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ORIGINAL

DECISION NO. 38355

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Panoche Farms, et al)	
vs)	Case No. 4762
San Joaquin Canal Company)	
E. J. Dietz, et al)	
vs)	Case No. 4766
San Joaquin Canal Company)	
Knut Fyling, et al)	
vs)	Case No. 4769
San Joaquin Canal Company)	
Joaquin Brazil, et al)	
vs)	Case No. 4771
San Joaquin Canal Company)	
Lindemann Farms, et al)	
vs)	Case No. 4780
San Joaquin Canal Company)	
J. R. Hammonds)	
vs)	Case No. 4782
San Joaquin Canal Company)	
San Hamburg)	
vs)	Case No. 4786
San Joaquin Canal Company)	

LINNEMAN & BURGESS by L. M. LINNEMAN, for Complainants in Cases 4762, 4766 and 4782.

C. R. FERRIER for Complainant in Case 4769.

D. OLIVER GERMINO for Complainants in Cases 4771 and 4786.

L. A. MACNICOL for Complainant in Case 4780.

J. E. WOOLLEY for Defendant.

J. J. DEUEL and EDSON ABEL for California Farm Bureau Federation.

C. RAY ROBINSON for Central California Mutual Water District.

CLAUDE L. ROWE and GEO. L. FINK for Grassland Water Users Assn.

ROWELL, COMMISSIONER:

O P I N I O N

Thirty formal complaints against the San Joaquin Canal Company* are joined in the seven above entitled cases. Most of these complainants ask that all or part of their lands be included in the service area of the Canal Company. Some desire merely to transfer their existing service rights to other acreages. In two complaints, the owners of several large tracts of land lying at an elevation above the canal system request the Canal Company to transport for them storage released water which they propose to buy directly from the U. S. Government.

These matters were heard together at Los Banos on August 30 and 31, 1945, and they appropriately may be considered in one opinion. The scope of the hearing on these formal complaints was broadened to include an even greater number of water service requests by landowners who previously had made informal applications either to the Canal Company or to the Commission. This procedure was in accordance with an understanding reached at a hearing on a similar proceeding held in March of this year, when all were advised that the filing of a formal demand was not essential.

In all, there are more than one hundred and thirty applications for water service to be considered. If all are granted, the result would be an enlargement of the Canal Company's existing service area by more than 50,000 acres. The task of taking the evidence on each of these applications was greatly simplified by the pre-hearing work done by the Commission's staff in analyzing and classifying the respective requests (Exhibit No. 1), and in the preparation of a map delineating both the lands now possessing service rights and those on which service is requested (Exhibit No. 2).

During the hearing there soon developed a concurrence of opinion on some of the issues presented. The position taken by the Canal Company itself

* The respondent utility will be referred to in this Opinion as the Canal Company.

does not differ materially from that expressed by representatives of various water user groups. They are in agreement that the supply of water available to the Canal Company has increased sufficiently during the past few years to justify some enlargement of the service area. There seemed to be no objection to the inclusion of those lands, about 1500 acres, which in recent years have been receiving water on a temporary basis, that is, only when a surplus existed beyond the needs of those having established service rights. It was likewise agreed that the owners of lands with service rights now attached should equitably be permitted to transfer such rights to other acreage owned. But it was not conceded by either the Canal Company nor the water user organizations that enough water would be available to safely permit any addition to the service area beyond that above mentioned.

Our consideration of the various problems presented may appropriately follow the staff's classification of the respective applications as outlined in Exhibit 1. However, it would be well first to make some reference to the Commission's earlier decisions in which the Canal Company was directed to restrict the area to which water service might be rendered.

The Commission's Decision No. 22228 issued March 19, 1930 (34 C.R.C. 473) was the first to require the filing of a description of the exact lands which were to be deemed to possess a right to water service from the Canal Company's system. It was then pointed out that although the Canal Company had the right to divert from the river as much as 1360 second feet during the peak flow months of May and June, an amount sufficient to permit the irrigation of about 155,000 acres during those months, the normal supply available during the succeeding summer months was wholly insufficient for the proper irrigation of the types of crops then being grown in increasing quantities. The lands then delineated as entitled to future water service comprised about 146,700 acres.⁽¹⁾ That acre-

(1) A number of decisions subsequently issued by the Commission have authorized the inclusion of additional lands within the service area, and also directed the exclusion of some that had not been making a beneficial use of water.

age remains substantially unchanged today, except for the inclusion of 6,000 acres located above the Outside Canal, to which the Commission in its Decision No. 36691 of November 8, 1943, permitted water service during part of the year only. The number of acres actually irrigated annually is considerably less than the total acreage accorded water service rights. In 1944 the total acreage actually irrigated was 119,780 acres, an increase over the previous year of about 8,000 acres.

The Commission's Decision No. 31861 of March 20, 1939, (41 C.R.C. 796) permitted the Canal Company to enter into the so-called "Exchange Contract" with the United States Government, Bureau of Reclamation, which was then undertaking the construction of Friant Dam for the storage of water in the upper San Joaquin River. The Friant Dam has since been completed. The benefits which the Canal Company is now deriving from that agreement were explained by its Chief Engineer, Mr. Mott. This witness presented an exhibit showing the amount of water which, under its entitlement, has been available by months for each year from 1933 to 1944 inclusive, together with the actual water deliveries monthly during the same years. That part of the exhibit covering the years 1940 to 1944 inclusive is reproduced in the table below.

THE SAN JOAQUIN CANAL COMPANY

YIELD

(Entitlement to water, in thousands of acre feet)

	<u>1940</u>	<u>1941</u>	<u>1942</u>	<u>1943</u>	<u>1944</u>
January	15.3	15.4	15.4	15.4	15.4
February	17.3	16.7	16.7	16.7	17.3
March	55.3	55.3	55.3	55.3	55.1
April	71.4	71.4	71.4	71.4	69.3
May	83.6	83.6	83.6	83.6	83.6
June	80.9	80.9	80.9	80.9	80.9
July	69.6	83.6	83.6	83.3	79.5
August	49.0	63.0	63.4	57.6	49.3
September	37.4	44.6	46.9	40.9	45.3
October	21.3	23.3	24.6	24.6	24.5
November	16.8	17.8	17.9	17.9	17.9
December	15.4	15.4	15.4	15.4	15.4
Total	533.3	576.0	575.1	563.0	553.5

DIVERSIONS

(Actual deliveries, in thousands of acre feet)

January	1.8	3.2	3.3	3.4	3.4
February	1.4	3.1	3.0	7.0	4.7
March	12.8	3.3	12.4	4.4	22.8
April	45.9	5.8	32.1	43.0	72.8
May	68.5	68.5	68.2	78.7	71.2
June	63.1	72.4	70.2	71.3	71.2
July	63.6	78.4	82.2	73.8	80.2
August	54.4	72.0	71.7	58.1	80.9
September	39.3	50.5	50.3	43.2	59.7
October	13.1	23.4	17.4	25.3	25.1
November	7.3	3.8	1.2	5.6	5.4
December	8.1	2.7	4.1	6.2	0.9
Total	389.3	387.1	436.1	420.0	498.1

As Mr. Mott explained, the above figures indicate that beginning with the year 1944 the Canal Company was able to secure the storage of water in Friant Dam during the months when its water entitlement exceeded its needs, and then obtain the release of such stored waters during the summer months when irrigation demands are most critical. Comparing the years 1940 and 1944, it is seen that its entitlement for the latter year did not materially exceed that for 1940, yet it was able to deliver 90% of its entitlement in that year, while in the year 1940

it delivered only 73%. Of more importance was its ability to increase its deliveries by about 40% during the critical months of July to September inclusive.

The facts thus placed in evidence by the Canal Company would appear to support its position that some enlargement of the water service area may safely be permitted. It declares, however, that there should not be an inclusion of new lands in excess of the acreage that in recent years has been receiving water on a temporary basis, or a total of about 1500 acres only. Although the representatives of the water user organizations and of the Farm Bureau expressed agreement with Mr. Mott's judgment in this regard, it was not explained by any witness just why the water delivery records above mentioned would compel such a conclusion.

The Commission might possibly rely upon the opinions thus expressed and render an opinion in these proceedings accordingly, for the respective applicants did not introduce any testimony to show that there would be an ample supply of water for the irrigation of their lands. Nevertheless, it appears to us that such action would not be an equitable disposition of the many requests for water service now before us. If that be our order in these cases, it must be rested upon a finding that only enough additional water is now available to safely permit the inclusion of the exact acreage heretofore receiving temporary water service. And we should also be able to conclude that all of such temporary service lands are equitably entitled to firm water service in preference to all other applicants. For the reasons which will now be developed, we cannot fairly make such findings or conclusions based on the evidence in the record.

Temporary Water Users

The Commission has in the past encouraged the Canal Company to dispose of any water it might have in a given year beyond the needs of its regular customers, and it has been the Company's practice to accept seasonal applications for temporary water service after the demands of firm water users have been provided for. Although those landowners who have received temporary water were fully advised that they were not thereby acquiring a permanent service right, it is

possible that some who have been supplied temporary water for a number of years have come to view this continued service as justifying the inclusion of their lands within the fixed service area, particularly those who in expectation of the continuance of such accommodation service have elected to plant their lands to permanent crops. The Commission believes that first consideration should be given of such temporary water users. However, we believe that there are a considerable number of other small parcels of land which, although not heretofore receiving temporary water, should with equal equity be permitted to share in the use of any increased quantity of water that the Canal Company may be able to obtain.

On the record before us we are not in a position to make a finding on the quantity of additional water the Canal Company may expect, nor the additional acreage of various crops that might reasonably be irrigated. Certainly, no factual basis exists for the conclusion that just enough water will now be available to permit the inclusion of only those specific parcels of land which the Canal Company expresses a willingness to serve, and the exclusion of all others. The Commission feels compelled, therefore, to deny all those applications for permanent water service rights on lands designated in Exhibit 1 as having received temporary water service. Such a disposition of these applications is not to be taken as being premised upon the conclusion that there will be insufficient water for the continued irrigation of the lands so designated. It would appear that the Canal Company should be able, as it declares, to supply those lands with water on a surplus basis as it has in the past. It will be expected to do so, if normal water conditions prevail, upon presentation of the usual seasonal applications for temporary water service. Reference was made in the testimony of Mr. Mott to pending negotiations with the Bureau of Reclamation for the establishment of a revised flow schedule. The Commission believes that until such negotiations are completed, and fuller evidence presented upon the question of the Canal Company's ability to permanently enlarge its service area in the light of expected irrigation demands, the continued sale of surplus water under the same procedure as

followed in the past will fairly safeguard the interests of all concerned.

Transfer of Water Service Rights

Exhibit No. 1 lists a number of applications for the transfer of water service rights now attached to specific lands to other parcels of equal acreages. Excluding the application of S. Hamburg in Case 4786, which will be considered hereafter, the Commission concludes that each of these requests should be granted. The testimony given with respect to such lands necessitates some corrections in the Exhibit. Our order will provide for the transfer of rights to 14 parcels of land totalling approximately 287.5 acres. This results in a slight decrease in the presently established service area.

Lands Below Outside Canal

Apart from the requests for service by temporary water users, above referred to, there were presented about 87 applications for service on other lands so located as to be irrigable by gravity from the canal system. They comprise a total of approximately 6,500 acres. The conclusions above expressed with respect to the want of sufficient data to justify a finding that temporary water service lands should be included in the service area apply with equal force to these applications. Most of the applicants in this group request water service on comparatively small acreages. Such evidence as was introduced with respect thereto indicates that a number of these possess as substantial equitable claims to water service as those who have already been supplied with temporary water. It would appear that the Canal Company should have sufficient surplus water in normal years to permit the rendition of temporary service to a portion of these lands. Our order made herein will deny each of these applications.

Lands Above Outside Canal

The applications falling into this category are for water service rights on lands which cannot be irrigated by gravity from the canal system, as the applicants would be compelled to install pumping systems to lift water to their lands. A considerable portion is now being irrigated by water pumped from wells. As the Commission has reached the conclusion above expressed that none of the lands below

the Outside Canal should at this time be included in the fixed service area, it is obvious that these applications also must be denied.

It should be observed, however, that although the lands in this class total nearly 30,000 acres, two of the formal complainants who together own about 6,000 acres, apparently are not asking for service rights except during the season of the year when the Canal Company's entitlement exceeds existing service demands. But the position taken by the Canal Company is that whereas in former years it had excess water during the winter and spring months, its ability now to obtain storage in Friant Dam serves to remove the justification formerly existing for the sale of water to particular landowners for a limited period of the year. It should also be observed that the Canal Company's contract with the United States Government prohibits the expansion of its service area above the Outside Canal by more than 15,000 acres, and of this possible increased acreage about 7,000 acres have already been accorded service rights.

Transportation of Water.

Panoche Farms, in Case 4762, and J. R. Hammonds, in Case 4782, who together own or lease more than 6,000 acres above the Outside Canal, ask also that the Canal Company be directed to transport for them the water which they propose to purchase from the government. Such purchased water would be released from Friant Dam into the San Joaquin River, and would be diverted by the Canal Company from the Mendota Pool where its several canals now divert the water to which it is entitled. Applicants will lift that water from the canal system by means of a series of pumps installed at their own expense. They offer to compensate the Canal Company for the transportation service performed at such reasonable rate or charge as may be fixed by the Commission.

At the hearing these applicants were joined in by six other owners of contiguous lands who together presented a proposal to construct a water lift system to irrigate more than 36,000 acres. The government has agreed to supply them with 250 second feet flow of water, and they have perfected plans for the construction of a lift and distribution system estimated to cost approximately \$481,060.00.

The only question arising with respect to this proposal is whether the canal system has the capacity to carry such additional quantity of water without impairment of the service rendered to regular water consumers. Applicants first sought the right to have their purchased water transported by means of the Outside Canal, but they later offered to accept delivery near a point on the Parallel Canal known as Camp 13. Mr. Mott testified that the Outside Canal was not capable of transporting a materially greater amount of water than at present, but that the Main and Parallel Canals, with minor improvements, together could carry 250 second feet more water without interfering with the efficient operation of the canal system.

From the evidence presented it appears that under existing operating conditions the Canal Company might undertake the transportation of this quantity of water through its Main and Parallel Canals to a point near Camp 13 without impairing its ability to serve its regular customers. However, it is possible that future water demands may necessitate some changes in the present operation of the various canals, and that the transportation of an additional 250 second feet in the Parallel Canal may adversely affect the delivery of water to consumers on the lower part of the system. We believe, therefore, that any duty imposed upon the Canal Company to render transport service should be made subject to the condition that the delivery of water to its regular water consumers shall not be impaired.

Our order herein will permit the Canal Company to take on the obligation of transporting not to exceed 250 second feet of water for the complainants in Cases 4762 and 4782, together with such other landowners as may join in an agreement to take delivery at a point above Camp 13 to be designated by the Canal Company, the charges for such service to be subject to approval by this Commission. By so doing the Canal Company would not thereby be undertaking to enlarge its service area. However, complainants in the above two cases will be expected to file with the Commission, maps showing the lands on which such transport water is to be used, and the owners and lessees thereof.

Hamburg Application

In Case 4786, Sam Hamburg seeks a transfer of a water service right from one 160 acre parcel to another. This acreage is a part of a described 6,000 acres to which a limited service right was granted by the Commission's Decision 36691 on November 8, 1943, in Application 25644. By that decision Hamburg was permitted to pump Canal Company water from the Outside Canal between September 15 and June 15. Subsequently, in Decision 37712, he was given a right to receive transportation of government purchased water. He now represents that the 160 acres in question was not then owned by him, but was leased land. The lease having expired, he wishes to transfer the Canal Company service right to another tract of equal acreage which he owns.

We are of the opinion that this application should not only be denied, but that the service right should be cancelled. It is obvious that a service right was given to this particular part of the described 6,000 acres under a mistake of fact. Although a review of the record in the former proceeding does not reveal any misrepresentation as to the ownership of this tract, the Commission has consistently demanded that requests for new water service rights be presented by or in behalf of the landowner, and has considered a service right once given to pass with a change of ownership. In addition, it has demanded actual beneficial use of water upon the land to which a service right is granted.

The facts now before us reveal that Canal Company water has not actually been placed upon this 160 acres, nor could it be used without an extension of Hamburg's lift system or the construction of other like works. Inasmuch as all his lands may be irrigated with water purchased from the government, the denial of his request for Canal Company water on another 160 acre parcel owned will not result in serious hardship. Any former order of this Commission which might restrict or otherwise interfere with the allocation of water purchased from the United States to said other 160 acre parcel is hereby modified accordingly.

The owner of the fee to the 160 acres in question protests the granting

of the application, he taking the position that a water service right once granted remains attached to the land described. But he has never been an applicant for water service, and does not now declare either his ability or intention to utilize Canal Company water upon his land.

Our order in these matters will be in accordance with the foregoing findings and conclusions: Because we are not directing an enlargement of the established service area at this time, yet believe that the Canal Company may reasonably expect to obtain sufficient water to permit temporary service to a considerable acreage, we will expect it to follow a procedure in this respect substantially as in the past. However, we believe it desirable that Canal Company supply the Commission by March 1, 1946, with a list of all applicants for temporary water service, together with a general statement of the acreage involved and monthly water demand of each, and an estimate of the quantity of water available.

ORDER

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

IT IS HEREBY ORDERED as follows:

1. That San Joaquin Canal Company, a corporation, be and it is hereby authorized to exclude from its service area the lands of the following property owners, consisting of 14 parcels, and totalling 295.62 acres, and transfer the rights to irrigation service and include within its service area 14 other parcels of land but belonging to the same property owners, and totalling 287.5 acres, all of said lands being delineated upon a map filed as Exhibit No. 2 in the above proceeding, and generally described in Exhibit "A" attached to and made a part of this Order.

2. That San Joaquin Canal Company be and hereby is authorized to transport through its Main and Parallel Canals to a point at or above Camp 13 such quantity of water, not exceeding a flow of 250 cubic feet per second, as may be purchased from the United States by the owners or lessees of approximately 36,000 acres of land situated in Townships 12 South, Range 11 East; 12 South, Range 12 East; 12 South, Range 13 East; 13 South, Range 11 East; 13 South, Range 12 East; 13 South, Range 13 East, M.D.B. & M., as generally delineated upon a map filed as Exhibit No. 2 in these proceedings, and other lands contiguous thereto, when the owners of said lands shall jointly or severally enter into an agreement with the Canal Company for said water transportation service at a rate or charge to be approved by the Railroad Commission. Said use of the canals of the San Joaquin Canal Company for the transportation of all or part of such purchased water shall be subordinate and secondary to the use of said canals by San Joaquin Canal Company for the rendition of regular utility water service.

3. In all other respects the above-entitled complaints for the inclusion of lands within the fixed service area of the San Joaquin Canal Company, and all applications for such water service, be and are hereby denied and the complaints dismissed.

4. That the complaint of San Hamburg for authority to transfer the right to irrigation service from 160 acres of land located in Section 5, Township 12 South, Range 11 East, to another 160 acres of land, be and hereby is denied; and

IT IS FURTHER ORDERED that the right to irrigation service on the above described 160 acres of land granted by the Commission's Decision 36691 issued November 8, 1943 in Application 25644 be and hereby is cancelled and revoked.

For the purpose of filing a petition for rehearing, the effective date of this Order shall be the 20th day 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 Los Angeles, California, this 30 day of
October, 1945.

L. Harold Coulter
Justice J. C. Calver
Francis D. Davis

W. H. Russell

Commissioners.

EXHIBIT "A"

Parcel No. From Exhibit No. 2	Landowner	:Service Rights Transferred : : From These Lands :		: Service Rights Transferred : : To These Lands :	
		:Number:	Location:	:Number:	Location:
		: of :	All Within	: of :	All Within
		:Acres :	M.D.B.&M.	:Acres :	M.D.B.&M.
95A	Cardoza Bros.	40.00	Sec.29 T.11S.,R.11E.	40.00	Sec.29 T.11S.,R.11E.
75	Cardoza, J. S.	9.50	Sec.30 T.10S.,R.11E.	9.50	Sec.30 T.10S.,R.11E.
103	Chagolla, T.	10.00	Sec.15 T.11S.,R.12E.	10.00	Sec.15 T.11S.,R.12E.
36	Degregori, L.	55.00	Sec.20 T.9S.,R.10E.	55.00	Sec.27 T.9S.,R.10E.
58A	Desouza, J. A.	12.00	Sec.22 T.10S.,R.10E.	12.00	Sec.22 T.10S.,R.10E.
88	Furtado, Joe	15.00	Sec. 6 T.11S.,R.11E.	15.00	Sec. 6 T.11S.,R.11E.
61	Iannco, A.	10.00	Sec.24 T.10S.,R.10E.	10.00	Sec.24 T.10S.,R.10E.
58	Leal, J.	12.00	Sec. 7 T.10S.,R.10E.	12.00	Sec.18 T.10S.,R.10E.
123A	Martin, Allen	29.22	Sec.26 T.11S.,R.13E.	28.70	Sec.26 T.11S.,R.13E.
123B	Martin, John	25.00	Sec.26 T.11S.,R.13E.	25.00	Sec.26 T.11S.,R.13E.
19	Newman, S.	22.40	Sec.28 T.8S.,R.9E.	14.80	Sec.28 T.8S.,R.9E.
43	Sagouspe, J.	25.00	Sec.11-14T.10S.,R.9E.	25.00	Sec.13 T.10S.,R.9E.
32	Sarbo, L.	20.00	Sec.20 T.9S., R.10E.	20.00	Sec.20 T.9S., R.10E.
15	Souza, M. V.	10.50	Sec.32 T.8S.,R.9E.	10.50	Sec.32 T.8S.,R.9E.
Total		295.62	Acres	287.50	Acres