

ORIGINAL

Decision No. 35727

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

C. W. CLARKE CO., and
W. H. HUNT ESTATE COMPANY,

Application No. 24862

California Corporations, for an order
authorizing the sale of Public Utility
Properties.

In the Matter of the Investigation on the
Commission's own motion into the rates,
charges, contracts, rules, regulations,
classifications, operations, practices,
services, or any of them, of C. W. Clarke
Co., a corporation, operating a public
utility water system in Big Valley in the
Counties of Lassen and Modoc, California.

Case No. 4645

Harden Barry, for C. W. Clarke Co. and
W. H. Hunt Estate Company.

K. Wiegand, C. M. Leonard, J. P. Miller and
Ralph L. Holmes, water users.

HAVENNER, COMMISSIONER:

O P I N I O N

C. W. Clarke Co.,* a corporation, in Application No. 24862, asks for authority to sell to W. H. Hunt Estate Company, a corporation, its public utility irrigation and drainage system called the Big Valley Drainage Canal, and also known as the Ash Creek Drainage Canal, located in Big Valley, in the Counties of Lassen and Modoc. Case No. 4645 is an investigation instituted upon the Commission's own motion for the purpose of inquiring into the reasonableness of the

(*) Hereinafter sometimes referred to as the "Company".

rates, charges, contracts, rules, regulations, classifications and operations, practices, services or any of them, of C. W. Clarke Co. in its public utility operations.

Public hearings in these two matters were held at Alturas in Modoc County, and at Bieber in Lassen County. It was agreed among all interested parties that these two proceedings be combined for the taking of evidence and for decision.

The Big Valley Drainage Canal originally was constructed about the year 1897 to drain the Ash Creek Swamp consisting of several thousand acres of overflow land very valuable for hay and pasturage crops. Since 1899, the Canal has been used for both drainage and the sale and distribution of water for irrigation and stock watering purposes. The present owner of this utility has been involved in a considerable amount of litigation concerning this drainage canal and also has been before the Railroad Commission on numerous occasions in formal matters relating to its public utility business. A general history of the utility's affairs will be found in the following decisions of the Railroad Commission:

Decision No. 25280 - dated October 24, 1932.
Decision No. 27360 - dated September 17, 1934.
Decision No. 29021 - dated July 27, 1936.

C. W. Clarke Co. has entered into an agreement to sell certain of its real properties in Big Valley to W. H. Hunt Estate Company, comprising approximately 10,000 acres of land and including the utility properties of the Ash Creek Drainage Canal. There has been no objection to this transfer as such by any of the former or present water users under this Canal or by any who might desire or claim a right to service therefrom. It seems, therefore, that this transfer should be approved. There has, however, been serious objection to the proposed abandonment or discontinuance of utility water service and rates charged therefor. It is equally clear that equitable and reasonable rates for water service should be established concurrently with authorization of the sale of this canal system.

The cost of water on this system for irrigation use, including stock-water, has varied from \$1.00 per acre per year to \$7.50. Under the latter charge the cost of water is more than the value of the service is worth and has entirely prohibited all further demand for water. The record in these two instant proceedings clearly indicates that in the past insufficient consideration has been given to the essential benefits derived from land reclamation and drainage, flood control and other services rendered land owners and tenants through and by means of the Big Valley Drainage Canal Project. The testimony discloses the fact that at a minimum at least 6,800 acres are directly so benefited and that practically all of this acreage would be of little or no practical value for raising and harvesting meadow hay, pasturage and other crops without the drainage facilities afforded by the Canal.

A case for the determination of the water entitlements and water rights on Ash Creek was instituted on August 26, 1935, in the Superior Court of California, in and for the County of Modoc, entitled Charles A. Gerig vs. C. W. Clarke Co. et al, No. 3670. The Court referred the matter to the Division of Water Resources of the Department of Public Works of the State of California, for investigation and report as referee, under the provisions of Section 24 of the Water Commission Act. In accordance with an amended general order of reference, under date of July 7, 1936, the investigation was commenced July 10, 1936. A watermaster service was established pursuant to the said order of reference. Results were prepared and submitted in three published Ash Creek Reference Reports and are made a part of the record in these two proceedings. These reports are entitled as follows:

"Water Supply and Use of Water on Ash Creek and its Tributaries, in Modoc and Lassen Counties, California," dated February 26, 1938. (Exhibit No. 1.)

"Report on Investigation and Watermaster Service on Ash Creek and Tributaries, Modoc and Lassen Counties, California, During Season of 1938," dated March 15, 1939. (Exhibit No. 2.)

"Report on Investigation and Watermaster Service on Ash Creek and Tributaries, Modoc and Lassen Counties, California, During Season of 1939," dated March 4, 1940. (Exhibit No. 3.)

Acreage in Ash Creek Swamp benefited through overflow relief by

Big Valley Drainage Canal:

<u>General Location and Name of Owner</u>	<u>Acreage Irrigated</u>	<u>Totals</u>
<u>Above Swamp Head:</u>		
C. W. Clarke Co.	168.6	168.6
<u>Flood Flow Area:</u>		
J. C. Lane	208.2	
C. W. Clarke Co.	<u>16.0</u>	224.2
<u>North Side Swamp:</u>		
C. W. Clarke Co.	1,689.9	
J. C. Lane	70.0	
A. L. Cannon	198.0	
Indian Allotment	61.8	
Wm. Kramer	<u>25.0</u>	2,422.7
<u>Tule Swamp:</u>		
C. W. Clarke Co.	1,263.5	1,263.5
<u>South Side Swamp:</u>		
C. W. Clarke Co.	1,747.5	
C. W. Clarke Co.	107.5*	
Wm. H. Bean	38.9	
A. M. Watman	232.9	
J. P. Miller	172.4	
C. A. Gerig	200.7	
K. Wiegand	141.1	
R. L. Holmes	<u>94.0#</u>	2,735.0
Total Average Irrigated, Ash Creek Swamp		6,816.0 Acres.

(Note): (*) Big Valley Drainage Canal.

(#) Big Valley Drainage Canal during and after Haying Season.

There is no controversy over the estimated original cost of the Big Valley Drainage Canal. The Commission established this cost as \$12,454 in 1932. Net additions and betterments to date bring this total to \$13,796.

No serious effort for many years last past has been made to maintain the Drainage Canal in first-class operating condition for irrigation purposes. Nevertheless the evidence does show that unreasonable and excessive overhead charges have resulted from arbitrary allocations of managerial salaries and expenses and for legal expenses and litigation costs which, in part, should be more fairly amortized over a period of years.

Operating statistics as presented by C. W. Clarke Co. are summarized as follows:

<u>Operating Expense</u>	<u>1936</u>	<u>1937</u>	<u>1938</u>	<u>1939</u>	<u>1940</u>	<u>1941</u>
Superintendence	\$ 218.67	\$ 184.00	\$ 283.00	\$ 288.00	\$288.00	\$ 288.00
Labor-Patrolling	666.04	951.75	988.50	695.00	348.50	527.67
Other Labor	150.64	154.34	132.50	-	-	-
Repairs to Canal, Etc.	2,039.21	33.87	63.68	-	18.00	9.79
General Expenses	476.03	1,680.43	43.30	68.69	19.28	179.00
Taxes	50.71	80.68	109.58	126.27	102.95	118.60
Depreciation	118.62	147.13	153.68	159.59	173.35	173.35
Total Expense	\$3,719.93	\$3,432.20	\$1,774.24	\$1,337.55	\$950.08	\$1,292.21

Operating Revenue

Water Sales	\$ 360.50	\$ 253.13	\$ -	\$ 323.12*	62.50*	-
Babcocks and H. C. Jack#		50.00	50.00	50.00	50.00	50.00
	\$ 360.50	\$ 303.13	\$ 50.00	\$ 373.12	\$112.50	\$ 50.00
Loss	\$3,359.43	\$3,129.07	\$1,724.24	\$ 934.43	\$837.58	\$1,247.21

Note: (*) Collections of 1937 delinquent accounts.
(#) For use of a portion of the Canal by certain of the Babcocks and Homer C. Jack.

Details of expenses for the period January 1 - May 31, 1942

(Exhibit 5g), are as follows:

Superintendence	\$ 72.00
Patrolling and Operating Labor	19.50
Notary Acknowledgement - Annual Report	.50
Taxes (estimated)	37.25
Depreciation (estimated)	72.50
Total	\$201.75

(Note): No revenue was received during the above period, as payment for use of a portion of Canal by certain of the Babcocks and Homer C. Jack is not due until June 1, 1942.

The revenues reflected by the Company's books, since the several branches of the family of Andrew Babcock developed their own water supply and discontinued utility water service, show a serious drop. This action on the part of the Babcocks withdrew 330 acres from direct utility service. The increase in water charges effective January 1, 1937 accounted for the remainder of the decline. However no credit has been entered upon the Company's books

for any water sales to C. W. Clarke Co. or to any others* receiving water either directly or indirectly from the ditch service improperly alleged by the Company to be non-utility in character. Nor has any proper credit been shown in the utility accounts for drainage, flood control and harvesting benefits received by the swamp and overflow lands, without which said lands would be of very little practicable agricultural value. It should be observed that irrespective of the failure of the so-called public utility consumers to file with the company a written application for irrigation service, the other and manifold functions of the Drainage Canal make it necessary to maintain the continued operation of this ditch, designed originally for a carrying capacity of 6,000 miner's inches of water.

K. Wiegand, J. P. Miller and C. M. Leonard, witnesses, each individually testified that they had not made application for irrigation water since 1937 and that it was their experience that the rate of \$2.50 per acre per irrigation was excessive, unreasonable and beyond the capacity of alfalfa and all other hay crops to produce sufficient income to justify such a cost for water. They each received two irrigations in 1937, paying \$2.50 per acre for each thereof and thereafter made no further application for service, not because they did not need the water for which they were then and still are willing to pay a reasonable charge, but because the total crop production did not permit a charge in excess of one dollar (\$1.00) per acre per irrigation at the delivery rate of one continuous miner's inch per acre. These witnesses further testified that they did not protest the transfer of Big Valley Drainage Canal and the other real properties of C. W. Clarke Co. provided their rights to water were not thereby jeopardized.

R. L. Holmes testified that he uses water from the Canal on 152.5 acres of land owned by him situated above Headquarters Ranch and that some 94 acres of his property in Ash Creek Swamp are also at times irrigated from

(*) Excepting \$50.00 per annum paid by the Babcocks and Homer C. Jack for use of a portion of the Ash Creek Drainage Canal as a transportation medium for their own private water supply developed jointly in Juniper Reservoir.

the canal. No charges have been rendered to or paid by him for this service. Mr. Holmes further testified that irrigation of alfalfa in Big Valley is essential to produce a profitable crop yield justifying its culture but could not be grown except at a prohibitive loss under existing rates. This witness likewise had no objection to the transfer of the utility property to the W. H. Hunt Estate Company.

The Company claims for water rights a value far in excess of the total cost of all its physical utility properties combined. In this instance, this purported value obviously is unsound in consideration of the fact that the primary performance of the Canal was and still is to by-pass, divert and drain waters from the swamp and overflow lands to permit agricultural use thereof, which use otherwise would be impracticable through the greater part of each growing season of every normal year.

The establishment of a value for water rights, as well as the further determination or allocation of a definite allowance for the reasonable costs of running the public utility division of the Big Valley Drainage Canal, will be unnecessary in light of our view of the case that the utility's share of the operating expenses of this drainage canal represents but a very minor portion of the total over-all costs required to maintain the major flood control, drainage, reclamation and harvesting functions of the business in conjunction with such irrigation demand as may arise.

By taking as presented, without deductions, the Company's own figures of past operating expenses and spreading these among the 6,828 acres of swamp lands and the few hundred additional acres, including certain lands owned by the Company, where service is rendered but not charged for, the assessment where benefited would amount to about 26¢ per acre as an average. If weighted in accordance with the maximum benefits received, such as with agricultural irrigation service including stockwater as well, the resultant rate that should be established for irrigation use should not reasonably exceed the sum of one dollar (\$1.00) per irrigation upon the present basis of allocation of one inch continuous flow per acre where not less than two irrigations are made available to insure the permanence of irrigation for alfalfa and other crops.

Upon this basis, a most ample net return is assured for irrigation and stock-water service upon those portions of the total capital investment properly and fairly chargeable to this utility service. It furthermore appears that this rate is one that the water user can afford to pay and will result in resumption of public utility irrigation on this system.

The following form of order is recommended:

ORDER

Application having been filed with this Commission, and an investigation having been instituted by the Commission on its own motion, both as above entitled, respectively, public hearings having been held thereon before Commissioner Franck R. Havenner and Examiner Murray R. MacKall, the matters having been duly submitted, and the Commission being now fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED as follows:

(1) Rules No. 5 and No. 11 of the rates, rules and regulations of C. W. Clarke Co., operating the Big Valley Drainage Canal in Lassen and Modoc Counties, be and they are hereby cancelled and annulled.

(2) Within twenty (20) days from the date of this Order, C. W. Clarke Co. shall file with this Commission the following schedule of rates for agricultural irrigation water including stockwater delivered from its Big Valley Drainage Canal System, in Lassen and Modoc Counties, effective for all service rendered from and after the effective date of this Order:

RATE SCHEDULE

For all water delivered for irrigation purposes, including stockwater entitlement, per acre, per irrigation \$1.00

Irrigation deliveries shall be limited to three irrigations per season when water therefor is reasonably available and based upon a continuous flow of one minor's inch per acre irrigated, following in general the deliveries and entitlements as decreed in Judgment No. 2789 entered in the Superior Court of Modoc County, subject to such reasonable modification thereof as may be agreeable and proper, subject to approval of the Railroad Commission.

The miner's inch referred to above shall be equivalent to one-fiftieth (1/50) of one cubic foot of water per second.

(3) Within twenty (20) days from the date of this Order, C. W. Clarke Co. shall file with this Commission four sets of revised rules and regulations governing relations with its consumers, said rules and regulations to become effective only upon approval by this Commission and/or as directed to be filed.

(4) Within thirty (30) days from the date of this Order, C. W. Clarke Co. shall file in quadruplicate with this Commission a suitable map or sketch, drawn to an indicated scale, upon a sheet approximately $8\frac{1}{2}$ x 11 inches in size, showing the area served and the location thereof with reference to the surrounding territory; 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.

(5) Within sixty (60) days from the date of this Order, C. W. Clarke Co. shall file with this Commission four copies of a comprehensive map, drawn to an indicated scale of not less than two inches to the mile, upon which shall be delineated correctly by appropriate markings the various parcels in the territory served and the location and size of all transmission and distribution pipe lines. This map should be reasonably accurate and show the source and date thereof.

(6) C. W. Clarke Co., a corporation, be and it is hereby authorized to sell to W. H. Hunt Estate Company, a corporation, all right, title and interest in and to the public utility water system properties known as the Big Valley Drainage Canal, situate in Modoc and Lassen Counties, which properties are more particularly described in Exhibit "D" attached to the application herein and which is hereby made a part of this Order by reference, subject to the following terms and conditions:

- (a) The authority herein granted shall apply only to such transfer as shall have been made on or before the first day of December, 1942, and a certified copy of the final instrument or instruments of conveyance shall be filed with this

Commission by C. W. Clarke Co. on or before said date.

- (b) The consideration for the transfer herein authorized shall not be urged before this Commission or any other public body as a finding of value for rate fixing or any purpose other than the transfer herein authorized.

IT IS HEREBY FURTHER ORDERED that upon due compliance with the terms and conditions set forth above, C. W. Clarke Co., a corporation, be and it is hereby relieved of all further public utility obligations and liabilities in connection with the properties herein authorized to be transferred.

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 1st day of September, 1942.

Justin P. Coe

[Signature]

Frank R. Havens

Commissioners.