. It is apparent therefore that there is more water available through this system than is beneficially used by the El Dorado Water Company for distribution to its present consumers.

The plaintiff is entitled, as a member of the public within

the area to which the water in question was dedicated, to share in its use. On the other hand, it is equally clear that these two utilities should not be permitted by their contract for the delivery of the entire capacity of the ditch to the Water Company to withhold the use of this water from a present applicant in order that future consumers may be served.

We do not believe that the defendant Electric Company would be justified in the expenditure necessary to increase the present carrying capacity of its ditch in order that water might be delivered to the plaintiff in addition to the amount already contracted to be supplied to the El Dorado Water Company. It is proper to conclude, however, that the water which plaintiff requires must be furnished out of the present available supply of the Electric Company as limited by the present capacity of its ditch, and must be taken out of the amount agreed to be furnished to the Water Company.

The following form of order is recommended:

O R D E R

John E. Sexton having filed formal complaint with the Railroad Commission against the Western States Gas and Electric Company and the El Dorado Water Company, public utilities, hearings having been held thereon and evidence submitted and the matter being now ready for decision,

IT IS HEREBY FOUND AS A FACT that the defendant Western States Gas and Electric Company has available for public use and has dedicated to the use of the public for mining and agricultural uses the amount of 1800 miner's inches of water; which it has contracted to sell and deliver to the defendant El Dorado Water Company for sale and distribution to the general public; that the plaintiff is a member of the public within the area to which the use of said water is dedicated; that the defendant El Dorado Water Company has not dis-

tributed all of the supply available to it from the defendant, Western States Gas and Electric Company, and that the supply of water thus available to the Water Company is sufficient to permit the delivery of water to the plaintiff in the amount of 40 miner's inches from the main ditch of the Electric Company without injuriously withdrawing the supply from the present consumers of the defendant El Dorado Water Company.

And basing its order upon the above findings of fact and the further findings of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED that the defendant El Dorado Water Company permit the delivery, and that defendant Western States Gas and Electric Company deliver to plaintiff 40 miner's inches of water per twenty-four hours every third day, or its equivalent of 40 miner's inches for eight hours each day, at a point of delivery on its main ditch most convenient for the delivery of said water for use on plaintiff's property known as the Pacific Channel Mine at Pacific in El Dorado County, California.

The amount herein required to be delivered to plaintiff shall be taken from the present supply of 1800 miner's inches available for public use through the ditch of the defendant Western States Gas and Electric Company, known as the El Dorado Ditch, referred to and described in the contract executed by defendants and approved by this Commission in its Decision No. 6436.

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 4th day
of November, 1921.

H. B. Sandberg
H. D. ...
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Commissioners