Decision No. 39058

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

YOLO COUNTY RICE GROWERS ASSOCIATION, Complainant, vs CLEAR LAKE WATER COMPANY, Defendant.	Case No. 4826
WESTERN YOLO WATER USERS ASSOCIATION, Complainant, vs CLEAR LAKE WATER COMPANY, a corporation, Defendant.	Case No. 4684

Carl E. Rodegerdts, for Yolo County Rice Growers Association.
E. L. Means, for H. L. Bulton, Vernon Mast, Chas.Schaupp, Chester Rother and Walter J. Sumn.
Robert H. Schwab, for Heidrick Bros.
Neal Chalmers, for Clear Lake Water Company.

CREAMER, COMMISSIONER:

O P I N I O N

Yolo County Rice Growers Association, an organized group of individuals engaged in growing rice in Western Yolo County, in Case No. 4826, alleges that Clear Lake Water Company has indicated by letter, under date of April 6, 1946, sent to all water users served by it, that said company does not intend to comply with its Rule No. 3a, heretofore ordered filed by the Railroad Commission, guaranteeing those lands entitled to be served with water from the system of the Clear Lake Water Company as it existed on December 31, 1943, which apply for water

on or before March 15th of any year, a prior right to be served with water by the company to the full extent of their requirements before any other lands shall be served. The Railroad Commission is asked to compel said Clear Lake Water Company to comply fully with the terms and provisions of said Rule 3a.

In order to broaden the issues raised in this complaint and to include the record of the proceeding in which the said Rule 3a was established, the Commission ordered the reopening of Case No. 4684 for further hearing to reconsider the propriety and reasonableness of said Rule 3a under present conditions and to determine whether Decision No. 36998, dated November 9, 1943, in said proceeding should be revoked, altered or amended in any respect. The Commission also found that public necessity required a hearing on less than ten days' notice and accordingly ordered that a public hearing be had in the reopened proceeding as well as in Case No. 4826.

A public hearing in these two proceedings was held at Woodland.

No answer to this complaint was filed by defendant, Clear Lake Water Company. At the hearing, counsel stated that no copy of the complaint had been served upon the company and as the matter was set for hearing on less than the statutory notice of ten days, he therefore had no opportunity to file such answer. Counsel was granted the right to file an answer on behalf of defendant but apparently has elected not to do so as no answer has been filed to the date of the order herein.

Clear Lake Water Company receives its major water supply from Clear Lake in Lake County, supplemented by a small amount of early season stream flow from Cache Creek and the North Fork of Cache Creek. The adjudicated rights of this company to divert water from Clear Lake are severely and strictly limited by two superior court orders, the Gopcevic Decree, issued by the County of Mendocino, and the Bemmerly Decree, issued by the County of Yolo.

The so-called Gopcevic Decree, issued October 7, 1920, by the Superior Court of the County of Mendocino, perpetually enjoined the Yolo Water and Power Company, predecessor in interest to Clear Lake Water Company, from allowing the

elevation of Clear Lake to exceed 7.56 feet on the Rumsey Gauge at Lakeport, an arbitrary datum, except for a limited period of ten days, and likewise enjoined from allowing said lake elevation to fall below zero on said gauge. This decree also required the company to reduce the lake level to certain established elevations by fixed dates, forcing withdrawals of water whether wasted or not, and perpetually enjoined and restrained said company from deepening the outlet of the lake, being the head of Cache Creek, to a depth greater than four feet below zero on the Rumsey Gauge.

A decree of the Superior Court of Yolo County, rendered December 18, 1940, called the Bemmerly Decree, forever enjoined and restrained the County of Lake, the State of California, Frank W. Clark, as Director of the Department of Public Works of the State of California, Clear Lake Water Company, and many others from deepening or enlarging the arm or slough constituting the outlet of waters from Clear Lake into Cache Creek, or changing said outlet so as to increase the flow of Clear Lake waters into Cache Creek. Unfortunately these two court decrees so restrict the beneficial use of the stored waters of Clear Lake for agricultural purposes during the irrigating season that the company can never take full advantage of the maximum storage capacity of approximately 350,000 acre feet at 7.56 feet on the Rumsey Gauge. While the service area of the Clear Lake Water Company comprises in excess of 95,000 acres of lands susceptible to irrigation under its canals, the usable firm water supply is sufficient only to irrigate about 20,000 acres each year, one-half of which normally is planted to rice. From the record in the original hearing in Case No. 4684, it appeared that from 1915 to 1943 there were eight years under various and different company ownerships and management, when there was a shortage of water for growing of rice. In three of these years it was necessary also to prorate water for general crops.

The installation of many new system improvements and the adoption of modern and efficient operating methods by Mr. Walter Ward, the present general manager of the company, had resulted in saving so much water through reduction in transmission losses that the increased system performance indicated the feasibility of extending service into new areas anxiously demanding water. The company,

therefore, proposed to construct a new high line canal through the Hungry Hollow District to Oat Creek and thence down the natural channel thereof into the Zamora area. This extension could serve some 9,000 acres of irrigable lands. However, the company's proposal to construct this new Hungry Hollow Ditch created a problem of grave concern to existing consumers who feared that an extension of service to new and additional acreage would imperil their long-established rights to an adequate water supply. Thereupon an organization of consumers under this canal system, called the Western Yolo Water Users Association, filed a formal complaint against the water company, the above-entitled and reopened Case No. 4684. On the record in the original hearing in this case the company was authorized to construct the new canal now known as the Hungry Hollow Ditch, and sometimes called the Oat Creek Ditch. To date this ditch has been completed only in part, to a point near its proposed junction with the natural channel of Oat Creek and can serve a maximum of 2,200 acres. As a matter of fact the potential service area of this utility is far beyond the 100,000 acres lying in the immediate vicinity of and directly under its canals. However, because of the impossibility of full beneficial use of its sources of supply, resulting from these court orders, it is only by the strictest operating economy and by careful and reasonable use of water that new acreages can be and have been authorized to be served. The entire extension program was based upon the fair and reasonable allocation and use of water and the elimination of unnecessary low-duty irrigation practices followed by many consumers.

The Commission in its Decision No. 36698, rendered in Case No. 4684, ordered the company to file an additional rule to its existing rules and regulations to protect the consumers against the threat of dilution of service through the Hungry Hollow extension. The rule is as follows:

> "Rule No.3a: Notwithstanding anything contained in these rules and regulations, those lands entitled to be served with water from the system of the Clear Lake Water Company as it existed on December 31, 1943; and which apply for water on or before March 15 of any year, shall have a prior right to be served with water by the Company to the full extent of their requirements before any other lands shall be served."

The extremely favorable price outlook this year on rice and other farm crops has continued the steady and very substantial increase in irrigated acreage, especially for rice. Applications were filed this year with the company for water to grow rice for the first time upon 1,270 acres under the new Hungry Hollow Ditch. Some 1,135 acres of land, never before planted to rice and under the old ditch system as it existed on December 31, 1943, also applied for water. On or before March 15, 1946, the company received applications for the irrigation of 28,190 acres of land, which included 15,344 acres for the growing of rice and the balance of 12,846 acres for general crops such as alfalfa, tomatoes, sugar beets, orchards and other diversified farm crops.

On the 15th day of March, the level of Clear Lake on the Rumsey Gauge at Lakeport stood at 7.20 feet. Calculations made by the company's engineers, based upon the amount of water in Clear Lake on March 15th, indicated that with a reasonable and proper use of water the entire acreage applying for rice water could be given up to a maximum of 10.10 acre feet per acre where necessary, after making full provision for all general croplands having filed applications on or before March 15th. Provision also was made by holding an additional reserve cushion of water for general crops to the extent of 2,500 acres for those general crop farmers who had failed to file by the prescribed time limit but who always and perennially applied late. The water users in this latter class, while not complying with the general rules and regulations of the company, requiring application for service on or before March 15th, nevertheless have never in the past actually been refused water for general crop use. This policy, however, never has been so recognized in the case of rice.

Calculations by the management showed that the Lake elevation of 7.20 feet on March 15, 1946, after allowing 2.16 feet for evaporation losses, would yield 201,600 acre feet of water for withdrawal from Clear Lake during the irrigation season. System performance in recent years indicated a gross net storage requirement of 1.257 acre feet to deliver one acre foot net on the land, leaving 160,380 acre feet net on the land for all crop delivery for the year 1946. Upon

this basis the full requirement amounting to 33,600 acre feet was allocated first to 15,346 acres of general crops, and the balance of 126,780 acre feet to rice.

A study of the duty of water for rice growing under the company's system indicated that at least one-third of the rice acreage applied for in 1946, on a weighted average, used in excess of the normal prewar average of 7.2 acre feet per acre. Investigation also revealed that the maximum use per acre for the year 1943 was as high as 29.83 acre feet per acre, in 1944 the maximum was 37.36 acre feet per acre and for 1945 it was 21.40.

Based upon the past requirements of lands heretofore irrigated, the company estimated that, on the lands using the prewar average duty of 7.2 acre feet per acre, 9,972 acres would use 72,157 acre feet for rice, which included lands using up to a maximum of 10.05 acre feet per acre. There remained 54,623 acre feet of water for allocation to lands using over 10.05 acre feet per acre including those lands requiring abnormally excessive quantities of water to mature a crop. This group composed 5,382 acres and could all be served if limited to a maximum delivery of 10.14 acre feet per acre. To permit the allocation of water to this class of lands not naturally adapted to rice culture upon the basis of the full extent of their requirements would force the prorating of the entire available rice allotment among all growers and force a reduction in the already planted acreage of each and every rice grower. Under such circumstances proration was considered unreasonable and economically unsound. After consultation with members of the Commission's staff, the company notified the rice growers that for the rice-year of 1946 the water supply available for rice would permit the service of water to all applicants based upon their past requirements but not to exceed a maximum of 10.1 acre feet per acre. The following letter was sent out by the water company to all rice growers served and made available to all of its other consumers growing crops other than rice:

"Woodland, California,
April 6, 1946.

Rice Growers:

Applications for water service have been received for an unusually large rice acreage and it will not be possible to furnish an unlimited amount of water to rice growers.

After consultation with the Railroad Commission it has been decided to allocate the water as follows:

The acre feet per acre furnished any field will be the minimum amount, without waste, required to mature the crop. The acre feet per acre is not to exceed the maximum amount delivered during any one of the preceding six years and in no case is it to exceed 10.1 acre feet per acre.

Yours very truly,

CLEAR LAKE WATER COMPANY."

Immediately after receipt of the above letter Yolo County Rice Growers Association filed with this Commission the above entitled formal complaint No.4826, demanding among other things that the company be forbidden to enforce its proposed allocation of water and that it be ordered to deliver to all lands entitled to be served from the system as it existed on December 31, 1946, water to the full extent of their requirements before any other lands are served, as provided in Rule No.3a.

Witnesses for complainants testified that many operators have been growing rice since 1917 and 1918 and that some of their lands while producing good and profitable yields of rice required in excess of 10.1 acre feet per acre, but claimed that they were fairly entitled to whatever amount of water these lands required to mature a crop before any new lands under the Hungry Hollow Ditch were given water. They contended that the maximum limitation adopted by the company would force and already has compelled a substantial reduction in the acreage of many growers.

Complainants asserted that the company's notice was ambiguous and uncertain, and did not indicate definitely the amounts of water the consumers are entitled to receive, and that the restriction based upon the maximum use of water upon a given rice field in any of the six years last past is unfair to old rice growers. Certain consumers claimed that the restriction of 10.1 acre feet per

acre placed a severe hardship on new lands where no past rice history existed because there is no known method of determining the requirements of such lands except through actual experience. Furthermore it was claimed that the present system of allocation adopted had already been anticipated to the extent that many rice growers felt compelled to and did make applications for excessive acreages in order to obtain sufficient water for their actual plantings.

Five rice growers who planted a total of 1,270 acres to rice on the new lands under the Hungry Hollow Ditch protested against the demands of the complainants. These five operators testified and unanimously agreed that formerly in other years they had grown rice under the old ditch system as it had existed prior to December 31, 1946, but that this year had merely transferred their acreage to the new lands under the Hungry Hollow Ditch, resting their rice lands under the old ditch system which lands otherwise would have been planted to rice this year. They agreed also that rice could be matured on all these lands with 10.10 acre feet of water per acre, and probably considerably less.

Under these circumstances the Hungry Hollow rice operators resisted as unnecessary and as unfair discrimination, the attempt of complainants to deprive them of water and force upon them great financial loss which would result from drying up their fields already prepared for, and planted to, rice and now regularly receiving water. This group suggested that the unsuitable rice lands requiring formerly undreamed of quantities of water now being farmed only temporarily to rice by reason of a pegged market, be wholly eliminated from the rice area.

At the outset it should be pointed out that this controversy in no wise involves the revenues of this company. The water is sold on a measured acre-foot basis. The company can sell all available water and the total amount of money received therefrom will be the same whether one group receives all the water by depriving others, or if the water is divided fairly among all. This utility, however, owes a responsible duty to its consumers and to the public and that is to allocate the available water supply among the consumers upon as reasonable and as fair a basis as possible. It is obvious that it has attempted so to do and in the

face of radically and unforeseen changed conditions, the company has met the new problems fairly and with decision. Failure to meet this crisis intelligently would have entailed severe financial losses to many substantial rice growers, and would have severely limited the potential gross rice output of this area by reducing full production merely for the slight and questionable advantage of but a few.

The present unusually large returns now being reaped from rice crops have precipitated a sudden and surprisingly heavy expansion in the rice-growing industry. Under the former prewar local and world-wide markets, rice could not profitably be grown on lands requiring even as much as 10 acre feet per acre. It is a matter of common knowledge that this Commission already has found it necessary to eliminate such lands from the growing of rice under several other public utility irrigation systems to prevent grave economic loss in over-all crop production.

Use of a permeable soil requiring in excess of 10 acre feet of water per acre for rice not only is poor practice but results in a highly uneconomic use of water which could be put to more beneficial and productive use otherwise. Where in this case there is a strictly limited water supply, the unnecessary waste of large volumes of water on lands not adaptable to rice culture deprives other landowners of their legal right to a fair share of water (Chapter 368, Statutes of 1943, Division 1, Section 100).*

Note (*):

"100. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water."

The rice growers represented by complainants insist that under Rule 3a their rights are paramount regardless of the quantity of water involved or the demands of other rice growers. Obviously Rule 3a was designed to prevent the very type of unreasonable and unfair discrimination which complainants now seek to impose on others solely to benefit themselves. No interpretation of Rule 3a is possible other than that it insures to the lands entitled thereto no more and no less than their "reasonable requirements." At the time this rule was promulgated there was a well-grounded fear that construction of a new ditch to supply a large acreage of new lands, not heretofore served by the company might easily give rise to a situation where there would not be sufficient water to meet system demands even in normal years. However, it never was intended that the lands so protected by this rule could thereby prevent the reasonable use of water by others. The limitation established by the company this year of 10.10 acre feet per acre for rice is reasonable, necessary, and proper and does not in our opinion conflict with the terms and provisions of Rule 3a.

Considerable criticism was leveled at the company for reserving water to supply some 2,500 acres of general crop lands whose owners habitually fail each year to apply for water on or before the 15th day of March as provided in its Rules and Regulations. These landowners are weather speculators, farming an average of about 30 acres and each year wait until water is absolutely necessary to save their crops before making application for service. The company witness testified that while relaxation in enforcing the filing rule was unorthodox, nevertheless he could not conscientiously put himself in the position of financially breaking this considerable group of small farmers which without water could not survive. However, laudable this practice may be, nevertheless it has reached the stage of unfair and habitual discrimination and deprives those water users who comply with the rules of a substantial amount of water which apparently amounts to from 6,000 to 10,000 acre feet of water a year.

The above type of casual disregard of observance of reasonable rules designed for the best interests of the consumers as a whole may most simply and effectively

be corrected through the filing with the Commission of a new rule providing for a cash penalty of a reasonable sum of money per acre to be paid at the time application for water is made after the 15th day of March and for which penalty no water, of course, will be delivered. It is suggested that such a rule be considered by this company and that upon acceptance by the Commission the consumers be so advised through some suitable medium.

The following form of Order is hereby recommended:

O R D E R

Complaint having been filed with the Railroad Commission as entitled above, and the Commission having reopened Case No. 4684 in order to determine whether or not its Decision No. 36698 in that proceeding be revoked, altered or amended in any respect, a public hearing having been held in the said two proceedings, the matters having been submitted, and the Commission being now fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the complaint in the above entitled Case No.4826 be and it is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that Decision No. 36698, issued November 9, 1943, be and it is hereby affirmed and continued in full force and effect unless and until otherwise ordered by this Commission.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby ~~affirmed~~ approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of June, 1946.

Harold Anderson

Justus F. Craemer

Franck R. Havenner

Ira H. Rowell

Harold P. Huls

COMMISSIONERS.