

Decision No. 21983

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
KINGS COUNTY CANAL COMPANY, a cor-
poration, for an order authorizing
said corporation to abandon its
public service.

ORIGINAL

Application No. 21983

Sidney J. W. Sharp and Lee G. Brown,
for Applicant.

Calvin L. Russell and J. Heid, Jr.,
for Protestants.

BY THE COMMISSION:

O P I N I O N

In this proceeding Kings County Canal Company asks for authority to abandon and discontinue its agricultural irrigation service in Kings and Tulare Counties, California. In the application, the Company alleges that for a great number of years it has been engaged in the business of selling water for irrigation purposes to various classes of users and, also, in the business of transporting or permitting the transportation of water through its canal system as a carrier of waters for certain and various individuals owning their own water supplies or obtaining foreign waters by purchase or otherwise.

It is claimed that prior to the year 1937, and as far back as the year 1917, no water has been available to applicant's canal system from either the Kings River or the Tule River, but during said period applicant has allowed certain parties to use

its canal system as a carrier of waters which were procured by said parties from other and various sources.

Applicant alleges that since the year 1912, to and including the year 1937, the operations of its canal system have cost \$51,711, during which same period the income received has amounted to only \$18,901. It is further stated that all of the shareholders in the Kings County Canal Company and all users of the canal system have signified their assent in writing to the authorization by the Commission of the abandonment of public utility service. Applicant therefore prays that the Railroad Commission approve and authorize the discontinuance and abandonment of all further public utility service and that it thereupon stand relieved from all public utility obligations and liabilities in the sale and distribution of water through its existing canal system and facilities.

Public hearings in this matter were held before Examiner M. R. MacKall and before Examiner Wm. Stava at Hanford.

Kings County Canal Company was organized and incorporated in the year 1905 and thereafter acquired certain interests in the water rights which Lakeland Canal & Irrigation Company, a corporation, claimed to appropriate and divert waters from the Kings River. However, it appears that almost immediately after its formation this irrigation company was restrained in the exercise of its purported appropriative rights to the waters of the Kings River through court action initiated by certain owners of lands riparian to said River and claimants to prior water entitlements therein.

During the year 1918, under co-operative agreements brought about through the State Council of Defense for the intensi-

fication of food crop cultivation, the Lakeland Canal and Irrigation Company was permitted to divert water from the Kings River, coming into entitlement, however, only when the flow therein exceeded 8,000 second feet measured at Piedra. The record herein shows that subsequent to the termination of the regime of the said Council of Defense, some waters have been diverted from time to time from the Kings River as described above by said Lakeland Canal and Irrigation Company, and its successors in interest, at present the Lakeland Irrigation District Option Syndicate, a private corporation, and transported through applicant's ditch system. It appears that no waters have been so used for a considerable number of years from the Tule River although the Canal Company still claims a right to divert the first 400 second feet of water from this stream arising out of a filing made by Ade Orrill in 1906. However, this right has never been exercised by this company since the date of filing as a result of the threats of injunction proceedings by and on behalf of many parties claiming adverse and prior rights to the waters in said River. In recent years, applicant has made no effort to obtain water from any of the several available sources for sale and distribution to the many land owners and farmers under its canal system seriously needing, and ready and willing to take, water for irrigation purposes. On the contrary, the Utility has placed the burden of procuring water upon the land owners and tenants and has performed practically no useful function other than to permit the irrigator, at his own expense, to use and maintain the Company's canals and ditches to transport water which he has been forced to obtain by contract and purchase from outside sources, a principal source being Alpaugh Irrigation District.

The Kings County Canal Company has a service area comprising approximately 20,000 acres, lying partially within two counties, Tulare and Kings, practically all of said area being located within the boundaries of the Homeland Reclamation District No. 780, a public corporation. This Reclamation District contains about 29,000 acres of land lying in the bed of Tulare Lake, which at times is subject to overflow from flood waters. According to the Canal Company's records, the largest acreage irrigated in any one year in the past has been in the neighborhood of 10,000 acres during 1937. At the present time, the Kings County Canal Company owns no diversion works of any kind whatsoever in either the Kings or the Tule Rivers nor any structures for the appropriation or capture of water from any of the creeks, sloughs, or other natural drainage courses in this territory. The main canal of the Company commences at a point about 7-1/2 miles south of the Tule River at the common corner of Sections 2, 3, 10 and 11, Township 23 South, Range 23 East, in Tulare County. At this junction, water can be received from the Bayou Vista Ditch, owned and operated by the Lakeland Irrigation District, a public corporation. From this location, the main canal runs in a southwesterly direction along the boundary line of the Homeland Reclamation District No. 780. Heading from the main canal, there are three primary lateral ditches designated as Laterals "A," "B" and "C" which run along section lines in an easterly and westerly direction at 2-mile intervals. The southwesterly end of the Company's main canal is generally considered to be its intersection with Bull Slough, the latter being one of the many drainage channels for flood and overflow waters coming from the south as far as Kern River and, at

times, from Kern and Buena Vista Lakes. There are about 30 miles of canals used by the Kings County Canal Company for distribution purposes.

The Company's main canal has a carrying capacity throughout of not less than 250 second feet. To a large extent, this main canal has been dredged out and used as a borrow pit by Homeland Reclamation District No. 780 in the construction and maintenance of its levees. As a result of such practice, the Reclamation District has been responsible to a large extent in recent years for the enlargement of the canals and reduction in maintenance costs of a considerable portion thereof. Many checkgates, by-pass and diversion works of necessity have been constructed in the Company's main canal by this Reclamation District for the protection of its reclaimed, lake-basin lands against the encroachment of flood waters.

The Kings County Canal Company claims ownership only to six and one-half miles of the Main Canal, seven and one-half miles of Lateral "A," six and a quarter miles of Lateral "B," and three and three-quarter miles of Lateral "C," a total of twenty-four miles. However, the Company actually uses an additional six miles of main canal and lateral ditches, a total of thirty miles. The fixed capital investment in the property actually owned is claimed to be \$127,000, as of December 15, 1939. This is based upon an unsubstantiated valuation of said properties made in 1921 by Max Enderlein and brought up to date through crediting subsequent net additions and betterments.

Protest was filed by Calvin L. Russell and J. Heid, Jr., counsel for certain protestants who, in the main, are the owners

of lands of approximately one section or less in area, all said lands lying within Homeland Reclamation District No. 780. These protestants claimed that their lands from time to time have been irrigated with flood waters and with other waters conveyed and transported through the Canal Company's ditches; that they have no other means of bringing water to their lands; and, that they have never agreed in writing, or otherwise, to the discontinuance of public utility service as alleged in the application filed in this proceeding. As further grounds for objection on the part of these land owners and water users, the contention was advanced that a large number of the Canal Company's structures and many other system improvements have been installed or made by and at the expense of Homeland Reclamation District No. 780 which also has, in a large number of instances, paid for the enlargement and cleaning of the Canal Company's ditches. Protestants contend that they have been in the past and now are unfairly discriminated against in water service by reason of the community of interests existing between the operation and management of the applicant's canal system, the Homeland Reclamation District No. 780, and certain properties owned by Florence Gates Baldwin, including Lakeland Irrigation District Option Syndicate.

The evidence shows that the Kings County Canal Company is under the control of Florence Gates Baldwin by reason of her ownership of 25,823 shares of stock thereof. There is only one additional shareholder in said company, other than directors holding qualifying stock, and that is George Taylor who owns 240 shares. The Lakeland Irrigation District Option Syndicate, a corporation, is also completely controlled through stock ownership by said Florence Gates Baldwin. The Homeland Reclamation District

No. 780 is managed and operated by Henry F. Libby who is also the general superintendent and manager of the Kings County Canal Company and overseer of the said Lakeland Irrigation District Option Syndicate, and other interests owned and controlled by said Florence Gates Baldwin in and in the vicinity of Tulare Lake Basin. The conduct of the affairs of the above Reclamation District as well as the strictly private farming and allied business activities of Florence Gates Baldwin, other than those involving Kings County Canal Company, are wholly beyond and outside of the control and jurisdiction of the Railroad Commission. However, in this connection it should be stated that there is no evidence whatsoever in the record in this proceeding indicating that any acts or practices on the part of either District No. 780 or said Option Syndicate have been unfairly detrimental to any of the respective rights and interest of the protestants.

According to the record, in Homeland Reclamation District No. 780, fourteen individuals own one or more sections of land. There is, however, quite a substantial number of owners of smaller parcels in the District. Nevertheless, the largest portion by far of the acreage in the Tulare Lake Basin is farmed by large operators who usually follow the practice of leasing vast tracts of land upon a crop-sharing basis; for example, Elmer C. Von Glahn farms some 20,000 acres more or less in the Homeland Reclamation District. 15,000 acres thereof being under 5-year leases from various owners. His total farming operations this last year in District No. 780 and adjacent areas involved 40,000 acres.

The record in this proceeding discloses a peculiar operating characteristic of this utility in that the sale and transportation of water in substantial volume has taken place mainly

during years of abnormally heavy rainfall and stream run-off which frequently resulted in the flooding of large areas of the otherwise dry bed of Tulare Lake. In 1937 and 1938, the major portion of Tulare Lake Basin was completely submerged by flood waters. These flood and overflow waters have been withdrawn by pumping and distributed for irrigation purposes mainly through the canals of the Tulare Lake Water Company, a mutual organization, and through the Gates-Jones Canal now controlled by Elmer C. Von Glahr. From these two ditch systems some waters have been conveyed through applicant's distribution canals.

The principal source of revenue obtained by the utility has been from the transportation of water as a common carrier for certain and various ranch owners and operators. In most cases the ranchers themselves have handled the use and distribution of these waters. Such water supplies have been acquired by the irrigators not only from the flooded lake areas, as above indicated, but also through contracts with the Alpaugh Irrigation District and the Cromwell System. Surplus water has been purchased from this said District at the rate of \$3.75 per acre foot, transportation being charged such purchasers by the applicant Canal Company at the rate of 1¢ per acre foot per mile. The Cromwell System's water comes from certain drilled wells lying just easterly of the Homeland Reclamation District. Delivery therefrom is obtained through a pipe line at a cost likewise of \$3.75 per acre foot at the well source. The total amount of water available to the collective contract users of surplus water from the Alpaugh Irrigation District is a maximum of 50 second feet, and similarly from the Cromwell System a maximum of 25 second feet.

The Alpaugh and Cromwell sources represent the most permanent and dependable supplies available to the service area of this utility, not being dependent upon flood and overflow water conditions. During occasional years, some water has been obtainable from the Lakeland Irrigation District Option Syndicate emanating from the Kings River and transported through the applicant's canal system at rates varying from \$1.00 per acre irrigated to \$2.00 per acre foot depending upon whether the Syndicate or the consumer paid the costs of transportation. Occasionally, additional flood waters have been delivered from various creeks and natural drainage channels, such as Cross Creek, Deer Creek, Pozo Creek, Tule River and from the Kern River via Goose Lake Slough and Bull Slough. The charges by the utility for delivering water from the latter sources usually have been made upon the basis of transportation costs only, the user being required to buy his own water and also pay in addition for all maintenance, upkeep and installations, both permanent and temporary, made necessary to divert and carry such water through the Company's ditch system.

According to the evidence presented, revenues and expenses, including depreciation for the years 1935 to 1939, both inclusive, are as follows:

<u>Year</u>	<u>Operating Revenues</u>	<u>Operating Expenses</u>
1935	\$ 545.36	\$ 565.26
1936	358.36	280.01
1937	11,732.46	9,999.44
1938	5,414.66	5,441.12
1939*	1,747.28	3,413.42

(*) As of September 25, 1939.

The testimony shows that the above operating expenses do not reflect the normal costs of management. The figures presented therein are subject to severe reduction for items more properly chargeable to capital accounts and for lump-sum depreciation allowances and abnormal emergency expenditures; the latter two of which should be amortized over a period of years. For instance, transmission and distribution expense and repairs amounted to \$3,711 in 1921 and \$1,600 in 1922, no further charges are shown in the Company's books for these items for a period of fifteen years until 1937 for which the sum of \$8,755 is set up. The following year, the charges to these accounts total \$2,700. Again depreciation was charged with the sum of \$18,291 in 1923 and \$16,150 in 1924. This account dropped to \$1,150 in 1925 and to \$609 in the following year, 1926. Thereafter no credit was made to depreciation until 1937 when \$118 was allocated thereto. Further analysis shows that the statistical information and data submitted in connection with operating costs and yields are wholly insufficient in scope and exactitude to permit a proper determination of the just and reasonable expenses which normally would be necessary for applicant to conduct its own public utility business without requiring a very considerable portion of such costs to be borne through both direct and indirect contributions by the water users.

Protestants contend that in the event the applicant's canal system is relieved of its public utility status, they will be left in the future without any means of supplying their lands with irrigation water except through the whim and fancy of the owners of large acreage blocks of land and big-scale farm operators. The record unquestionably bears out this claim. The Canal Company in the past has been remiss in its duties and obligations to the

members of the public entitled to its services in not properly protecting and safeguarding its water rights and in not taking measures to secure a water supply of its own when opportunity presented. It appears doubtful if either the Canal Company or its consumers at this late date can acquire an adequate water supply at a price economically feasible, although at many times in former years the Company could and should have made some sincere efforts to this end.

It is clearly evident that for years applicant has made no serious attempt to operate its irrigation system upon a sound and proper basis. Such use as has been made of the Company's water ways has been almost entirely by the consumers themselves, by one or two, or a group thereof, who have purchased water from foreign sources wherever available, and who have assumed the responsibility of maintaining and operating the system throughout. No request has ever been filed with the Railroad Commission by or in behalf of applicant to establish increased rates and additional revenues. The present charge for the transportation of water upon the face thereof is inadequate for such service and undoubtedly could support readjustment. It is a most serious act to deprive land owners of their rights to water for agricultural irrigation service, especially is this true where such rights have been enjoyed for over a quarter of a century. It does not appear equitable to do so in this instance when applicant has made no apparent effort to exhaust the possibilities of remedying the conditions complained of through appropriate proceedings before this Commission and there the evidence as submitted is wholly insufficient to warrant any finding at this time that discontinuance of public utility irrigation service is justified.

O R D E R

Kings County Canal Company, a corporation, having applied to this Commission for an Order authorizing it to discontinue all its public utility service, public hearings having been held thereon, the matter having been duly submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that the application of Kings County Canal Company, a corporation, for an order authorizing it to discontinue and abandon all public utility water service in connection with the operation of its system of canals located in and in the vicinity of Homeland Reclamation District No. 780 in the counties of Kings and Tulare, 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 Los Angeles, California, this 18th day of February, 1941.

[Signature]
[Signature]
[Signature]
Justice J. Calmes
Francis R. Havers

COMMISSIONERS.