

Decision No. 23603

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of R. G. KANN, as Trustee for the former stockholders of THE CALIFORNIA COMPANY, for an Order Permitting Abandonment of Public Service of water from Salt Springs Valley Reservoir.

Application No. 23603

A. L. Cowell, for Applicant.

CRAEMER, COMMISSIONER:

O P I N I O N

In this proceeding, R. G. Kann, as Trustee for the former stockholders of The California Company, asks the Railroad Commission for permission to abandon and discontinue all public utility service of water from Salt Springs Valley Reservoir in Calaveras County. The application sets forth the following allegations for the proposed abandonment:

- (a) That for many years the revenues derived from the water distributed from the reservoir through North Hill Ditch have been insufficient to pay the cost of maintaining and operating said ditch.
- (b) That revenues received during recent years for water delivered from the North Hill Ditch for dredging operations will cease because, it is alleged on information and belief, all ground within the territory served by said ditch which can be worked profitably has now been dredged.
- (c) That the agricultural land which can be irrigated from the North Hill Ditch is extremely limited and the future revenues will be meager.

- (d) That the territory in the vicinity of the North Hill Ditch is rolling, foothill land and used principally for grazing and is unsuitable for general farming purposes.
- (e) That the said ditch includes about 1200 feet of wooden flumes, the expense of maintaining which has been and will be greater than the revenue which could be derived from water served from the ditch for all purposes.

The application further sets forth that the total expenses for taxes on said reservoir and ditch and for the operation and maintenance thereof for the five-year period from 1935 to 1939, inclusive, have been \$10,194 compared with the total revenues for the same period of only \$7,530. Applicant offers to sell water hereafter at the reservoir under contract to any water users along the North Hill Ditch provided they will agree to maintain and operate said ditch and the distribution of water therefrom.

A public hearing in this matter was held in San Andreas, in Calaveras County.

Salt Springs Valley Reservoir, located some six miles east of Milton in Calaveras County, is formed by an earthen dam across Rock Creek with a catchment area of approximately 25 square miles. The original dam was built about 1857 with subsequent additions and enlargements so that its capacity is 10,900 acre feet at the spillway level, elevation, 1074 feet above sea level. The North Hill Ditch extends along the foothills about 12-1/2 miles northwesterly from the dam toward Jenny Lind and was originally built to furnish water for hydraulic mining purposes. The California Company⁽¹⁾ was a New York corporation organized for a life of 50 years in 1823 about which time it acquired possession of the Salt Springs Valley Reservoir, the North Hill Ditch and other

(1) Hereinafter generally referred to as the Company.

properties in the vicinity. When hydraulic mining was stopped, the water from the reservoir was put to agricultural uses, watering stock and incidental mining operations.

Although contending that it was not a public utility, the Company asked for authority to issue a certain note. In Decision No. 5986, rendered December 16, 1918, the Commission declared the Company to be a public utility for the purposes of that proceeding. In 1919 Ivey Lewis Borden filed a complaint, Case No. 1302, to the effect that the Company had refused him water after furnishing him service for several years during which time he paid rates varying from 5¢ to 10¢ per miner's inch. The Company then filed Application No. 6334 for permission to discontinue service of water, maintaining that it had never intended to become a public utility. In Decision No. 9939, rendered December 29, 1921, the Commission refused to allow the Company to discontinue and ordered it to file the following rate for all water service rendered to its consumers subsequent to January 31, 1922, which rate was filed under protest:

RATE SCHEDULE

For water delivered to consumers at turnouts on its main or branch ditches, per miner's inch run for twenty-four hours, which is equivalent to a total delivery of 2160 cubic feet \$0.20

The Commission in Decision No. 24454, dated February 8, 1932, granted authority for the Company to issue \$30,000 worth of bonds to expire February 1, 1952, which bonds are now understood to be owned entirely by R. G. Kann. To avoid the necessity for reincorporating, authority was requested in Application No. 18845 to transfer all of the Company's property to R. G. Kann as Trustee

for Eda Kann, Ruth M. Heinemann and R. G. Kann. The transfer was authorized by the Commission's Decision No. 25903, dated May 1, 1933.

Exhibit No. 1, filed in this proceeding, is a map showing the location of Salt Springs Valley Reservoir and the North Hill Ditch in relation to the Calaveras River and surrounding territory in Calaveras and Stanislaus Counties. Rock Creek flows southwesterly below the reservoir but is not tributary to Calaveras River. North Hill Ditch extends northwesterly and water from it may be released down ravines and gulches which ultimately drain into Calaveras River. Unfortunately, and perhaps for more or less obvious reasons, Applicant failed to locate upon this same map the original old pioneer mining canal, running southwesterly from Salt Springs Reservoir and generally known as the Quail Hill Ditch, as well as several other more recently constructed canals through which, together with several natural drainage courses, the major portion of the water sold to consumers from Salt Springs Valley Reservoir is now, and for several years last past has been, transported.

At the hearing, Applicant filed Exhibit No. 2, which is a tabulation of the revenues from water sales for the years 1929 to 1939, inclusive, and expenses for the same period. The table includes the revenues derived from sales of purported "surplus water" and segregates the revenues from sales of water delivered from the North Hill Ditch upon the assumption that these latter are the only revenues derived from arbitrarily designated public utility operations. The sales classified as "Public Utility" range from \$223 to \$2,115 per year, while the receipts derived from and designated as "Surplus Water Sales" range from a low of

\$285 to a maximum of \$3,852 in 1938. Applicant testified that the revenue obtained from water served from the ditch for agricultural purposes had never exceeded \$250 per year in any year. In 1935, an arrangement was made with K. G. Schwegler to deliver to him from the North Hill Ditch for mining purposes fifty miner's inches of water for eight months of the year at the rate of 11-1/4¢ per miner's inch day, rather than at the established and filed tariff of 20¢ per miner's inch day. Applicant testified further that since the above arrangement he has sold water to all other public utility customers at the same 11-1/4¢ rate.

Because of the unused water available in the reservoir in normal years over and above the amount required by the consumers from the North Hill Ditch, Applicant made efforts to dispose of such excess water elsewhere. During the period from 1933 to 1938, water was released from the said ditch to flow into the Calaveras River channel from which it was recaptured and pumped by various ranchers owning lands riparian to the stream. The rate was \$1.50 per acre-foot of water measured at the individual pumps, amounting to about 7-1/2¢ per miner's inch day. However, the pumps were not operated during the night resulting in a great waste both of water and revenue and led to the final abandonment of this method of operation.

In 1935, Applicant entered into a 20-year agreement with Linden Irrigation District (see Exhibit No. 6) to sell to said District "all water impounded in said reservoir in any season in excess of the amount required for service to such other water users as the Trustee may have or may become obligated to serve." The District agreed to pay for water measured at the outlet gate of the reservoir at the rate of 55¢ per acre-foot, being equivalent

to about 2-3/4¢ per miner's inch day. Among other things, the District also agreed to enlarge the capacity of the North Hill Ditch to 75 cubic feet per second and to make certain other improvements at the dam to increase the storage capacity of the reservoir. Water was purchased by the Linden Irrigation District during 1936, 1937 and 1938 but there was no extra water available during the extremely dry season of 1939 with the result that the agreement, together with modifications thereto, has been virtually, if not actually, cancelled.

Annual revenues varying from \$300 to \$400 are reported for the year 1930 and for the years 1934 to 1938, inclusive, for so-called "surplus water" released into the natural channel of Rock Creek for the purpose of watering cattle on ranches riparian to the stream. Three ranchers buy stock-water under written or oral agreements. In general, the Applicant is required to maintain in Rock Creek a supply of water sufficient for the livestock during the irrigation season.

Under date of March 20, 1936, R. C. Kann entered into what he termed and designated a "water right agreement" with Annie Moran for the irrigation of Ladino clover or other crops on not to exceed 250 acres at a rate of \$4.50 per acre with a maximum requirement of 3-1/2 acre-feet per acre. Water supplied under this agreement is discharged from the reservoir into Rock Creek and thereafter diverted by Annie Moran at her own expense. The evidence shows that other similar agreements have been made as follows:

- (a) Contract dated February 17, 1936 with Kate Greenlagh for irrigation of not to exceed 90 acres.

- (b) Contract dated April 21, 1936 with Marguerite A. Rhodes for irrigation of not to exceed 250 acres.
- (c) Contract dated August 26, 1936 with Albert L. Groves for irrigation of not to exceed 150 acres.

Still another "water right agreement" was made by R. G. Kann on November 3, 1937 with Mary Ada Orvis and W. S. Orvis and Marguerite A. Rhodes, wherein said R. G. Kann agreed to furnish water for the irrigation of Ladino clover or other crops on not more than 250 acres of land owned or leased by said Mary Ada Orvis and/or W. S. Orvis, and on not more than 300 acres owned or leased by Marguerite A. Rhodes. The rate specified was \$4.50 per acre, with a maximum requirement of 4 acre-feet per acre. This agreement also provided that Applicant might enter into similar contracts with Charles B. Rhodes for the irrigation of not more than 200 acres and with Annie Moran for the irrigation of not more than 150 acres. The water was to be delivered from the reservoir to the lands to be irrigated by means of a main ditch to be constructed along the general course of the Quail Hill Ditch for a distance of about 16,920 feet, thence by natural drainage channels and through another ditch to be constructed for about 1600 feet. The construction costs were to be paid by the irrigators, one-half thereof to be refundable in kind. Upon completion, the ditch and the right of way therefor were to become the property of Applicant and be operated and maintained by him. The new Quail Hill Ditch was constructed in 1937 and 1938 at a total cost of \$8,150.

Following is a tabulation summarizing the revenues and expenses as presented by Applicant for the eleven-year period 1929 to 1939 in Exhibit No. 2 as corrected:

: Year:	: Public Utility*:	: Surplus Water Sales*:					: Total:	: Revenue:	: Expenses:
:	: North Hill Ditch:	: Calaveras River Ranch-ers:	: Linden-Irrigation-Dis-trict:	: Rock Creek-Cattle:	: Rock Creek-Clover:	: Total:	: All Water Sales:	: Total:	
1929	\$ 878	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 878	\$2,774	
1930	1,062	-	-	390	-	390	1,452	2,240	
1931	741	-	-	-	-	-	741	3,967	
1932	907	-	-	-	-	-	907	2,170	
1933	223	285	-	-	-	285	508	1,828	
1934	551	301	-	350	-	651	1,202	2,210	
1935	1,437	307	-	300	100	707	2,144	2,024	
1936	2,115	166	990	400	474	2,030	4,145	2,373	
1937	1,557	-	1,292	400	1,140	2,832	4,389	2,331	
1938	1,526	90	967	400	2,395	3,852	5,378	2,393	
1939	894	-	-	**	**	**	**	1,997	

* Classification arbitrarily assumed and adopted by Applicant.

** Not reported - incomplete.

Counsel for Applicant has evolved a rather startling method of reclassifying service obligations wherein the entire group of water deliveries yielding heavy and substantial revenues are unreported and placed in the category of non-operative business upon an arbitrarily assumed private contractual status dealing with alleged "surplus water" only. To the regular public utility service has been relegated the obviously unprofitable and unremunerative deliveries to the two remaining consumers on the North Hill Ditch. No logical or satisfactory reason has been advanced by counsel justifying the thinly disguised attempt to carve private contractual rights from a water supply which has in its entirety been dedicated to the public use for over half a century. Since as early as 1918, The California Company voluntarily submitted itself to the jurisdiction of the Railroad Commission which thereupon assumed this company to be a public utility, at least as to the extent of the issues then involved, Decision No. 5986, 16 C.R.C. 285. In 1921, with the actual status of The California

Company under direct attack, the Commission in the following unequivocal language declared the entire operations of said company to be public utility in character without any exception whatsoever, Decision No. 9939, 21 C.R.C. 23-26.

"The most important issue raised herein is whether or not defendant, The California Company, is a public utility as to the operation of its water system.

The evidence shows, and it is an admitted fact, that for over 30 years past The California Company has operated its water system continuously and has delivered water to various individuals who have applied for service and has collected regular rates therefor. Further, since 1869, when the company ceased to mine, it has engaged solely in the business of the sale and distribution of water to its consumers. The California Company has filed its annual reports with this Commission, and therein are set out, among other things, the number of consumers and the quantity of water delivered for irrigation and mining use, together with operating revenues from the water sales.

After carefully considering all of the evidence relative to the public utility status of this company's activities, and particularly the facts set out above, it is evident that said company owns, controls and operates a water system within this state and that it is distributing water to the public for compensation. The Commission therefore finds as a fact that The California Company is a public utility."

The facts are clear and indisputable. The record herein conclusively shows that all sales and distribution of all water from Salt Springs Valley Reservoir are public utility in character and as such are fully and completely under the control and jurisdiction of the Railroad Commission. This being a fact, the evidence indicates that upon the basis of all revenues received, disregarding all arbitrarily assumed classifications, this utility is not operating at an out-of-pocket loss but, on the contrary, is even realizing some return upon its capital investment. It furthermore appears that for a considerable number of years last past, this utility has disregarded the filed tariffs which hereto-

fore had been established by the Railroad Commission upon a uniform basis for all water deliveries. Service has been rendered for mining, agricultural, stock water and other purposes at varying and non-uniform rates, all of which were considerable less than the rates heretofore established. In addition to these departures from the officially fixed schedule of charges, a large number of private agreements have been entered into providing for the sale and distribution of water for various purposes wherein the specified rates were highly preferential in favor of the contractual water users and excessively discriminatory against regular water users.

The history of the North Hill Ditch shows a rather disheartening decline in productive activities. In 1920 some 16 consumers took water from this ditch. At times, considerable water was run for mining purposes. Now only two ranchers depend upon this ditch for water, Willard B. Tower, a sheep raiser, and Smile Pacheco, a cattleman, who also is superintendent and operator of this utility's irrigation system. Mr. Pacheco lives at the extreme end of the 12-mile North Hill Ditch and has absolutely no other means of obtaining stock and pasturage water except from the Company's canal. However, the entire gross revenues from both of the above users do not exceed \$100 for the entire year. Without a doubt, this presents a desperate situation not only from the utility's operating standpoint but, most serious of all, to Smile Pacheco. Loss of this water means the loss and abandonment of his entire ranch. There appears to be little hope for any new revenues along this ditch in the future except, perhaps, from possible gold dredging operations on this

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same Pacheco ranch and at this time such venture appears to be both remote and too highly speculative to warrant further consideration at this time.

Ordinarily, under such conditions and circumstances, abandonment of further water deliveries through the North Hill Ditch might be in order. However, present service demands have undergone a considerable change, having shifted to new areas not under or capable of being supplied by the North Hill Ditch.

Testimony indicates that there is now an insistent demand for the irrigation of large areas of lands lying generally in the lower Rock Creek Valley, primarily for the raising of Ladino clover, alfalfa and other forage crops for pasturage purposes. It appears that the entire production of water from the Salt Springs Valley Reservoir is insufficient to supply the increasing demands in this territory for water even in years of average rainfall. In order to obtain water in this area, many land owners therein have agreed to and have actually constructed, mainly at their own expense, several miles of ditches and many structures for the transportation of water to their respective ranches. There is no loss of market for Applicant's water supply, in fact, so important has the demand for water in this area become that steps have been taken from time to time in the past, as well as at the present time, for the formation of an irrigation district under and by virtue of the laws of the State of California with the ultimate end in view of acquiring by purchase or otherwise all of the water production facilities owned by Applicant in this territory. It is this water which has been handled entirely by and through written agreements under the guise of "surplus water."

An analysis of the revenues and expenditures submitted in this proceeding indicates that with a comprehensive reorganization of operating practices and procedure and with the proper allocation of revenues and expenditures, the full development of the business opportunities presented in the lower Rock Creek district should easily place this utility in the position of earning a fair and reasonable return upon its investment over and above the necessary and proper costs of operation. To date, Applicant has extended his efforts not toward the natural development of this new business and more efficient plant management, but rather to the abandonment and severance of all public utility obligations and liabilities to continue service to those entitled thereto. Applicant for many years last past has abandoned and departed from his regularly established rate schedule and has followed a plan of bargaining with each individual water user upon whatever terms could be mutually agreed to. If it is a fact and could be shown that Applicant is not receiving an adequate return, the proper remedy lies in an appeal to this Commission for the fixing of compensatory and uniform rates, rules and regulations. No such action has been taken. Until Applicant has exhausted the simple and inexpensive remedies dictated by good business judgment and as provided by law for such rehabilitation of this system as may be necessary, it would be highly improper and unwarranted for this Commission upon the evidence in this proceeding to authorize the abandonment and discontinuance of water service on all or any part of the existing system. The present record indicates at this time that it is no longer reasonable to require this utility to carry the burden of maintaining the 12 miles of ditches together with the appurtenant structures making up the North Hill Ditch.

It now appears just and proper that service as heretofore be continued to any and all consumers along this ditch who may desire water with the additional understanding, however, that such upkeep, repairs and maintenance as may be required thereon shall be done solely and entirely at the expense of each and every such water user and that the utility hereafter stand relieved from this latter responsibility, unless and until changed conditions should warrant or it otherwise be ordered by this Commission. This method is somewhat in line with the plan proposed by Applicant of placing all further water service from the North Hill Ditch upon a private contractual basis, selling all water at a fixed price measured and delivered at the Salt Springs Valley Dam. However, besides adding to the already surfeit of unnecessary contracts, Applicant's proposal has the additional disadvantages of forcing the consumers to bear the whole burden of the heavy seepage losses throughout the entire 12 miles of canal, which, coupled with the expense of ditch, tunnel, flume and structure maintenance, would make the cost of water prohibitive and force abandonment through economic necessity.

The following form of Order is recommended:

O R D E R

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

IT IS HEREBY ORDERED that R. G. Kann, as Trustee for the former stockholders of The California Company, be and he is hereby authorized to deliver water by and through the North Hill Ditch

upon regular consumer basis, provided, however, that said R. G. Kann may demand the additional requirement that each and every such consumer assume his full share of the responsibility of maintaining said North Hill Ditch in reasonable state of repair for the transportation of water.

IT IS HEREBY FURTHER ORDERED that the application of R. G. Kann, as Trustee for the former stockholders of The California Company, in so far as it pertains to the request for permission to abandon public service of water from Salt Springs Valley Reservoir in the County of Calaveras, State of California, be and it is hereby denied without prejudice.

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 8th day of April, 1941.

[Handwritten Signature]

Justus J. Calver
Francis R. Havens
Commissioners.