

Decision No. 27360

RECORDED
INDEXED
JAN 10 1933

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
C. W. CLARKE CO., a corporation, for
an order fixing just, reasonable and
non-discriminatory rates for water.

) Application No. 17784
) (Rehearing)

In the Matter of the Application of
C. W. CLARKE CO., a California cor-
poration, and ANDREW W. BABCOCK and
others for an order of the Railroad
Commission of the State of California
authorizing C. W. CLARKE CO. to enter
into a written agreement in the form
filed herewith.

) Application No. 18983

Barry & Barry,
by Hardin Barry, for applicants.

A. K. Wylie,
for consumers and protestants.

BY THE COMMISSION:

OPINION ON REHEARING - APPLICATION NO. 17784

and

OPINION - APPLICATION NO. 18983

By reason of the interrelated interests involved, these two proceedings have been consolidated for hearing and decision; the Opinions, however, will be discussed separately.

REHEARING.

In Decision No. 25280, dated October 24, 1932, this Commission established rates for irrigation service rendered by

C. W. Clarke Co. to ten consumers through a ditch nine and one-half miles long located in Lassen and Modoc counties and known as the Big Valley Drainage Canal. Applicant primarily is a large cattle company owning several extensive ranches, one of which is the Big Valley Ranch of 4,900 acres, more or less. In 1897, the above canal was constructed to drain this ranch land, a large portion of which was swamp land caused by the overflow of Ash Creek. Since 1899, these by-passed drainage waters were sold to various ranchers at a charge of one dollar (\$1.00) per acre per year for stock-watering and irrigation purposes. Litigation arising over the refusal in 1924 by the company and/or its duly constituted agents to serve their former consumers resulted in the decision of the Supreme Court of the State of California in the case of Babcock vs. C. W. Clarke Co. (August 15, 1931), 213 Cal. 38, in which said company was declared to be a public utility and the rates and rights of the consumers as established by the trial court affirmed.

In Application No. 17784 herein, this Commission in its Decision No. 25280, supra, increased the one-dollar rate established by court decree to one dollar and seventy-five cents (\$1.75) and two dollars (\$2.00) per acre per year.

In its petition for rehearing of this proceeding, the company claims that the rates established will produce less than half the normal future operating expenses recommended by the Commission's own engineers, allow no return upon the capital investment or the value of its water rights, and, lastly, it is contended that there was no evidence before the Commission which would support the finding "that at least one-half of the canal operating expenses should properly be contributed by the company for benefits derived through this canal in its local ranch business."

A public rehearing in this rate proceeding, as well as a public hearing on Application No. 18983 for approval of a certain contract, was held in Alturas before Examiner MacKall.

The detailed history of this utility and its operating methods and practices set out in our original decision need not be repeated here. (See Decision No. 25280, dated October 24, 1932.)

In its annual reports to the Railroad Commission, the utility has reported its maintenance and operating expenses as follows:

: No. :	Description	:Jan.1,1930:	:Jan.1,1931:	:Jan.1,1932:	:Jan.1,1933*:
:Acct.:		to	to	to	to
: No. :		:Jan.1,1931:	:Jan.1,1932:	:Jan.1,1933:	:June 1,1933:
E-1	Superintendence, General	\$ 65.69	\$ 428.36	\$ 255.17	\$ 99.66
E-22	Superintendence, Trans. Canal	434.24	500.86	494.47	300.00
E-23	Operating Labor, Patrolling, etc.	1,323.00	1,515.00	1,516.12	600.00
E-27	Misc. Expense on Trans. Canal	114.18	112.74	#	-
E-28	Repairs to Canal	207.22	98.78	#	28.54
E-36	Salaries of General Offices	-	-	-	-
E-37	Salaries of Office Clerks	50.00	50.00	50.00	25.00
E-38	General Office Expense	5.00	5.00	38.60	13.66
E-30	General Law Expense	-	199.00	608.83	231.50
E-40	Railroad Commission Expense	-	-	-	-
E-50	Taxes, incl. Federal Check Tax	3.27	3.79	.36	.20
E-51	Depreciation	-	-	251.13	125.66
	Total	\$2,202.60	\$2,913.53	\$3,214.68	\$1,298.56

NOTE: # Charges included in Account E-23.

* For first six months of year only.

The company claims it requires a ditch tender employed continuously throughout the year at an annual salary of twelve hundred dollars (\$1,200), that it should be permitted to allocate one-quarter of the salary of its General Cattle Ranch Foreman to utility expense and to charge off arbitrarily a prorated amount of home office (Sacramento and San Francisco) expenses to the utility

business.

As heretofore pointed out in the original decision in this matter, the mere fact that a corporation operating a large irrigation system in the central valley of the state (North Fork Ditch Company) and also engaged on a large scale in the cattle-raising business finds itself, through court order, operating another public utility does not justify the allocation of a considerable proportion of its entire overhead expenses of both private and other utility operations to this isolated and independent canal system. There must at least be an actual, necessary and reasonable service rendered to the public before such action would be warranted. No such showing was made in this case. There are ten cattle or stock ranches aggregating a total of 595 acres of land which have been supplied with irrigation and cattle water from 1899 to 1924 by this company and/or its predecessor in interest without protest and with no necessity during this period for a large and complicated organization. There has been practically nothing expended either for new capital, maintenance or repairs for thirty-two years. The consumers themselves have done a large part of the repair work and ditch cleaning.

Carl F. Mau, one of the Commission's hydraulic engineers, estimated the reasonable allowance for operating charges to be five hundred and forty-two dollars (\$542) per annum, assuming that the utility be relieved from the duty of furnishing stock water throughout the entire year.

Applicant advances the theory that its annual depreciation should be computed upon the basis of retirement of the remaining life of the physical structures commencing at the time when the

court declared the properties to be dedicated to the public use although this property actually and in fact had been so devoted since 1899. Obviously, this is unsound. On the other hand, the depreciation allowance proposed by the engineers of the Commission during the original hearing is clearly insufficient. The evidence shows a reasonable allowance for the annual depreciation charge is one hundred and two dollars (\$102), based upon the usual practice of this Commission in using the actual age of the property together with the five per cent sinking fund method of computation.

A careful consideration of the evidence presented by the utility, the consumers and by the Commission's engineers indicates that the sum of eight hundred and fifty dollars (\$850) per year is a reasonable allowance for all expenses, including one hundred and two dollars (\$102) for depreciation, necessary and essential for the operation of this canal system in a manner which will be satisfactory and acceptable to the consumers and this Commission. It should be pointed out that this allowance, in so far as the record discloses, is probably more in the aggregate than has been expended by the utility for such purposes during the entire period from 1899 until it was declared to be a public utility by court decree.

Applicant contends that it does not require its public utility canal property for its own use nor does it deliver water through said canal to its private agricultural lands. The record does not support this contention. It does appear that the Big Valley Canal was constructed in order to divert water away from the Big Valley swamps to enable the lands therein to be reclaimed and put to agricultural use and thereafter to enable the company

to control the flow of water into the swamp so that, in years of high water, seasonal crops could be harvested. For this particular purpose the canal in recent years has been of little value to the company in its private farming operations, not because it did not properly perform the function for which it was designed but because the long cycle of predominantly dry years temporarily has made it unnecessary to divert water away from the swamp. No one can predict when and for how long it may again be necessary to use the canal for drainage.

From the testimony it appears that at various times in the past diversions have been made from the canal in at least two places providing irrigation and stock water to lands not described in the said court decree as being entitled to utility service. Unquestionably some of this water was used upon a part of the lands belonging to applicant. No compensation was received by or credited to the utility for this water. All water delivered for stock and irrigation purposes should be charged for and billed at the regular rates.

There is no controversy over the value of the physical properties at twelve thousand four hundred fifty-four dollars (\$12,454). The company, however, claims an additional value for its water rights of forty-nine thousand dollars (\$49,000) - four times the value of the physical properties. This is based upon a purported loss of ten dollars (\$10.00) per acre to the Big Valley Ranch for deprivation of the use of Ash Creek water by the decision of the Supreme Court of the State of California. Applicant is willing to have its water rights assumed at a value of only twenty thousand dollars (\$20,000), however, for this proceeding.

The waters which this utility is obligated to serve its consumers amount to but 595 miner's inches, seldom available in recent years, there having been but 237.5 inches of flow at Ash Creek headworks on June 20, 1932, for example. Water measurements for other seasons are not obtainable but many years have shown less flow than 1932 by reason of the greater shortage in rainfall and stream runoff. With but 595 acres under this ditch and an inadequate water supply even for this small acreage, it is absolutely out of the question to establish a rate which the consumers can afford to pay and at the same time provide through such a rate a full return on physical capital and an additional twenty thousand dollars (\$20,000), purported or alleged value of water rights. It should be noted again here that, in the opinion of the Supreme Court of this state affirming the rate of one dollar (\$1.00) per acre per year for irrigation service on this system established by the lower court, no such allowance or any at all was made for water rights. Again, the original owners of this canal built it for the very purpose of by-passing this Ash Creek water from the Big Valley Ranch to drain their swamp land to enable it to be used for raising hay and for pasturage. Said owners disposed of the water for what additional benefit and profit they could realize from this source. While the record provides no exact basis for a fair estimate of the enhanced value to the Big Valley Ranch accruing from the reclamation of this swamp and overflow land provided by the ditch, it can hardly commend itself to any of the principles of sound logic that this reclamation project necessary to make these lands usable should be advanced as showing a public utility water right value of ten dollars (\$10.00) per acre for the entire 4,900 acres or any other amount.

It is true that in 1924 and 1931 this swamp land could have used water beneficially in parts thereof for irrigation, but these years were two of the most severe years of drought in the history of the state. No one can doubt that in years of abnormal rainfall and undoubtedly after a year or two of normal runoff this drainage canal will be absolutely necessary to make the vast acreage of these swamp lands usable.

It is evident that this cattle ranch should bear some amount of the utility operating burden because of the benefits received and protection afforded by the drainage of the land by the canal. However, the record herein provides insufficient data to permit a fair estimate of this value in dollars and cents. For this reason, no allowance has been allocated for this specific purpose in the operating expenses found above to be reasonable and proper. Fairness, however, demands that this phase of the problem should not be wholly disregarded. Counsel for applicant has stated in his brief that the rate or the amount of return will be left to the judgment and discretion of the Commission. The rate established in the following Order will reflect, to the best of our judgment and ability, a return to the utility just and reasonable under existing circumstances and conditions.

The scheduled method of deliveries to consumers as established by the trial court has not worked out satisfactorily in actual practice either to consumers or utility. Although suggestions were made during the rehearing of this proceeding that consumers and utility agree by stipulation or otherwise to desirable changes, nothing has been accomplished to this end and for this reason the regulations of water deliveries fixed in the accompanying Order,

based upon the data available in the record, will be followed until further order or modification by this Commission.

The trial court directed the delivery of a continuous flow during the entire year of five miner's inches of water to each of the ten consumers for stock-watering purposes. To provide this service properly during the severe winter weather in this section of the state would entail a most unnecessary burden upon the utility. All consumers can obtain sufficient stock water without placing upon the utility the duty and burden of supplying it during periods of off-season irrigation deliveries. However, should there be water available in the canal for such use at other times, there should be no objection on the part of the company to its use by consumers.

OPINION ON APPLICATION NO. 18983.

In this proceeding C. W. Clarke Co. asks the Railroad Commission to approve an agreement entered into with ten members of the Babcock family wherein and whereby the company is to be relieved of all further public utility obligations and liabilities to furnish public utility irrigation service to the respective lands of the said Babcocks in consideration, among other things, for permitting the latter to run their private waters through the utility canal⁽¹⁾ to the first day of August, 1933.

Protest was filed by the other utility consumers upon the ground that, by eliminating over half⁽²⁾ of the acreage under

1. Rights to the above private waters have been in litigation and only recently have been ruled upon by the trial court.

2. The Babcock family controls 330 acres out of the total service area of 595 acres.

the canal system owned by the Babcock interests, the entire utility operating costs would be placed upon the owners of the remaining acreage resulting in the necessity of establishing a rate for water beyond the reasonable value of the service and their ability to pay. In addition to this, no assurance was given that the waters to which the Babcocks were entitled would be placed at the disposal of any utility consumers.

Neither the Babcocks nor any of the other public utility consumers on this system legally require authority from this Commission to discontinue the purchase of utility water from the C. W. Clarke Co. The proposed date of discontinuance has long since expired. The record clearly indicates that the approval of this surprisingly unusual contract would most seriously and adversely affect the best interests of the public. It will, therefore, be denied.

O R D E R

C. W. Clarke Co., a corporation, having made applications to this Commission as entitled above, a public hearing having been held in Application No. 17784 (rehearing) and Application No. 18983, the matters having been submitted and the Commission being now fully informed in the premises,

It is hereby found as a fact that the present rates, rules and regulations of the C. W. Clarke Co. for irrigation service from its Big Valley Drainage Canal in Lassen and Modoc counties under the schedule for deliveries provided for in this Order are just and reasonable.

Basing the Order on the foregoing findings of fact and on the further statements of fact contained in the Opinion which

precedes this Order.

IT IS HEREBY ORDERED that C. W. Clarke Co. be and it is hereby directed to cancel and abolish Rules 4, 5 and 11 of its Rules and Regulations at present in effect and shall substitute therefor and file with this Commission within sixty (60) days from and after the date of this Order (effective on the filing date) the following revised rules:

RULE 4

APPLICATION FOR WATER

Application for water shall be made on regularly prepared forms furnished by the Company. These applications shall be filed either at the Company's local office near Bieber in Big Valley, Lassen County, or in the Company's office in Sacramento, California, not later than April 1st of each year. Applications filed after said date shall be accepted only when water is available and shall be of secondary entitlement.

RULE 5

SCHEDULES

C. W. Clarke Co. shall establish a service schedule which shall be followed in the delivery of water to consumers and which will establish the points and methods of delivery of water. This schedule shall provide for service in rotation of two fifteen-day irrigations or its equivalent during the period from June 20th to September 1st of each year to consumers applying for water in accordance with Rule 4. During each irrigation period, each consumer entitled to delivery shall receive a continuous flow of one (1) miner's inch⁽³⁾ of water per acre applied for.

RULE 11

RATE SCHEDULE

For all water delivered for irrigation purposes when seasonal delivery is made for one continuous thirty-day period or two fifteen-day periods, per acre irrigated-----\$2.25

3. One (1) miner's inch is equivalent to 1/50th of a cubic foot of water per second.

For each additional irrigation of fifteen days, per miner's inch continuous flow, per acre-----\$1.50

Irrigation deliveries shall be based on a flow of one (1) miner's inch⁽³⁾ per acre irrigated for the lands entitled to irrigation in accordance with Judgment No. 2789 entered in the Superior Court of Modoc County.

Consumers will be billed for the actual number of acres irrigated. Should a deposit be made by a consumer for a greater amount of water than can be served him, the excess amount of the deposit will be applied on the second half of his bill due November 1st as provided for in Rule 12.

-oOo-

IT IS HEREBY FURTHER ORDERED that C. W. Clarke Co. be and it is hereby authorized to discontinue the further deliveries, during the periods outside of the irrigation season, of stock water provided, however, that nothing in this Order shall be construed to mean that unregulated amounts of water permitted to flow through the Big Valley Drainage Canal and not properly allocated to other uses may not be used by consumers for stock-watering purposes when not required for irrigation use.

IT IS HEREBY FURTHER ORDERED that the lands of Andrew Babcock, Martin E. Babcock, L. A. and E. G. Babcock and Alfred Babcock, as described in Judgment No. 2789 entered in the Superior Court of Modoc County, be and they are hereby declared to be entitled to irrigation service from the Big Valley Drainage Canal under the same terms and conditions and in the same manner as the lands of the other consumers, and

IT IS HEREBY FURTHER ORDERED that Application No. 18983 be and it is hereby denied.

For all other purposes, the effective date of this Order

shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 17th day
of September, 1934.

Leon A. Whiteley

M. J. Carr

M. B. Harris

Commissioners.