

Decision No. 28162

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
PACIFIC GAS AND ELECTRIC COMPANY, a
corporation, and C.B. JACKSON, for an
order of the Railroad Commission of
the State of California authorizing
applicants to consummate, in accordance
with its terms, a certain agreement of
sale and purchase executed by applicants
under date of December 7, 1926, etc.

Application No. 13429.

The Berkeley Olive Association,

Complainant,

vs.

Case No. 3292.

California Water Service Company and
Pacific Gas and Electric Company,

Defendants.

C.P. Cutten and W.R. Dunn, for Pacific
Gas and Electric Company.

McCutchen, Olney, Mannon & Greene, by
Carl I. Wheat, for California Water
Service Company.

Raymond A. Leonard, for E.W. Hill and
Berkeley Olive Association and
Thermalito Irrigation District.

Hubert Townshend, for Thermalito Irrigation
District.

S.T. Harding, for Berkeley Olive Association.

Garrett W. McEnerney, by Wm. L. McGinness,
for Parrott Investment Corporation,
Interveners.

Cushing & Cushing, by Delger Trowbridge,
for Noel Sullivan, R.D. McElroy,
Thomas B. Doyle, O.K. Cushing, as trustees
under the last will and testament of
James D. Phelan, deceased; also, for
Mary Louise Phelan and Alice Phelan
Sullivan Corporation, Interveners.

Ware & Ware, by Allison Ware, for
Chloe G. Estes and Estes heirs,
as Interveners.
Herbert W. Whitten, for W.C. Stevens
and Albert Estes, Interveners.
H.P. Dechant, Assistant Solicitor,
Department of Agriculture, for the
United States and United States
Department of Agriculture.
Jerome D. Peters, for California Lands,
Incorporated.
George F. Jones, City Attorney, for
the City of Oroville.

WEITSELL, COMMISSIONER:

O P I N I O N

Application No. 13429 originally was filed in 1926 and involved the sale by Pacific Gas and Electric Company of several of its water utilities to California Water Service Company, including that water works supplying domestic service in the City of Oroville in Butte County, as well as the selling and transporting of water for agricultural irrigation purposes to a considerable acreage in and about Thermalito. The Commission authorized the above transfers in Decision No. 18037, dated March 2, 1927 (29 C.R.C. 425) and in Supplemental Decision No. 18101, issued March 24, 1927, required the above parties to submit to this Commission, for its approval, the quantity of water which the Pacific Gas and Electric Company was obligated to deliver to the California Water Service Company under the sales contract, to be based upon the water use of the year

1927.⁽¹⁾ It is for approval and determination of the specific amount of water to be furnished the local Oroville water company that this supplemental petition in Application No. 13429 is now before the Commission.

However, in Application No. 8140, Decision No. 11887, dated April 4, 1923 (23 C.R.C. 317) this Commission theretofore had authorized the sale of the Thermalito irrigation and domestic water system, then owned and operated by Pacific Gas, to the District in accordance with the provisions of an agreement for the sale thereof under date of July 13, 1922, in which, among other things, Pacific Gas agreed to supply and deliver to said District 9.1 second feet of water from no specified or restricted source, for which the District agreed to pay a fixed sum whether or not the full amount of such water was actually used by land owners and residents of said District. In the sale of the Oroville domestic water system to the Water Company, Pacific Gas in its Oroville Water Contract attempts and purports to restrict the waters to be delivered to this District by both Pacific Gas and the Water Company to waters emanating only from the so-called "Miocene Water Right." The District has protested against any determination of the amount of water Pacific Gas is obligated to serve the Water Company which would interfere with and limit its contract rights as heretofore approved by this

1. The Sales Agreement under date of December 7, 1926, by and between Pacific Gas and Electric Company and C.E. Jackson, amended to substitute for the latter the California Water Service Company, hereafter will be referred to as the "Oroville Water Contract."

The Thermalito Irrigation District will be referred to as the "District."

The California Water Service Company will be designated as the "Water Company" and the Pacific Gas and Electric Company will be referred to as "Pacific Gas."

Commission. In addition to this, said District has petitioned under Section 60 of the Public Utilities Act to intervene in Application No. 13429, and, under Section 64 of said Act, demands further that so much of Decision No. 18037 as purports to relieve Pacific Gas of its obligations and liabilities as a public utility in the furnishing and/or causing to be delivered to the District of the waters to which it is entitled under its above contract of April 4, 1923, be set aside. The District also demands that no definite maximum quantity of water to be supplied by Pacific Gas to the Water Company be fixed by this Commission.

This petition of protest and intervention will be accepted and given due consideration.

Protest also was filed in Application No. 13429 by Berkeley Olive Association,⁽²⁾ now an incorporated organization of land owners growing principally olives and whose holdings comprise approximately 600 acres of land owned in severalty but managed through the said Berkeley Olive. Upon the basis of contracts entered into by Berkeley Olive and the Pacific Gas and also by their respective predecessors in interest, this protestant asks the Commission to issue no order or decision which would limit or determine that the only waters which Pacific Gas and the Water Company are obligated to serve it are to be restricted to Miocene Ditch rights.

This protest and petition in intervention likewise will be accepted and given due consideration.

2. Hereafter Berkeley Olive Association will be referred to as "Berkeley Olive."

Case No. 3292:

This case filed by Berkeley Olive against Pacific Gas and the Water Company, involving in general similar matters, has been consolidated with the above Application No. 13429 for hearing and decision. It is alleged in the complaint that the defendants in the year 1931 failed and refused to deliver to it the amounts of water to which it was entitled; that it was forced to enter into a contract with defendants to obtain its full entitlement of water during said year, for which it was also forced to pay additional and at a higher and unreasonable rate; and that in the delivery of water during said year it was discriminated against by defendants because other consumers received an adequate and satisfactory supply of water at no extra, additional and/or increased cost. Reparation is demanded from the Water Company to the extent of \$291.11 which is the full amount paid for the extra water delivered. Request is made that this Commission declare the waters of the West Branch of the North Fork of the Feather River⁽³⁾ during periods of low flow heretofore have been dedicated by Pacific Gas to the public use of the consumers under the Powers Canal⁽⁴⁾ to the extent necessary to provide them with sufficient water to irrigate adequately their lands at any and all seasons of each and every year.

In Application No. 13429 and also in Case No. 3292 the following parties petitioned to intervene: The United States of

3. Hereafter referred to as "West Branch."

4. Powers Canal takes out of the lower end of the Miocene Canal at the tail-race of the Coal Canyon Power House.

America and the United States Department of Agriculture; Parrott Investment Corporation; Noel Sullivan, et al., as trustees under the last will and testament of James D. Phelan, deceased; Mary Louise Phelan and Alice Phelan Sullivan Corporation; Chloe G. Estes and certain Estes heirs; W.C. Stevens and Albert Estes; and California Lands, Incorporated. This group of interveners has irrigated lands receiving waters diverted from Big Butte Creek or Butte Creek,⁽⁵⁾ a direct tributary of the Sacramento River, and, in general, all allege that any enlargement of the entitlements of water users in the vicinity of Oroville to waters other than those confined to the Miocene right will deprive them of vested interests heretofore established and enjoyed continuously for a great number of years last past.

The Parrott and Phelan interests own 25,000 acres, more or less, of lands, none of which is riparian to Butte Creek but is riparian to the main Sacramento River. These parties collectively claim rights to divert approximately 2,000 miner's inches of foreign water from Butte Creek at any and all times of the year when available. The federal government owns and operates a plant introduction station on certain lands having diversion rights to this foreign water from Butte Creek. The Estes heirs and others including California Lands, Incorporated, claim to be entitled to water from Butte Creek.

The lands of these interveners are in a watershed foreign to the Feather River. The West Branch debouches into the main Feather River above the City of Oroville. The confluence

5. Hereafter referred to as "Butte Creek."

of the Feather River with the Sacramento River is many miles below. Waters diverted by Pacific Gas from the West Branch include certain natural flow and the storage from Round Valley and Philbrook reservoirs which are passed through DeSabra and Centerville power plants and spilled into the foreign watershed of Butte Creek from which this latter group of protestants obtain their irrigation water.

These interested parties will be permitted to intervene in the above entitled proceedings.

Public hearings in these consolidated matters were held in the City of Oroville beginning September, 1932. The delay in their presentation to the Commission was occasioned by the fact that both the District and the Berkeley Olive had filed complaints in the Superior Court of Butte County against Pacific Gas and the Water Company to obtain a determination of their respective rights to water under their various contracts, but the plaintiffs later withdrew the civil cases and attempted to submit substantially the same issues in these proceedings before the Commission.

At the outset it should be stated that the Commission is without power to make a determination of the water rights claimed by the various interested parties. In considering the issues, which I believe are here properly presented, it should be borne in mind that the Commission's only function is to regulate that water service which is public utility in character and, incidental to that function, to determine when necessary the extent of the dedication of water to the public use.

In order to present properly the existing service conditions, it will be necessary to show as briefly as possible the

historical background of water operations in the area involved in these proceedings as disclosed by the record.

Originally, the canals and ditches now supplying Oroville and vicinity were constructed for mining purposes. After 1888, water was served to the Thermalito area for agricultural and domestic uses. The City of Oroville is situated upon the Feather River fifteen miles below the confluence therewith of the West Branch. In 1858, one Dewey filed on the upper reaches of the West Branch and constructed a ditch with a capacity of thirty second feet for mining purposes. In 1859, a group of miners, in order to obtain cheaper water, built a ditch taking out of the West Branch at a point one and a half miles downstream from the Dewey diversion and having a claimed capacity of ten second feet. This ditch is now called the Miners. The original Hendricks Ditch was built in 1858 and carried water for mining purposes also from the West Branch. In 1870, a second filing was made for this ditch, now claiming a capacity of 125 second feet. In the year 1873, the Cherokee Mining Company, operating at that time on Butte Creek in the vicinity of Hell Town, acquired the Dewey and Miners ditches and spilled the waters of the West Branch into the Butte Creek and the Sacramento River watershed. In 1877, the Cherokee Mining Company built the Round Valley Reservoir storing about 880 acre feet on the West Branch to regulate the flow for mining in Butte Creek.

The Miocene Ditch, constructed about 1865, has a capacity of sixty second feet, taking out of the West Branch lowest on the stream in point of diversion but conceded among all interested parties herein to come into entitlement next

after the Dewey and Miners rights. Its purpose was to convey water for mining purposes as far as Thompson's Flat in the vicinity of Oroville, some thirty-five miles along said ditch from point of diversion. This canal did not convey water into the foreign Butte Creek watershed. Along the line of the Miocene Ditch water is run through the Lime Saddle Power Plant about ten miles from the diversion point. Eleven miles farther downstream, the water again is run through the Coal Canyon Power Plant, the present termination of the Miocene Canal. From the tail-race of this latter plant, the Powers Canal takes out, carrying water to balancing reservoirs located immediately above and adjacent to the City of Oroville. Along the line of the Powers Ditch, water is delivered mainly for irrigation purposes to many consumers, chief of which are the Berkeley Olive, Rancho Golden Grove, Thermalito Irrigation District and Table Mountain Irrigation District.

In 1902, Oro Water, Light and Power Company⁽⁶⁾ acquired the Miocene Canal and appurtenant water rights and installed a small hydro-electric power plant at Thompson's Flat, which it abandoned after some five or six years' operation. In 1906, the Lime Saddle Plant and in 1907 the Coal Canyon Power Plant were built by this company. As far as ascertainable from the evidence, the original Powers Ditch obtained its water by diversion from Dry Creek in the Feather River drainage basin at a point some ten miles above its present headworks at the Coal Canyon Power House and probably supplied the first irrigation

6. Oro Water, Light and Power Company will be referred to hereafter as the "Oro Company."

and domestic ditch water service in the Thermalito area and the City of Oroville. In 1917, Pacific Gas acquired the Oro Company properties and assumed the obligations of the latter to serve water for irrigation and domestic purposes in and in the vicinity of Oroville.

The water rights involved herein, now all owned by Pacific Gas, in order of priority as conceded by parties interested herein, are as follows:

1. Dewey and Miners right, originally separate but now consolidated as a single right; diversion point highest on West Branch; claim combined present right of 30 cubic feet per second.
2. Miocene right - second in entitlement but lowest on West Branch in point of diversion; operating capacity - 38 cubic feet per second.
3. Hendricks right - third in priority - operating capacity 125 cubic feet per second; point of diversion midway between original Dewey and Miners head-dam and also above Miocene headworks.

The terrain near the headwaters of the West Branch is such that upper-stream diversions therefrom may be carried over and spilled into the Butte Creek watershed, as was actually done in the early mining days by the Cherokee Mining Company and now followed by Pacific Gas. Oro Company acquired the Hendricks Canal and rights but soon thereafter sold them to Valley Counties Power Company.⁽⁷⁾ In 1906, the ditch was extended to the Butte Creek Canal. Valley Counties acquired the properties including water rights and ditches of the old Cherokee Mining Company and di-

7. Valley Counties Power Company hereafter will be referred to as "Valley Counties."

verted water under the Dewey, Miners and Hendricks rights to operate two power plants located on Butte Creek - Centerville Plant and DeSabra Power House. The Centerville Plant, lowest on the stream, was constructed in 1899 by Butte County Electric, Power and Lighting Company and sold in 1902 to Butte County Electric Company and during the same year acquired by Valley Counties. The second and upper project, the DeSabra Power Plant, was built by Valley Counties in 1902. Central California Gas and Electric Company, in 1903, purchased these properties and thereafter sold them to Pacific Gas, the present owner and operator. Philbrook Reservoir was constructed in 1926 by Pacific Gas and put into service in the following year. This reservoir impounds waters of Philbrook Creek, a tributary of the West Branch, to the extent of 5,000 acre feet and primarily is used to increase the available summer flow of the Dewey-Miners right for the generation of power in the DeSabra and Centerville power plants.

The underlying and fundamental issue in these cases is the dedication of the above waters and the amounts thereof to the Oroville area, upon disposal of which the other claims readily may be determined.

There is evidence that, when the Oro Company entered into its contract with the predecessors of the Berkeley Olive, it owned and controlled only the Miocene water rights and whether capable or not of ability to provide all water required for its service obligations must be considered as being limited to Miocene rights. The Dewey, Miners and Hendricks water rights were in control and possession of other interests at the time the contracts covering the lands now managed by the Berkeley Olive were entered

into originally and these Dewey-Miners waters unquestionably were diverted into a foreign watershed. There were three contracts involving the water now supplied to Berkeley Olive. The original agreement⁽⁸⁾ of September 25, 1912, was by and between the Oro Company and B.B. Meek and H.S. Johns and provided for the delivery of thirty-two miner's inches of water and additional amounts if and when available. Payment was to be made only for water actually delivered by the company if a shortage existed although the irrigators were required to pay for the entire thirty-two miner's inches the sum of four hundred and eighty dollars (\$480) if available and whether used or not. An agreement dated December 31, 1912, between the above parties provided for delivery of water to the extent of sixty-eight miner's inches to additional lands acquired or to be acquired by Meek and Johns. Similarly, there was a contract dated September 25, 1912, with the Oro Company and C.E. Hotle providing for one hundred miner's inches of water. In the first Meek and Johns contract and in the Hotle agreement, there was a recital to the effect that the Oro Company was "the owner of the Miocene Ditch." In the later Meek and Johns agreement, this recital was modified as follows: "Whereas the party of the first part" (Oro Company) "is the owner of Miocene and Powers Ditches***." The original heading of the Powers Ditch was in Dry Creek and water was never diverted, nor, as far as this record is concerned, did it ever have any diversion rights from the West Branch. The Miocene head-works was and is downstream from the diversions of the Dewey

3. Exhibit No. 1 attached to Protest of H.W. Hill and Berkeley Olive Association in Application No. 13429.

and Miners ditches and, undoubtedly, could and did at times pick up waters lost and/or not diverted by these upper ditches; yet, legally, the Oro Company was in no position to agree to deliver water from these two ditches or any waters other than those emanating from its Miocene right.

Upon the acquisition of the Oro Company properties by Pacific Gas, an agreement⁽⁹⁾ was entered into under date of March 11, 1916, by and between Pacific Gas and Berkeley Olive, which latter had succeeded to the interests of Meek and Johns and the rights under the Eotle agreement. This contract provided for the delivery of water to the lands described in the above three contracts under similar terms and conditions, among other things, incorporating therein by reference the provisions of each and every of the above three contracts. On the twenty-second day of June, 1918, a new agreement⁽¹⁰⁾ was entered into by and between Pacific Gas and Berkeley Olive, confirming the aforesaid agreements, incorporating them by reference and providing for the delivery of one hundred fifty miner's inches of water to the said Berkeley Olive. This agreement supersedes and cancels the contract of March 11, 1916, and, among other things, is terminable by either party upon sixty days' notice. The rates for water are the same as in the prior agreements but subject to change "by or under authority of law***."⁽¹¹⁾

9. This agreement is Exhibit No. 4 attached to Protest of H.W. Hill and Berkeley Olive Association in Application No. 13429.

10. Exhibit No. 5 in Protest of H.W. Hill and Berkeley Olive Association filed in Application No. 13429.

11. See Decision No. 26351 in Case No. 3558, dated September 18, 1933.

Pacific Gas acquired the Oro Company properties in 1917 and its acquisition of the properties and rights of the Butte County Electric, Power and Lighting Company, Butte County Electric Company, and Valley Counties Electric Company placed it in virtual control of all major diversions from the West Branch. Pacific Gas therefore was in a position to insure delivery of water to its domestic and irrigation consumers in Oroville and vicinity from sources other than the Miocene and, while its major business was the generation of power rather than the service of water for domestic and irrigation purposes, there is no doubt from this record that occasionally it picked up waters from upstream rights other than Miocene which were delivered to its irrigation users including the District and Berkeley Olive; nevertheless, there is no denying the fact that under the above contracts Pacific Gas must be conceded to have escaped the legal duty and obligation of supplying water to the Berkeley Olive except from such waters as accrue to the Miocene water right.

Pacific Gas entered into a contract with the District for the delivery of 9.1 second feet of water, approved by this Commission in Decision No. 11887, dated April 4, 1923 (23 C.R.C. 317). In this agreement there was no limitation as to the source of supply. This contract is clear upon the face thereof. Without discussing the powers of the Commission to alter or modify said Decision No. 11887 authorizing the sale of the Thermalito system to the District, it is clear that there is nothing in this record to show any necessity or equity in so doing. The amount of water to which this District is entitled under the above agreement and any question of damages or reparation for

its breach or non-performance obviously lies in the civil courts.

As to those interveners diverting waters from Butte Creek, the record is conclusive that they have no rights to demand the diversion of waters from the West Branch but come into entitlement at this time to such waters only as are diverted from this source and are spilled or wasted into Butte Creek from the tail-race of the DeSabra and/or Centerville power houses. In so far as the claims of such interveners are concerned in the instant proceeding, they may be dismissed.

Discrimination:

Berkeley Olive claims unfair discrimination in the delivery of water during the year 1931 and demands reparation to the extent of two hundred and ninety-one dollars and eleven cents (\$291.11) against the Water Company.

The year of 1931 was characterized as one of the most serious in water shortage in the history of this State. Demand upon the Water Company by the District and Berkeley Olive for additional water to save their trees resulted in an agreement with Pacific Gas and the Water Company to sell to the latter for delivery to Berkeley Olive and the District five second feet of water (200 miner's inches) and more, if available, at a price of fifteen cents (15¢) per miner's inch, based upon the purported value of this extra water in the generation of electricity through the DeSabra and Centerville power houses and measured at the Hendricks diversion, all transmission losses to be sustained by the purchasers. Berkeley Olive and the District, being consumers of the Water Company and now only indirectly consumers of the Pacific Gas, entered into a contract with the Water Company

in which, among other things, each agreed to pay said Water Company at the rate of fifteen cents (15¢) per miner's inch. The agreement by and between Pacific Gas and the Water Company was approved by this Commission in Decision No. 24062, dated September 21, 1931. The agreement by and between said Water Company and the District and Berkeley Olive was approved by this Commission in Decision No. 24063, issued on the same date. In this latter contract, the Water Company agreed to pay one-half of the cost to both parties of the water up to five second feet, additional water to be paid for - one-quarter by Berkeley Olive and three-quarters by the District.

The water was released by Pacific Gas and paid for by the three parties as follows:

Berkeley Olive-----	\$ 291.11
The District-----	873.34
The Water Company-----	<u>864.45</u>
Total-----	\$2,028.90

There was excess water spilled by Pacific Gas upon demand under said agreements which was not all used by either the District or the Berkeley Olive, a part of which was waste water and was diverted by Rancho Golden Grove, the last large irrigator on the system, which resulted in this ranch receiving its normal supply without payment of any additional charge, the regular rate being ten cents (10¢) per miners inch day.

There are contracts outstanding for irrigation service to all such users both below and above the Coal Canyon Power House. The lower users, including the Berkeley Olive, have contracts purporting to give them priority over all users. Those above the said plant and now still consumers of Pacific Gas have

contracts subjecting them to secondary entitlement. Such irrigation consumers of Pacific Gas received full deliveries during 1931 without entering into special contracts. Berkeley Olive claims that these upper users should have been cut off entirely and that the failure so to do resulted in unjust discrimination against it. As far as all or any of these contracts are concerned, they were entered into subsequent to the dedication of the waters involved to the public use and could not, therefore, grant to any of the consumers a preferential right. As to the demands of Berkeley Olive, it must be evident that legally there cannot be conceded anything other than equality in the rights to water deliveries by either Pacific Gas or the Water Company. There was no proration of water or extra charges made by Pacific Gas to its consumers during this period of water shortage. In comparison with the large demand for irrigation of those consumers taking out from the Powers Canal, the combined deliveries to the upper users in 1931 amounting to one and a half second feet to all practicable purposes are insignificant. However, there was no excuse or justification for the Pacific Gas diverting, for six days in July during this period of water shortage, through the Hendricks Canal to DeSable 2.2 second feet in excess of its entitlement.

As to the claim that the price of fifteen cents (15¢) per miner's inch, which the District and Berkeley Olive were required to pay for the release of emergency water, was excessive, it must be conceded that this price was agreed to by all parties by written instruments approved by formal order of this Commission. For its regular supply the District pays six cents (6¢) per miner's inch day and Berkeley Olive ten cents (10¢). Although Pacific Gas

could have had the benefit of the use of this water to generate power through the Lime Saddle and Coal Canyon power plants before reaching the irrigation consumers, it was under no legal obligation to so operate. No reparation is demanded from Pacific Gas.

The charge of unfair discrimination as a result of permitting Rancho Golden Grove to secure its full entitlement during the season without the necessity of entering into a similar special contract is unfounded. From August 2 to September 23, 1931, water in excess of the contract amount of five second feet was released upon demand of the District and Berkeley Olive. This excess, being greater than either could use, was taken by Rancho Golden Grove rather than allowed to go to waste. Obviously, no extra charge could be assessed against the Rancho. By reason of the fact that its diversion is at the extreme lower end of the Powers Canal, it was in a position to take advantage of any waters not used by the other irrigators and received the benefit of such waters as might be built up through poor ditch regulation. A more thorough control of irrigation deliveries by the Water Company and also by the irrigators themselves would have prevented most of the dissatisfaction arising from this source. The adoption of more reliable and efficient methods of water measurements and closer supervision over diversions and release, by both the Pacific Gas and the Water Company, is clearly advisable.

The Water Company has a standby well in Oroville for emergency purposes, capable of producing a flow of one second foot, or two acre feet per day, which was used during this period

only to the extent of equalizing its standby power charge. Had this well been cut-in during the shortage of water to supply the Oroville domestic demand, considerable relief would have been afforded the irrigation users. Its production costs would have been only slightly in excess of the fifteen cents (15¢) per miner's inch day paid for the extra water. Although the Water Company claims that this well is for fire use only and for protection against the possibility of a break in its main transmission line crossing the Feather River, nevertheless good judgment should have dictated the advisability of putting it into full operation, for there was no reduction in domestic water service in the City of Oroville during 1931 other than that resulting from the advertised request of the Water Company that its consumers conserve their use of water to the fullest extent possible.

In the agreement with the District and Berkeley Olive, the Water Company showed its willingness to cooperate with its consumers by agreeing to pay and actually paying half the cost of the emergency water purchased from the Pacific Gas which it was under no legal obligation to do. Of a total charge for this water of two thousand twenty-eight dollars and ninety cents (\$2,028.90), the Water Company voluntarily paid eight hundred sixty-four dollars and forty-five cents (\$864.45). The evidence presented herein is insufficient to justify the claim for reparation by Berkeley Olive of two hundred ninety-one dollars and eleven cents (\$291.11), or any other amount, against the Water Company.

Pacific Gas has adopted the policy of running its Dewey and Miners rights through the Hendricks Ditch at all times

even in spite of the fact that in periods of low flow, when the water is approximately ten second feet, only two second feet of water can reach the penstock because of conveyance losses. This water could, of course, be turned down to the Miocene Canal and put to a beneficial use. However, Pacific Gas has the right to protect its own vested interests in water rights and the Railroad Commission has no power to order a dedication of such waters or any part of them to any specified use or at any particular point of delivery without full consent of the owner of such rights.

Ryan-Barnum Report:

In the sale of the Oroville water system to the Water Company, the Oroville Water Contract made no provision for the delivery of any definite amount of water by Pacific Gas. Obviously, it was a matter of grave concern to insure sufficient water for the domestic consumers and irrigation water users in and in the vicinity of Oroville. The Commission therefore directed that a proper and adequate quantity of water be specified, which, after investigation, was decided could be based fairly upon deliveries for the year 1927. Records of all waters supplied during this year were directed to be made. A joint report of such deliveries prepared by J.T. Ryan, Valuation Engineer for Pacific Gas, and E.K. Barnum, Chief Engineer for the Water Company, was presented. With the exception of the maximum-day allowance, all parties have agreed to the quantities set forth in this report. The Pacific Gas accepted the suggested elimination of the "Maximum Day" column and figure on condition that it be not required to deliver at the head of Powers Canal more than forty-eight second feet of water which is the maximum operating delivery

capacity of the Miocene Canal. As far as reasonably possible, this appears to be as fair a method as any to fix the amount of water which should be delivered by Pacific Gas to the Water Company and, undoubtedly, should provide an adequate supply except in times of most extreme drought. Admittedly, in such cases, the Miocene right cannot furnish all water necessary. Berkeley Olive requests that its rights to water be not confined to Miocene rights. The District demands that Pacific Gas be not relieved from its public utility obligation and liability to supply it with water to which it is entitled and that no definite quantity of water be fixed. These contentions have been disposed of already. In the interests of proper regulation, it is essential that a definite determination be made of the amount of water to be delivered to the Water Company under the sales contract of December 7, 1926, as heretofore ordered.

The following form of Order is recommended.

O R D E R

Supplemental petition having been filed in the above entitled Application No. 13429 asking for approval of the quantity of water which the Pacific Gas and Electric Company obligates itself to deliver to C.B. Jackson or California Water Service Company under the terms of the agreement for the transfer of the Oroville water system as heretofore authorized by this Commission in its Decision No. 18037 and as directed in First Supplemental Order in

Decision No. 18101, and complaint having been filed as above entitled in Case No. 3292, public hearings having been held thereon, at which it was agreed by all interested parties that these two matters be combined for hearing and decision, the matters having been submitted and the Commission being now fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the joint report of J.T. Ryan and E.K. Barnum, setting forth the amounts of water which said Pacific Gas and Electric Company is obligated to deliver to the said California Water Service Company as heretofore mentioned and filed in the above entitled proceedings as Exhibit No. 5 in Application No. 13429 and as Exhibit No. 5 in Case No. 3292, be and it is hereby approved and incorporated in the Order herein by reference, subject, however, to the following modifications:

1. The maximum quantity of water which said Pacific Gas and Electric Company shall be required to deliver at the head of Powers Canal shall not exceed a rate of forty-eight (48) cubic feet of water per second, being the maximum operating delivery capacity of the Miocene Canal.
2. The column of figures under "Maximum Day" in Table F of said report shall be eliminated from the schedule.

IT IS HEREBY FURTHER ORDERED that nothing in the Order herein approving said Ryan-Barnum Report shall be construed as placing any limitation upon the source of supply of the waters which the Pacific Gas and Electric Company has heretofore obli-

gated itself to deliver to the Thermalito Irrigation District.

Based upon the findings of fact contained in the Opinion which precedes this Order, IT IS HEREBY FURTHER ORDERED that the complaint in Case No. 3292 be and it is hereby dismissed.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after 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 1st day of August, 1935.

Leon A. Whiteley

W. H. Carr

W. B. Harris

~~George H. Hays~~

Donald R. Quinn
Commissioners.

Commissioner Ware feels himself disqualified and therefore has not participated in this decision.