

Decision No. 29501

322
ORIGINAL

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,
a corporation, to exclude certain
lands from its service area that
have not received irrigation water
within a period of five years last
past, and to extend service to lands
of an equivalent acreage outside of
its service area.

Application No. 20280

J. E. Woolley, for applicant.

Raymond Salisbury, for Bank of America.

BY THE COMMISSION:

O P I N I O N

The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, (1) a corporation, is engaged in the public utility business of selling water mainly for agricultural irrigation purposes but also to some extent for domestic and industrial use in a gross service area of approximately 146,700 acres lying westerly of the San Joaquin River and extending through portions of Fresno, Merced, and Stanislaus counties from Mendota Weir to a point a few miles north of the Town of Crows Landing. Within the above territory are the towns of Dos Palos, Los Banos, Volt, Ingomar, Gustine, Newman and Crows Landing. In this proceeding the Canal Company alleges that there lies within its present service area a large

1. Hereinafter referred to as the Canal Company.

number of parcels of lands which have not applied for or received irrigation water for a period of at least five years last past and practically all of which are of uniformly poor quality not susceptible to being economically irrigated and that there is a vast acreage of fine farm lands lying outside of, adjoining and adjacent to the present service area that has repeatedly applied to the Canal Company for continuous irrigation water service which has been refused. Request is made for authority to exclude the above non-irrigated lands from its service area and substitute therefor an equivalent net acreage of outside lands now demanding continuous service. Attached to the application is Exhibit "A" setting forth by number the name of the owner, acreage, location either by section or Canal Company plat book lot numbers, or both, and county location of each parcel sought to be removed from the service area. In some cases the acreage listed is approximate only. Attached also is a map designated Exhibit "B" showing the location of the above parcels listed in Exhibit "A."

Formal protest was filed at the hearing by George Johnson and Alesia Johnson, the owners of parcel No. 47 containing 82.6 acres in Section 19, Township 9 South, Range 9 East, Merced County. Protestants claim that the land is of very fine quality and, while not now taking irrigation water, will require water service in the near future. Request is made that this parcel be not excluded from the service area.

A public hearing in this proceeding was held before Examiner M. R. MacKall in Los Banos.

The present service area of this utility was established by the Railroad Commission in its Decision No. 22228, dated

March 19, 1930 (34 C.R.C. 473) and included a total gross acreage of 146,700 acres, of which it was then estimated that approximately 114,000 acres would be the average net number irrigated annually. However, since 1930, the actual net irrigated acreage has been as follows:

1930	-	98,213	acres
1931	-	78,932	acres
1932	-	90,121	acres
1933	-	87,680	acres
1934	-	94,430	acres
1935	-	84,880	acres

Based upon the evidence presented, the Canal Company contends that under existing rates and the acreage actually irrigated it has never realized the revenues to which it was entitled under the schedule of rates last established for its service by this Commission. Great anxiety is expressed by officials of the Canal Company that, by reason of the extensive water right litigation now pending and threatening involving diversions from the San Joaquin River, it may suffer a substantial restriction in its appropriations of water through failure to put all its existing water rights to a full, beneficial and continuous use. The testimony shows that the Canal Company through its engineering staff made a very extended survey and examination of all lands within its service area as well as adjacent lands outside thereof and desirous of receiving irrigation water to the end that it found 132 separate parcels of land in separate ownership ranging from 2.8 acres to a maximum of 300 acres, scattered throughout the service area, which parcels had not been irrigated for a period of at least five years last past and which, in general, gave indications of being so poor

in quality as to show little or no prospect of ever using irrigation water in the future advantageously. These parcels totalled 6,263 net acres and were recommended for exclusion mainly because the soil was highly impregnated with alkali, consisted of hard-pan, or was water-logged and swampy. However, certain of the parcels used an independent source of supply such as wells and long ago had discontinued the use of ditch water; others, while classified as fair, dry-farming grain and pasture lands, were too poor in quality to support the costs of irrigation.

Several owners, or their representatives, whose lands were listed for exclusion, testified that they could now raise sufficient funds to install drainage facilities for their lands and would again be able to use irrigation water advantageously. Certain others agreed to level and properly prepare their lands for irrigation and to sign applications for continuous general irrigation service. George and Alesia Johnson who filed formal protest against exclusion of their tract of 82.6 acres showed that their land was, in fact, very good but that a series of misfortunes had made it impossible to use water during the past five years and they had been forced to resort to dry-farming. Mr. Johnson stated that he was now in a position to take and pay for continuous irrigation service. The Canal Company withdrew this parcel from the excluded list and similarly withdrew many others where the owners gave assurance that they would immediately properly prepare the lands for irrigation and also agreed to take continuous service in the future. These withdrawals amounted to 395.4 acres and the Canal Company was requested to and has filed a revised and corrected list and map of excluded parcels, amending Exhibits "A" and "B" at-

tached to the application, as well as a new map setting forth the location of lands of new applicants for irrigation service which it is willing to serve.

Protest was made by the Bank of America, the owner of a tract of 1,100 acres in Sections 33 and 34, Township 9 South, Range 9 East, against the exclusion of 300 acres of this tract located in Section 34, which it contended was all good land. However, the evidence conclusively shows that this particular portion of the 1,100-acre tract was highly impregnated with alkali and had not been irrigated for many years because it could not raise a profitable crop. The company's refusal to withdraw its request for removal of this parcel from the service area is fully justified by the record.

In connection with certain requests for new lands to be included within the revised service area, the testimony indicates that some of the parcels are of the same character or even worse than those sought to be excluded. As the primary reason for the elimination of certain poor and non-irrigated lands is to substitute therefor an equivalent acreage which will support continuous irrigation in the future and protect the utility's water rights, there is no justification in permitting the inclusion of barren and unproductive lands. As most all the good quality lands under the canal system have already been served for many years and are now within the service area as established, by far the larger portion of the new lands asking for water lies adjacent to and above the Outside Canal. The Canal Company does not propose to install additional ditches or extend its existing canals and laterals to supply the new or substitutional tracts and, in those instances where they

lie above the gravity flow of the canal, the irrigators must install their own pumping plants as is now the practice in those cases where such conditions exist. The Canal Company does not furnish any service by pumping to lands lying above the ditches.

The record in this case clearly indicates that the utility should not be required to reserve indefinitely a rather substantial portion of its water supply for lands which have not for many years last past used water and which show little, if any, probability of reasonably continuous use in the future when there is a most insistent demand for all such unused water by other lands adjacent to the Canal Company's ditches and which water can readily be delivered to such lands with but a nominal expense upon the part of the Canal Company. As the demand for irrigation water increases in this State far in excess of the supply, the Commission in several instances in the past has found it necessary to place limitations upon the period of time utilities may justly be required to reserve water for non-users and has directed extension of service to new applicants or to new areas where the water so released could be put to beneficial use and not wasted. The seriousness of the possible loss of diversion rights for approximately six thousand net acres of land through unnecessary waste is most vital to this entire district and should be prevented before it becomes too late. The utility in all fairness is entitled to receive the benefit of all possible revenues from a reasonable and efficient disposition of its entire available water supply. This in turn permits the establishment of the lowest possible charge to the consumers for irrigation service by providing for the most complete and economical application of its rights of diversion. The Commission owes a duty to warn a large number of

the old consumers now within the established service area that the evidence and testimony in this proceeding clearly indicate that an alarmingly large number of acres may soon be forced to discontinue the use of water for irrigation through the excessive water-logging of the lands. This is the result either of excessive irrigation or lack of drainage, but usually both. The remedy for the former is obvious and simple; in the latter case extensive drainage systems will be required. The favorable results obtained through existing drainage districts and systems in this area demonstrate their advisability. This warning is vital because many more acres may in the future lose their rights to water service through inability to make further profitable use thereof as a direct result of present careless and improvident irrigation practices.

The question has arisen as to the necessity of the Canal Company filing an amended petition asking for a certificate of public convenience and necessity to supply lands outside of its present area of service. It appears that the scope of the present application is broad enough to cover the entire matter without modification and that the permission to serve in the new and outside territory may properly be granted in this proceeding.

O R D E R

Application as above entitled having been filed with this Commission, a public hearing having been held thereon, the matter having been duly submitted and the Commission being now fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED as follows:

1. The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, be and it is hereby author-

ized to discontinue on the first day of March, 1937, further irrigation service to those parcels of land which have not applied for and received irrigation water for a period of five consecutive years last past, namely, 1931 to 1935, inclusive, as such parcels of land are more particularly set forth and described in Exhibit "A," as revised and amended, and delineated upon the map designated Exhibit "B," as revised and amended, said exhibits being attached to the application herein and hereby made a part of this Order by reference, all such parcels of land embracing and including some 5,614 net acres, more or less, being hereby ordered to be excluded from the service area of this utility as of the first day of March, 1937.

2. Within twenty (20) days from and after the date of this Order, The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, shall notify, in writing, the owners of all parcels of land to be excluded from the service area by the Order herein that this Commission has authorized the discontinuance of all further irrigation water service to such parcels on and after the first day of March, 1937, and on or before the first day of March, 1937, the said company shall file an affidavit with this Commission that such notice has been duly given as provided herein.
3. The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, be and it is hereby authorized to supply irrigation service under its regular rates, rules and regulations to lands now outside its established service area to the extent of a net acreage approximately equivalent to that acreage excluded from the present service area as provided in paragraph 1 above, and such new lands to which an extension of service is herein authorized are hereby ordered to be included in and made a part of the general service area of this utility as of the first day of March, 1937.
4. Within thirty (30) days from and after the date of this Order, The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, shall file with this Commission in quadruplicate a list setting forth the new lands to which service is to be extended, each separate parcel thereof to be described as to ownership, acreage and location, together with four copies of a

map showing thereupon the general or approximate location of all such individual parcels; provided further that the said new lands to which service is to be extended shall be substantially as proposed by applicant at the hearing held in this proceeding.

IT IS HEREBY FURTHER ORDERED that this Commission reserves the right to alter, modify or amend the list of lands excluded from the service area of this utility and to order or approve any proper and necessary modification or revision in the list of new lands admitted into service by the terms of the Order herein.

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 1st day of February, 1937.

Matthew H. Brown
Leon A. White
Frank S. Smith
Carl S. Whipple
Ray A. Kelley
Commissioners.