

Decision No. 29021

ORIGINAL

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 authorizing and permitting an increase in the rates and charges for water furnished and services rendered by it in the Counties of Modoc and Lassen, State of California.

Application No. 20408

Hardin Barry, for applicant.

C. A. Raker, for J. P. Miller,  
C. M. Leonard, K. Weigand,  
and W. H. Bunselmeier,  
consumers.

BY THE COMMISSION:

O P I N I O N

This is an application for an increase in rates charged by C. W. Clarke Co. (1) which operates a canal supplying water for agricultural irrigation purposes to certain lands in Big Valley lying in Modoc and Lassen counties.

A public hearing in this proceeding was held at Alturas before Examiner MacKall.

The Company was declared to be operating as a public utility in the service of irrigation water to 595 specific acres of land through its Ash Creek Drainage Canal as the result of a

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1. Hereinafter referred to as the Company.

decree of the Superior Court of Modoc County, affirmed by the Supreme Court of the State of California (A. Babcock, et al. v. C. W. Clarke Co., et al., (1931) 213 Cal. 389). The rates established by the Superior Court were thereupon filed with the Railroad Commission. In general, these rates provided for water to be delivered at the rate of one miner's inch per acre for each irrigation at a total charge of one dollar (\$1.00) for each acre, together with a continuous supply of stock water throughout the entire year to the extent of five (5) inches to each consumer, for which no charge was fixed or ever has been made.

Thereafter the Company applied to the Railroad Commission for the establishment of rates which were fixed in Decision No. 25280 dated October 24, 1932. Later, on a rehearing of this proceeding, these rates were revised in Decision No. 27360 dated September 17, 1934, and are now in effect as follows:

"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

"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<sup>(3)</sup> 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.

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

The Order in Decision No. 27360 further provided for the discontinuance of deliveries of stock water outside of the irrigation season, provided, however, that unregulated amounts of water flowing through the Ash Creek Drainage Canal (as the main ditch is called) and not properly allocated to other services could be used by the regular consumers for watering stock during said off-season.

The Ash Creek Drainage Canal is nine and one-half miles long and is in such a state of disrepair as to require a large expenditure of money in order to deliver water other than for watering stock. A considerable amount of the ditch cleaning must be done immediately to fully serve the 265 acres now entitled to service. At the time the original rate cases were held before this Commission 595 acres were entitled to service. Thereafter Andrew Babcock and certain of the members of his family having the rights to demand service to 330 acres developed their own water supply and by contract with the Company relinquished their individual rights to Ash Creek water, or at least agreed not to demand public utility service from the Company for any of their lands.

Upon the acquisition of the lands of H. C. and Mattie E. Watson by Chas. M. Leonard, there remained but four consumers with a total of 265 acres of lands under the ditch rights as decreed by the Court.

The evidence shows the following operating statistics:

Year	Revenue	Expense	Loss
1933	\$468.00	\$3,209.40	\$2,741.40
1934	325.75	1,888.70	1,562.95
1935	348.37	1,352.71	1,004.34

The record shows that but very little money has been ex-

pended in cleaning and repairing the canal. It is also clear that approximately three thousand dollars (\$3,000) will be required in order to put it in a reasonable operating condition. Not all of this amount, however, must be expended in one year; the total cost is subject to amortization over a period of years.

The testimony of the water users, who are all stock raisers, is unanimously to the effect that none of them can afford to pay more than the present rate of two dollars and twenty-five cents (\$2.25) per acre even with stock water furnished throughout the year without additional charge. It is clear that the Company can no longer afford to operate under present rates and equally evident that this Commission cannot require it to continue service at an out-of-pocket loss without confiscating its property without due process of law. The situation since withdrawal of the Babcocks as consumers is as regrettable as it is most unfortunate and hopeless. Delivery of water to the few remaining consumers will necessitate a rate of seven dollars and fifty cents (\$7.50) per acre year. If the service at this price is prohibitive to the consumers, there remains nothing further than the abandonment of the public utility service.

#### O R D E R

C. W. Clarke Co., a corporation, having made application to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

It is hereby found as a fact that the present rates contained in and affected by Rules and Regulations Nos. 5 and 11 of

the C. W. Clarke Co. for irrigation service from its Ash Creek Drainage Canal in Lassen and Modoc counties are unjust and unreasonable in so far as they differ from the rates, rules and regulations authorized by this Order and that the rates and amended rules and regulations authorized herein are just and reasonable, and

Basing this 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., a corporation, be and it is hereby directed to cancel and abolish Rules Nos. 5 and 11 of its Rates, Rules and Regulations at present in effect and shall substitute therefor and file with this Commission, within thirty (30) days from and after the date of this Order, the following revised rates, rules and regulations to become effective on the first day of January, 1937:

RULE NO. 5

SCHEDULES

C. W. Clarke Co., a corporation, 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 such deliveries. This schedule shall provide for service in rotation of three fifteen-day irrigations or the equivalent allotment of water thereof in three irrigations as hereinafter provided during the period from June 20th to October 1st of each year to consumers applying for water in accordance with the present effective Rule No. 4. During each irrigation period each consumer entitled to delivery shall receive a continuous flow of one (1) miner's inch<sup>(2)</sup> of water per acre applied for to the extent of the entitle-

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

ment of said consumer.

RULE NO. 11

RATE SCHEDULE

For all water delivered entitling the consumer to three irrigations, if desired, as set out above in Rule No. 5, per miner's inch continuous flow per acre-----\$7.50

Irrigation deliveries shall be based on a flow of one (1) miner's inch<sup>(2)</sup> per acre applied for and delivered to the lands entitled to irrigation in accordance with said Judgment No. 2789 entered in the Superior Court of Modoc County.

Consumers will be billed for the total number of acres entitled to receive water under said Judgment No. 2789 as applied for, provided water is delivered. In case of water shortage, water charges shall be prorated. Should an initial deposit be made by a consumer for a greater amount of water than can be furnished by C. W. Clarke Co., the excess amount of such deposit shall be credited on the second half of the consumer's bill due November 1st as provided for in Rule No. 12.

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IT IS HEREBY FURTHER ORDERED that C. W. Clarke Co., a corporation, be and it is hereby authorized to discontinue the further deliveries, during the periods outside of the irrigation season, of stock water heretofore authorized by said Judgment No. 2789, provided, however, that nothing in this Order shall be construed to mean that unregulated amounts of water permitted to flow through the Ash Creek Drainage Canal and not properly allocated to other uses may not be used by consumers to the extent of their respective and individual entitlements thereto for stock-

watering purposes when not required for irrigation use.

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 27<sup>th</sup> day of July, 1936.

M B Harris

M H Cunn

M J Devlin

Commissioners.

Commissioner Devlin, feeling himself disqualified, has not participated in this decision.