

Decision No. 9939.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

IVEY LEWIS BORDEN,

COMPLAINANT,

vs.

THE CALIFORNIA COMPANY,

DEFENDANT.

CASE NO. 1302.

In the Matter of the Application)
of THE CALIFORNIA COMPANY, a cor-)
poration organized under the laws)
of the State of New York, for per-)
mission to discontinue service of)
water.)

APPLICATION NO. 6334.

Aaron Sapiro, Milton D. Sapiro and
and Charles P. Snyder for Ivey Lewis Borden.
F. J. Solinsky, for The California Company.
A. L. Cowell, for the Farmington Land &
Irrigation Company.

BY THE COMMISSION.

O P I N I O N

Complaint is made in the above entitled case that The California Company, defendant herein, has refused delivery of water required by complainant, Ivey Lewis Borden, for the operation of his gold dredger near Jenny Lind, Calaveras County.

Defendant in its answer alleges that the company is not a public utility but at all times since its incorporation has been and now is a private corporation.

A petition in intervention was filed by 16 individuals.

who allege in effect that the defendant has dedicated its water to the public use, in that for many years past they have been supplied at a fixed compensation and in varying quantities for mining, irrigation, stock raising, farming and domestic purposes. The intervenors join with complainant in a request that defendant, The California Company, be ordered by the Commission to furnish such water as is required by its consumers; to make all necessary improvements and repairs to its system in order to provide adequate service; and that just and reasonable rates be established for the various uses of water.

Subsequently the Farmington Land and Irrigation Company, a corporation, also filed a Petition in Intervention in the above entitled matter. This intervenor alleges in effect that it holds options on some 2,100 acres of irrigable land in the vicinity of Farmington and that in cooperation with other landowners plans are being formulated for the organization of an irrigation district; that it also holds an option to purchase defendant's water supply system and proposes to reconstruct and utilize it for the irrigation of the proposed district and the development of electric power; and it therefore joins with the defendant in contending that there has been no dedication of the water supply to public use and requests that the defendant be adjudged a private corporation.

Complainant in his answer denies the right of the Farmington Land and Irrigation Company to intervene in this proceeding, contending that the company was incorporated in June, 1919, many months after the filing of above entitled proceeding, and that the project as proposed is designed for other purposes than the public benefit.

A public hearing was held in above entitled matter at Milton before Examiner Encell, restricting the testimony to evidence relevant for a determination of the question of jurisdiction of this Commission. The case was submitted on briefs embracing arguments

both on the law and the facts in the case.

The Public Utilities Act does not require or contemplate a separate decision by the Commission on the sole or bare question of whether or not any concern is a public utility. Accordingly, after a review of the evidence submitted, this Commission instituted a further hearing to complete the taking of evidence in the case as to service conditions and rate fixing. Thereafter The California Company filed the above entitled application No. 6334 for permission to discontinue service of water from said ditch.

Further hearings were held at Milton and San Francisco, before Examiner Satterwhite, and a stipulation was entered into that both matters be consolidated for hearing and decision.

The record shows that this ditch system was originally constructed about 1857 by the Calaveras County Water Company for hydraulic mining purposes. On May 5, 1883, The California Company was incorporated as a mining company under the laws of the State of New York, and acquired the ditch system and the appurtenant water rights and lands, together with some 1200 acres of hydraulic mining ground. After making extensive repairs and renewals on the ditch system The California Company began hydraulic operations about 1883 at its North Hill Mine, but was compelled to cease hydraulic mining and close down in 1889 by reason of an injunction brought under the "Anti-Debris Act." Since 1889, with the exception of the years 1902 to 1904, when its mining property was operated under a lease, the company has not been engaged in mining activities but has continued to operate the ditch as a water system and has supplied water in the vicinity to such water users as have requested service for irrigation, watering stock, or dredger mining.

All of the capital stock of The California Company was acquired in November, 1918, by W. L. and R. G. Kann of Pittsburg, Pennsylvania, who have since that date exercised control and management of its properties.

The water system consists of the Salt Spring Valley impounding reservoir, capacity 20,000 acre feet; approximately 12-3/4 miles of main ditch (capacity 1000 miner's inches), including about 1188 lineal feet of wooden flume; 2-1/2 miles of branch ditches and two small earthen regulating reservoirs located at the ends of the ditch. There are no distributing ditches or laterals owned by the company.

The most important issue raised herein is whether or not defendant, The California Company, is a public utility as to the operation of its water system.

The evidence shows, and it is an admitted fact, that for over 30 years past The California Company has operated its water system continuously and has delivered water to various individuals who have applied for service and has collected regular rates therefor. Further, since 1889, when the company ceased to mine, it has engaged solely in the business of the sale and distribution of water to its consumers. The California Company has filed its Annual Reports with the Commission, and therein are set out, among other things, the number of consumers and the quantity of water delivered for irrigation and mining use, together with operating revenues from the water sales.

After carefully considering all of the evidence relative to the public utility status of this company's activities, and particularly the facts set out above, it is evident that said company owns, controls and operates a water system within this state and that it is distributing water to the public for compensation. The Commission therefore finds as a fact that The California Company is a public utility.

The contention of defendant that the service and sale of water, amounting only to 10 or 15 per cent. of the available supply, has been merely as a temporary accommodation to certain parties within reach of its ditch pending the proposed sale of its properties, cannot in any particular alter its public utility status.

We now proceed to a consideration of the matter of the establishment of rates and also of the application for permission to discontinue service of water.

Appraisals of the physical properties of this water system were submitted at the hearing by Mr. Burton Smith for the company and by Mr. H. A. Noble, one of the Commission's hydraulic engineers.

Mr. Smith arrived at a total of \$281,904, exclusive of overhead charges, as the estimated reproduction cost, based on prices of material and labor obtaining in 1919. He testified that the quantities and dimensions used in his inventory were approximations, since accurate surveys had not been made.

Mr. Noble submitted a total of \$146,292 as an estimate of the historical cost. The inventory, obtained from the company and verified generally by a field inspection, is substantially the same as that used by Mr. Smith.

No records of original cost of this ditch system are available.

The system was originally constructed and used to deliver large volumes of water for hydraulic mining purposes, which use has long since been discontinued, and the present small use to which it has reverted for irrigation, gold dredger mining and cattle grazing, requires only from 10 to 15 per cent. of the estimated available water supply. It is apparent that the system is largely overbuilt for the present small use of water, and therefore a rate schedule designed to produce an income sufficient to include payment of interest upon the reproduction cost or even the original cost of the property would result in unduly high and prohibitive charges and would require the few consumers at present served to pay more than the service is reasonably worth. According to the testimony the present owners acquired all of the stock of The California Company in 1918 for a consideration of \$50,000, but it was stated that this figure was contingent upon the writing off and releasing of some \$75,000 of obligations of the pur-

chasers against other parties. Subsequent to 1918 the present owners offered to sell the entire property to Mr. Borden for \$50,000.

The evidence shows a general condition of disrepair of the system due to long deferred maintenance and the consequent large leakage and seepage losses from the ditch. Further, that practically all of the flumes and wooden structures, including the waste gates at the dam, have reached the condition that replacements are necessary to maintain service even for the present small use of water. A contractor's bid of \$12,250 was submitted in evidence for restoring the ditch to a serviceable condition, including renewal of the waste gates at the dam and replacing the flumes with ditches run up the gullies.

Mr. Noble's report shows an allowance for depreciation annuity, calculated by the sinking fund method at 6%, amounting to \$55. The utility, however, claims an allowance of \$5,200 per year for this purpose. Attention is called to the fact that a very large proportion of the property consists of earth ditches, dams, and reservoirs which depreciate very slowly, if at all, and that the timber structures, comprising only a small portion of the total cost of the system, are the items with which we are principally concerned in fixing a proper allowance for depreciation. It appears that an annuity of \$300 will adequately care for depreciation on a system of this character when properly maintained.

Maintenance and operating expense has ranged from \$1,437 to \$2,098 per year during the period from 1915 to 1919, inclusive. The amounts expended, however, have not been sufficient to properly maintain the system. The evidence indicates that an allowance of \$4,000 per year will be required for the proper maintenance and operation of the system after it has been placed in reasonably good condition.

The utility's Exhibit No. 3 sets up the following claim for

necessary annual charges:

Return at 6% on \$130,000.....	\$7,800
Depreciation at 4%.....	5,200
Maintenance and operating expense...	5,000
Total.....	<u>\$18,000</u>

For purposes of comparison the following computation of annual charges is presented:

Return at 6% on \$50,000, the price at which the property was offered for sale in 1918.....	\$3,600
Depreciation annuity.....	300
Maintenance and operating expense...	4,000
Total.....	<u>\$7,900</u>

Revenues from the sales of water for several years past have fluctuated considerably, and are as follows:

1915	\$ 906
1916	493
1917	1,787
1918	2,336
1919	2,364
1920	1,251

The large decrease in 1920 was due almost entirely to the decreased use for mining.

If a revenue of \$2,350 is considered as a normal one at the present rates for this utility it is apparent that the rates would have to be increased 666 per cent. in order to return the revenue necessary to equal the annual charges of \$18,000 claimed by the utility. In order to return revenues sufficient to cover the annual charges of \$7,900, set out above, rates would have to be increased 236 per cent.

Rates calculated to return the annual charges of \$7,900 would unquestionably result in such a decrease in water use that the resulting revenue would fall far below the desired amount, and it is doubtful if the utility can hope to earn, at least for some time to come, more than enough revenue to cover maintenance and operating expense, depreciation annuity, and perhaps a small return upon its investment. Rates will therefore be fixed so as to, as nearly as possible, do substantial justice to both the utility and the con-

sumers.

The area irrigated under this system is now about 70 acres, and the use of water in 1920 was 13,963 miner's inch days. In 1919 the use was considerably greater, and amounted to 31,825 miner's inch days, the decrease in 1920 being principally due to a smaller use for mining purposes.

It is evident that this utility must look to the irrigators of land adjacent to its ditch for the greater part of its normal income, as experience in the past has shown that the use of water for mining purposes fluctuates widely and is not at all dependable. The utility should, therefore, do everything in its power to encourage the use of water for agricultural purposes.

In 1920 there were 16 consumers using water for irrigation from this utility's system; in 1919 the number of consumers was 13. These consumers have established a use of water and are dependent upon the system for the production of their crops. It would therefore be manifestly unfair to permit the abandonment of service until every expedient which may help to solve the difficulties confronting the utility at present has been thoroughly tested out in practice.

O R D E R

Ivey Lewis Borden having made complaint against The California Company, and The California Company having made application for permission to discontinue service to its consumers, public hearings having been hold thereon, briefs having been filed, and the matter having been submitted,

IT IS HEREBY FOUND AS A FACT that The California Company is a public utility water system, and that public convenience and necessity require the continued operation of the water system, and the furnishing of water to Ivey Lewis Borden and all other applicants therefor, up to the limit of its dependable supply; and

IT IS HEREBY FURTHER FOUND AS A FACT that the present condition of The California Company's water system is such that repairs and improvements thereof are necessary in order to render adequate service to consumers.

IT IS HEREBY FURTHER FOUND AS A FACT that the rates now charged by The California Company for water delivered to its consumers are unjust and unreasonable in so far as they differ from the rates herein established and that the rates herein established are just and reasonable rates for such service.

And basing the order upon the foregoing findings of fact and upon the statements of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that The California Company furnish a water supply to Ivey Lewis Borden and to all other applicants therefor, up to the limit of its dependable supply; and

IT IS HEREBY FURTHER ORDERED that The California Company file with this Commission within thirty (30) days from the date of this order a plan for such repairs and improvements as are necessary to render adequate service to its consumers, and upon the approval of such plan by the Commission, to begin at once and proceed diligently to complete the repairs and improvements outlined therein; and

IT IS HEREBY FURTHER ORDERED that The California Company file with this Commission within twenty (20) days from the date of this order the following rates for water delivered to its consumers, effective for all service rendered subsequent to January 31, 1922:

RATE SCHEDULE

For water delivered to consumers at turnouts on its main or branch ditches, per miner's inch run for twenty-four hours, which is equivalent to a total delivery of 2160 cubic feet. \$0.20

IT IS HEREBY FURTHER ORDERED that The California Company file with this Commission, within thirty (30) days from the date of

this order, rules and regulations to govern its relations with consumers, such rules and regulations to become effective upon their acceptance by the Commission.

IT IS HEREBY FURTHER ORDERED that the application of The California Company for permission to discontinue service to its consumers be and it is hereby denied.

Dated at San Francisco, California, this 29th
day of December, 1921.

H. C. Brundage

H. S. Leonard

Charles H. Brown

J. F. Brundage
Commissioners.