

Decision No. 34785

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Agnes L. Rupley,

Complainant,

vs.

Emma H. Rose, Anna G. Lane, Hobart Estate Company,  
Lane Investment Company, Arroyo Seco Gold Mining  
Company, Arroyo Seco Gold Dredging Company, Arroyo  
Mining Company,

Defendants.

ORIGINAL

Case  
No. 4456

In the Matter of the Application (a) of  
ARROYO DITCH COMPANY, a corporation, for  
authority to issue stock for the purpose  
of acquiring the public utility water  
system owned by Arroyo Mining Company,  
a corporation, and also for a certificate  
of public convenience and necessity to  
operate a water system as a public utility  
water corporation; and (b) of ARROYO  
MINING COMPANY, a corporation, for auth-  
ority to sell its public utility water  
system to Arroyo Ditch Company, in ex-  
change for stock of that company.

Application  
No. 24324

I. H. Pfaffenberger of California Farm Bureau  
Federation and Joseph W. Gross, for  
Plaintiff in Case No. 4456.

Joseph W. Gross for Agnes L. Rupley, Plymouth  
Water Works, Sloughouse Farm Center  
and other water users, in Application  
No. 24324

I. H. Pfaffenberger of California Farm Bureau  
Federation, for Agnes L. Rupley and  
other water users, in Application No.  
24324

Thomas R. White, Chas. W. White and Douglas  
Brookman by Chas. W. White, for  
Defendants in Case No. 4456, and

Chas. W. White and Douglas Brookman, for  
Applicants in Application No. 24324.

BY THE COMMISSION:

O P I N I O N

In Case No. 4456, the complainant asks the Railroad Commission to investigate the service previously given to complainant and to other consumers of water from the "Enterprise Ditch System" in El Dorado and Amador Counties, maintained and operated by defendants, and to compel the defendant who now owns such system to give adequate service and to deliver water to complainant and to other consumers who have rights thereto, and to perform adequately its public utility functions as prescribed by rules and regulations of the Commission and by the Public Utilities Act of the State of California.

Commissioner Baker held a hearing on the complaint in Jackson on November 14 and 15, 1940. At this hearing it was stipulated by counsel for plaintiff and by counsel for defendants that defendants, Emma H. Rose and Hobart Estate Company, had no interest in the property. As to them, therefore, the case was dismissed. The record shows that there is no such company as the Arroyo Seco Gold Mining Company; that the Arroyo Seco Gold Dredging Company is a California corporation; that the Arroyo Mining Company is a corporation organized under the laws of Nevada, and that the "Enterprise Ditch System" is owned by the Arroyo Mining Company, whose outstanding stock is owned by the Arroyo Seco Gold Dredging Company. Chas. W. White, appearing for defendants in Case No. 4456, stipulated that Arroyo Mining Company was a public utility. It is, therefore, not necessary to review the record to establish the fact that the Arroyo Mining Company and

its predecessors have operated the "Enterprise Ditch System" as a public utility.

In Case No. 4456, Agnes L. Rupley complains that in August, 1939, she found the water supply on her ranch inadequate. She made a demand in writing upon L. L. Crain, the superintendent in charge of ditch and water operations, for the delivery to her of water to relieve the suffering of her livestock. He advised her, under date of August 18, 1939, that no water was available for her Willow Springs Ranch. On September 27, 1939, the company released fifty miner's inches of water from the Irish Hill Ditch. However, the ditches and natural stream channels used to carry water to the Rupley Ranch had become so dried out from the withdrawal of service that no water reached the Willow Springs Ranch until the 9th day of October, and then only in a very small, almost negligible, quantity.

The defendant, Arroyo Mining Company, by way of justifying its failure to deliver water to the Rupley Ranch, calls attention to the fact that Agnes L. Rupley had notified the company that she did not require any water after June 15; that at no time prior to 1939 did she make any demand for water during July, August and September, and that because of the lack of sufficient rainfall in 1939, it was impossible for defendant to deliver water to said ranch. The record, however, indicates that during the time she was demanding water, some water was being delivered through the Irish Hill Ditch into Dry Creek and made available to the Arroyo Seco Gold Dredging Company for gold dredging purposes. It is somewhat difficult to reconcile the delivery of water to the dredging company with the order to the superintendent of the ditch system that stock raisers should

have water for their stock even though the dredging operations would have to be shut down.

At the hearing, as indicated, Chas. W. White stipulated that the Arroyo Mining Company was conducting its operations as a public utility. Subsequent to the hearing, to-wit, on July 3, 1941, Arroyo Mining Company filed with the Railroad Commission, in Case No. 4456, a written stipulation to the effect that it is now, and for several years last past has been, the sole owner and operator of that certain water system located in El Dorado and Amador Counties, State of California, and generally known as the "Enterprise Ditch System"; that in the operation of said "Enterprise Ditch System" and the distribution of water therefrom for compensation, Arroyo Mining Company has become a public utility water corporation as that term is defined in Section 2(x) of the Public Utilities Act of the State of California. The Arroyo Mining Company further stipulates that the Commission may make a finding in Case No. 4456 to the effect that defendant Arroyo Mining Company is now, and since January 1, 1941, continuously has been, a public utility water corporation as defined in Section 2(x) of the Public Utilities Act of this State, in the sale and distribution of water for compensation from the water system located in El Dorado and Amador Counties, State of California, commonly known as "Enterprise Ditch System."

On July 3, 1941, Application No. 24324 was filed with the Commission. In this application, the Arroyo Mining Company, a Nevada corporation, asks permission to transfer its public utility water properties to the Arroyo Ditch Company, a California corporation. The latter company asks the Commission to grant to it a certificate of public convenience and necessity to

operate as a public utility corporation, and to authorize it to issue \$13,500 of common stock in payment for Arroyo Mining Company's properties described in Exhibit "C" filed in said Application No. 24324.

Examiner Fankhauser held a hearing on Application No. 24324 in Jackson on October 17, 1941.

The Enterprise Ditch, to which reference is made in these proceedings, is eighteen miles long, and consists of unlined earthen canals, a tunnel, and wooden flumes. After passing through Plymouth, water is transported through the natural channel of Indian Creek for about one mile and is then diverted to the Forest Home Ditch, which extends six or seven miles westerly on the north side of the valley formed by Willow Creek, sometimes called Willow Springs Creek and also Laguna Creek. From the Forest Home Ditch, water is diverted into the Irish Hill Ditch which extends for several miles southwesterly along the ridge between Willow Creek and Dry Creek. The location of the ditch system is shown on maps filed as Exhibits 9 and 10 in Case No. 4456.

Water for the "Enterprise Ditch System" is diverted from the middle fork of the Consumnes River in Section 33 of Township 9 North, Range 11 East, about nine miles northwest of Plymouth, and is conveyed southwesterly by a circuitous route across the south fork of the Consumnes River from which water is also diverted. The water is then transported to and through the City of Plymouth and distributed by means of the two ditches heretofore mentioned, and natural water courses. Water is delivered at a wholesale rate to the Plymouth Water Works, a public utility operated by Miss M. E. Randolph, who distributes water

for domestic, commercial, fire protection and other purposes in Plymouth. Water is sold by Arroyo Mining Company at flat rates varying from \$10 to \$100 per annum for watering stock and other agricultural purposes. Water is also sold to operators of gold dredges and for mining purposes at a rate of 25¢ per miner's inch for twenty-four hours. The Plymouth Mine, owned by the Argonaut Mining Company, serves several domestic consumers at the rate of \$2 per month through the pipe system supplying the Plymouth Mine. These domestic consumers are located within the city limits of Plymouth but at present are not connected with the Plymouth Water Works.

The Arroyo Mining Company, in Exhibit 13, filed in Case No. 4456, reports operating revenues as follows:

1936 .....	\$ 6,336.23
1937 .....	5,312.86
1938 .....	9,149.15
1939 .....	8,769.10
1940 .....	11,705.90

The increase in operating revenues from 1936 to 1940 is due to the sale of water to operators of gold dredges and for mining purposes. The 1940 operating revenues shown above do not include the operating revenues from the sale of water during November and December, 1941 to the Argonaut Mining Company, the W. D. Ingram Dredge and the John C. Pantle Dredge. The 1940 operating revenues are segregated as follows:

Water sold to ranchers	\$ 632.50
Water sold to Plymouth Water Works	900.00
Water sold to operators of gold dredges and for mining purposes	10,053.00
Water sold for domestic purposes through Plymouth Mine pipes	<u>120.00</u>
Total	<u>\$11,705.50</u>

As stated, the Arroyo Mining Company, in Application No. 24324, asks permission to transfer its properties to the Arroyo Ditch Company. A description of the properties which the former desires permission to sell to the latter is contained in Exhibit "A" of Exhibit "C." Counsel for consumers questioned whether this description included the Irish Hill Ditch. Though not admitting that the Irish Hill Ditch is excluded from said description, counsel for applicant amended Exhibit "A" of Exhibit "C" by adding thereto the following paragraph:

"All right, title and interest of the Arroyo Mining Company in and to the Irish Hill Ditch, which ditch extends in a southerly and westerly direction from its junction with the Forest Home Ditch in the southeast quarter of Section 9 of Township 7 North, Range 10 East."

The Arroyo Ditch Company asks the Commission to grant to it a certificate of public convenience and necessity covering the service of water as a public utility water system as that term is defined in Section 2(x) of the Public Utilities Act, for service of water for agricultural, mining, domestic and other purposes, to all lands heretofore served by the Arroyo Mining Company which are tributary to the "Enterprise Ditch System" as described herein. It is of record that it is not possible to describe by metes and bounds the area for which the Arroyo Ditch Company is seeking a certificate. The record, however, is conclusive that there is no intention on the part of the Arroyo Ditch Company to discontinue service to anyone presently receiving service from the Arroyo Mining Company. The principal reason for transferring the properties to the Arroyo Ditch Company is to get the ownership of said utility properties into a California corporation.

The Arroyo Ditch Company was incorporated on May 29,

1941, under the laws of California. It has an authorized stock issue of 50,000 shares of the aggregate par value of \$50,000.

The testimony shows that the Arroyo Mining Company acquired the "Enterprise Ditch System" in 1935 from the Lane Investment Company at a cost of \$13,500. Since then it has expended about \$5,000 to improve the ditch system. It has realized approximately \$2,000 from dredging operations on a reservoir site that will be transferred to Arroyo Ditch Company. The properties that will be transferred to the Arroyo Ditch Company, and for which it will issue \$13,500 par value of common stock, are described in Exhibit "A" attached hereto.

The agreement of sale, in addition to providing for the sale of the properties described in said Exhibit "A," provides that all other real and personal property owned by Arroyo Mining Company, excluding cash in bank, but including all bills receivable, shall be transferred to Arroyo Ditch Company. The sale agreement contains other provisions, reading:

"Purchaser (Arroyo Ditch Company) will pay and deliver to said Seller (Arroyo Mining Company) as a consideration for said sale and the conveyance and transfer of said properties to Purchaser, capital stock of Purchaser of the par value of Thirteen Thousand Five Hundred Dollars, (\$13,500.00), and Purchaser will also assume all outstanding obligations of said Seller, including the payment of all bills payable.

"Seller agrees that it holds said properties under a good and merchantable title, and that the said properties are free and clear of all liens or encumbrances.

"Buyer agrees to purchase the said properties in the condition in which the same now are, and to take the same subject to all of the obligations for the sale of water now attached thereto, and to fulfill existing contracts of Seller for the sale of water from said Ditch System.



"Seller agrees to pay all taxes upon said property now due, and Buyer agrees to pay all taxes upon said property falling due after the date of this agreement."

We find that the Arroyo Mining Company has been and is engaged in the operation of a public utility water system. In view of the fact that it has asked permission to sell its public utility properties to Arroyo Ditch Company and the order herein grants such permission, we assume that the properties will be transferred promptly after the effective date of the order herein, and in any event on or before December 31, 1941. Upon the assumption that this will be done, the order herein requires the Arroyo Ditch Company to file with the Commission a schedule of rates charged by Arroyo Mining Company all of its several types of consumers as of the date hereof. The Arroyo Ditch Company will also be required to file with the Commission proper rules and regulations. We expect it to serve and deliver at all times, including periods of water shortage or other emergencies, water to each and every consumer strictly upon a basis of equality and without discrimination, unless otherwise ordered by this Commission in the public interest.

#### O R D E R

The Commission having considered the evidence submitted in the above entitled matters, and it being of the opinion that Case No. 4456 may properly be dismissed and Application No. 24324 granted, subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED that Arroyo Mining Company may, on or before December 31, 1941, transfer to Arroyo Ditch Company the public utility water system and business now owned and operated

by Arroyo Mining Company, and commonly known as the "Enterprise Ditch System" located in El Dorado and Amador Counties in the State of California, and more particularly described in Exhibit "A" attached hereto and made a part hereof, said transfer to be made in accordance with the terms of the agreement filed in Application No. 24324 as Exhibit "C."

IT IS HEREBY FURTHER ORDERED that Arroyo Ditch Company may, on or before December 31, 1941, issue in part payment for said properties of Arroyo Mining Company \$13,500 par value of its common capital stock. The Commission is of the opinion that the money, property or labor to be procured or paid for through the issue of said stock is reasonably required by Arroyo Ditch Company for the purposes herein stated, and that the expenditures for said purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AND DECLARES that public convenience and necessity require, and will require, Arroyo Ditch Company to construct, maintain and operate as a public utility corporation as defined in Section 2(x) of the Public Utilities Act of this State said public utility water system acquired from Arroyo Mining Company, for the service of water for agricultural, mining, domestic and other purposes, to all lands which are tributary to said "Enterprise Ditch System," which have been heretofore served by Arroyo Mining Company and its predecessors in interest.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity be, and it is hereby granted to Arroyo Ditch Company to construct, maintain and operate a public utility water system in the territory hereinabove described.

IT IS HEREBY FURTHER ORDERED that Arroyo Ditch Company be, and it is hereby, authorized and directed to file in quadruplicate with this Commission, on or before December 31, 1941, its rates for water service, which rates shall be identical with the rates charged for water service by Arroyo Mining Company as of the date hereof.

IT IS HEREBY FURTHER ORDERED that on or before December 31, 1941, Arroyo Ditch Company shall submit to this Commission for its approval quadruplicate sets of rules and regulations governing relations with its consumers, each set of which shall contain a suitable map or sketch drawn to an indicated scale upon a sheet approximately 8½ x 11" in size, delineating thereon in distinctive markings the authorized service area, provided, however, that such map or sketch shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof.

IT IS HEREBY FURTHER ORDERED that within sixty (60) days from the date of this order, Arroyo Ditch Company shall file with this Commission four copies of a comprehensive map drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated correctly by appropriate markings, the territory for which the certificate is granted herein. This map shall be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire utility area of service.

IT IS HEREBY FURTHER ORDERED that Arroyo Ditch Company shall file with the Railroad Commission a report as required by

the Commission's General Order No. 24-A, which order insofar as applicable is hereby made a part of this order.

IT IS HEREBY FURTHER ORDERED that Arroyo Ditch Company shall file with the Railroad Commission within thirty (30) days after the execution of the deed conveying the aforesaid properties to said Arroyo Ditch Company, a true and correct copy of the deed so executed, together with a true and correct copy of the agreement of sale.

IT IS HEREBY FURTHER ORDERED that Case No. 4456 be, and the same is hereby, dismissed.

IT IS HEREBY FURTHER ORDERED that this order shall become effective twenty days after the date hereof. (25th)

Dated at San Francisco, California, this 28<sup>th</sup> day of November, 1941.

Ray L. Riley  
Justus J. Carlson  
Francis D. Havens  
Richard L. ...  
Commissioners

EXHIBIT "A"

All that certain property situated in the Counties of El Dorado and Amador, in the State of California, and more particularly described as follows, to wit:

That certain Ditch known as the Enterprise Ditch, (sometimes called the Plymouth Ditch), together with all water, water rights, and water appropriations relating thereto, or in any way used in connection therewith. Said Ditch takes water from the Middle Fork of the Cosumnes River by means of an intake Dam in the Middle Fork of said River at a place commonly called the "Log Yard," in the Northwest quarter of Section 33, Township 9 North, Range 11 East, M.D.B. & M., in El Dorado County, State of California; said Ditch thence runs in a general Southerly and Westerly direction through a flume across Spanish Creek to a reservoir commonly called "Green Gulch" reservoir; thence out of the Southerly side of said reservoir to a flume crossing the South Fork of the Cosumnes River at the boundary between said County of El Dorado and the County of Amador, State of California; thence through said flume and across the said boundary into the continuation of said Enterprise Ditch to the town of Plymouth, Amador County, California;

ALSO, all feeder ditches and water rights and water appropriations appurtenant thereto by means of which water is taken from the South Fork of the Cosumnes River, and also from a Creek known as "Indian Creek," and diverted into said Enterprise Ditch;

TOGETHER with all reservoirs, water privileges, claims, dams, or other branch ditches, feeders, and easements belonging to or in anywise appertaining to said Enterprise Ditch or its said Branch ditches and feeders;

ALSO, that certain Ditch known as the "Forest Home Ditch," together with all water, water rights, and water appropriations, easements, and privileges relating thereto. Said ditch commences upon certain land known as Winan's land, in the Northwest quarter, (NW $\frac{1}{4}$ ) of Section 10, Township 7 North, Range 10 East, MDM., Amador County, California, and runs thence eight (8) miles, more or less, to certain land known as Bliss and Detert's land;

ALSO, all right, title and interest of the Arroyo Mining Company in and to the Irish Hill Ditch,

which ditch extends in a Southerly and Westerly direction from its junction with the Forest Home Ditch in the Southeast quarter of section 9 of Township 7 North, Range 10 East;

ALSO, all that portion of Lot Two (2) of Section 19, Township 9 North, Range 12 East, M.D.M., El Dorado County, California, that is located Southerly and Easterly of the present County Road of said El Dorado County, where said road is now located, and adjacent to said described tract of land; said portion of said Lot Two (2) contains thirty-nine (39) acres, more or less;

ALSO, all those certain parcels of land in Township 9 North, Range 12 East, M.D.B. & M., in said County of El Dorado, State of California, being and described as:

The North half of the Northeast quarter, ( $N\frac{1}{2}$  of  $NE\frac{1}{4}$ ) of Section 19, and the Southwest quarter of the Southeast quarter, ( $SW\frac{1}{4}$  of  $SE\frac{1}{4}$ ) of Section 18, and the Northwest quarter of the Northwest quarter ( $NW\frac{1}{2}$  of  $NW\frac{1}{4}$ ) of Section 20;

The West half of the Northeast quarter, ( $W\frac{1}{2}$  of  $NE\frac{1}{4}$ ) and the North half of the Southeast quarter ( $N\frac{1}{2}$  of  $SE\frac{1}{4}$ ), both of Section 20;

Lot Four (4), and the Southeast quarter of the Southwest quarter ( $SE\frac{1}{4}$  of  $SW\frac{1}{4}$ ) and the Northeast quarter of the Southwest quarter, ( $NE\frac{1}{4}$  of  $SW\frac{1}{4}$ ), all of Section 18, and

The Northeast quarter of the Northwest quarter, ( $NE\frac{1}{4}$  of  $NW\frac{1}{4}$ ) of Section 19.