

Decision No. 26153

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE SAN JOAQUIN & KINGS RIVER CANAL
& IRRIGATION COMPANY, INCORPORATED,
for an order authorizing it to enter
into a certain contract with Miller
& Lux Incorporated, a corporation,
Firebaugh Canal Company, a corpora-
tion, San Luis Canal Company, a cor-
poration, and Columbia Canal Company,
a corporation.

Application No. 18087.

ORIGINAL

J. E. Wooley, for Applicant.

J. J. Deuel, Edson Abel and L. S. Wing,
by L. S. Wing, for the California Farm
Bureau Federation.

C. R. Perrier, for Peoples Protective
Association.

James F. Peck and Theodore M. Stewart,
by Theodore M. Stewart and J. E. Tuttle,
for Tranquillity Irrigation District,
the James Irrigation District, and the
owners of lands within said Districts.

William Weinstein, for Western Farmers
Protective Association.

W. R. Dunn, for San Joaquin Light & Power
Corporation.

WARE, COMMISSIONER:

O P I N I O N

The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, engaged in the business of serving water for irrigation, domestic and commercial purposes in Fresno, Merced and Stanislaus Counties, asks the Commission for authority to enter into an agreement with Miller & Lux, Incorporated, a corporation, Firebaugh Canal Company, a corporation, San Luis Canal Company, a corporation, and Columbia Canal Company, a corporation, which said agreement provides for the regulation of diversions on the

San Joaquin River by a flow schedule defining and controlling the water entitlements among and between said parties.

It is alleged that the Commission's approval of this method of operation will provide more water to the utility during the summer months, will define the water rights of the parties involved, and should eliminate future water right litigation between them.

Public hearings were held in this proceeding at Los Banos.

Applicant is a corporation subsidiary to Miller & Lux Incorporated, the owner of approximately 200,000 acres of lands riparian to the San Joaquin River. Miller & Lux Incorporated, said applicant, together with its predecessors in interest and Southern California Edison Company, Ltd., hereinafter referred to as the Power Company, and its predecessors, heretofore have entered into contracts providing for the storage and release of waters of the San Joaquin River. The Power Company operates three reservoirs on this river called Huntington Lake, Florence Lake and Shaver Lake, having a total storage capacity of approximately 300,000 acre feet. For some years last past, said waters have been stored and released from these reservoirs in accordance with the terms and conditions of said agreements. The present effective contract provides that the Power Company shall not impound unless and until there shall be flowing in the San Joaquin River 5,000 second feet of water or more, measured at Whitehouse Gauging Station situate five miles above Mendota Dam. The Power Company now desires to reduce this limitation to permit it to store water at the river stage of 3,000 second feet.

Said Power Company owns and controls the Edison Securities Company which holds title to approximately 17,000 acres of land in Fresno and Madera Counties, acquired from the Herminghaus Estate in settlement of certain water right litigation. The Herminghaus lands

are located above Mendota Wier, the diversion structure of the San Joaquin & Kings River Canal & Irrigation Company, and are riparian to the San Joaquin River and to certain channels thereof, and furthermore admittedly possess diversion rights prior and superior to those of applicant. These rights permit the diversion and beneficial use of at least 225 second feet of water for grass land flooding. It is conceded that the unrestricted exercise of the said Herminghaus riparian rights can interfere with and prevent the applicant from adequately serving its consumers during the summer months and periods of low river flow.

The Firebaugh Canal Company providing irrigation service to 20,000 acres of land, the San Luis Canal Company supplying 47,000 acres, and Columbia Canal Company serving an area of approximately 16,000 acres are mutual canal companies. The lands irrigated by these mutual companies are situate downstream from the Herminghaus riparian lands and are alleged to be subordinate and subject to the prior upstream diversion rights thereof. Edison Securities Company is willing to enter into an agreement whereby it will restrict and limit the exercise of its riparian rights in such a manner as not to interfere with the ability of either applicant or any of said mutual companies to adequately supply their consumers, upon the condition that Miller & Lux Incorporated grant the Power Company the right to store in its reservoirs at and above the 3,000-second-foot stage of the San Joaquin River. Said Power Company is not a party to the proceeding or to the contract herein sought to be approved. There were submitted, however, certain letters from its executive officers to the effect that the Power Company hereafter would continue to draw heavily on its stored water supply during the months of July, August and September as it

had been accustomed so to do in the past.

Miller & Lux Incorporated is the owner of rights by appropriation and of a vast acreage of lands riparian to the San Joaquin River which would be affected adversely through any additional and uncontrolled storage by the Power Company. Notwithstanding this fact, Miller & Lux Incorporated is willing to permit the Power Company to impound water at 3,000-second-foot stage of the river in order to improve and make more secure the water rights of applicant and the said mutual irrigation companies through the adoption of a flow schedule regulating and controlling the principal diversions of the San Joaquin River. The yield of the San Joaquin River is dependent upon the melting snows in the mountains and arrives at its maximum or peak discharge during the months of April, May and June. This would result in a serious shortage of water during the irrigation season were it not for the release of stored waters during the late summer. In the event the Power Company is permitted to store water at all stages of the river above 3,000 second feet, there will be an additional quantity of impounded water available to the parties to this agreement during the period of low river flow.

Applicant is the owner of the right to divert the first 1,360 second feet from the San Joaquin River, subject, however, to the intrusion of the Chowchilla right to 120 second feet coming into entitlement at the river stage of 775 second feet. Storage by the Power Company, pursuant to former agreements, has not interfered with applicant's operations in the past; and the proposed change in limitations of storage will not affect adversely its rights. This utility's present obligations involve 146,300 acres of lands, 110,000 acres of which require water each season. The gross annual water requirement based on the normal demand of the various crops grown within the area is estimated to be 453,530 acre feet; the

average yield of applicant's right under the proposed flow schedule for the period 1910 to 1931, inclusive, is 505,000 acre feet, which exceeds the estimated requirements of the area to be served. It appears that only in the years of abnormal water shortage such as have occurred during the years of 1924 and 1931 would the yield of the right be less than the estimated requirement.

Representatives of the Peoples' Protective Association, an organization of water users, testified that the proposed flow schedule since revision at their suggestion has the complete approval of their members.

Protest against the granting of this application, however was made by the San Joaquin Light and Power Corporation and the California Farm Bureau Federation. Said protesting Power Corporation maintains a storage reservoir, known as Crane Valley Lake on the North Fork of the San Joaquin River having a capacity of 60,000 acre feet. Waters are stored therein in accordance with a contract with Miller & Lux Incorporated providing for impounding only if and when the stream flow in said North Fork amounts to 3,000 second feet or more at Whitehouse Gauging Station during the months of April, May, June, July and August, and at stream flow of 1,500 second feet and over during the remaining months of the year. Protest is made on the ground that the approval of the contract would tend to reduce the flow of the river during the months that said protesting Power Corporation is permitted to store water. This contention was not supported by the evidence. The record shows that the proposed flow schedule will not interfere with storage by this protestant but on the contrary said schedule will prove distinctly advantageous to it.

The California Farm Bureau Federation protested upon the grounds that the Southern California Edison Company, Ltd., is not

a party to the agreement and is thereby not bound to discharge stored waters in accordance with the demands of the flow schedule, and further that the proposed schedule does not provide applicant with the quantity of stored water during the months of July, August and September to which it is entitled under existing adjudicated rights. While it is true that the Power Company is not a party to this contract, the record shows that its representatives unofficially have pledged a continuation of its past cooperation in maintaining the necessary releases from its reservoirs in conformance to the demands of irrigators. Moreover, ample protective remedies are open and available to the consumers in the event this policy should be changed at any time in the future so as to adversely affect the rights and interests of the applicant utility and/or its consumers.

The flow schedule permits the mutual companies to obtain certain quantities of stored water during river stages below 1,480 second feet during July, August and September. In this behalf said Farm Bureau complains that any diversion by the mutual companies before applicant receives the full 1,360 second feet, when available in the river, deprives said applicant's consumers of water to which they are rightfully entitled. The record shows that the service rendered by applicant has improved materially during the months of July and August since the diversions have been made in accordance with the flow schedule heretofore adopted by the utility following the suggestion by the Commission in its Decision No. 22228 dated March 19, 1930. (34 C.R.C. 473) Prior thereto, applicant's diversions from the river were limited largely to the natural flow of the river, resulting in a surplus supply of water during the spring months when the river was in flood stage and a serious shortage during each July and August. Applicant's consumers were never able

to obtain any benefit from the stored waters without regulated release. The improvement in service resulting from the operation of applicant's diversions under the flow schedule has convinced all interested parties of the necessity and practicability of such operating control. While obviously it is true that the proposed flow schedule permits the invasion by the mutual canal companies of the utility entitlement to the extent of certain minor quantities during the summer months, it is equally true that in compensation therefor this utility should be enabled to provide adequate irrigation deliveries to all of its consumers throughout the entire season, a service which it has never been able to provide without such regulation. There could be no basis for compromise if this utility insisted on obtaining at all times its full entitlement of 1,360 second feet. Manifestly it is to the best interests of all consumers and the utility that this proposed flow schedule be adopted.

The following form of Order is recommended.

O R D E R

The Railroad Commission having been asked to authorize applicant herein to enter into an agreement as indicated in the foregoing Opinion, public hearings having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, be and it is hereby authorized to enter into a certain contract with Miller & Lux Incorporated, a corporation, Firebaugh Canal Company, a corporation, San Luis Canal Company, a corporation, and Columbia Canal Company, a corporation, in accordance with the terms and conditions as set forth in the form of contract marked Exhibit "A" and attached to the application herein and which is hereby made a part of this

Order by reference.

IT IS HEREBY FURTHER ORDERED that The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, file with this Commission, within thirty (30) days from and after the date of the execution of said contract, four certified copies thereof.

The authority herein granted shall become effective on the date hereof.

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 17th day of July, 1933.

C. E. Cheney

Leon Whidely

W. H. Lee

M. B. Harris

W. H. Lee

Commissioners.