

Decision No. **41253**

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the Application of

FOOTHILL DITCH COMPANY,

a corporation, to increase its rates  
for transporting water.

Application No. 28404

McFadzean & Crowe, by J. Thos. Crowe, for Applicant.

Leonard M. Ginsburg, for Wallace Ranch Water Company,  
Protestant.

James H. Camplin, for Pacific Mutual Life Insurance  
Company, Intervenor.

O P I N I O N

Foothill Ditch Company, a corporation, engaged in the business of transporting and delivering water for agricultural irrigation purposes in the vicinity of Exeter, in Tulare County, in this proceeding asks the Commission for authority to increase its rates. Applicant alleges that the rates now charged do not yield sufficient revenues to defray the bare expenses of operating the properties devoted to the transportation of waters for its consumers. The Commission is requested to establish a rate of 25 cents per miner's inch\* day for all water delivered.

A public hearing in this matter was held before Examiner M. R. MacKail at Visalia.

The main foothill ditch was constructed originally by John Swanson about the year 1857 and about 1863 was acquired by J.W.C. Fogue, W.H. Wallace and C.W. Crocker to divert and convey water from the Kaweah River for the irrigation of their ranch lands. After various changes in ownership and operating policies, R. C. Merryman acquired the ditch properties and conveyed all interests and rights therein and appurtenant thereto to Foothill Ditch Company, which he caused to be incorporated

Note: \*The miner's inch used on this ditch system is the equivalent of continuous flow of 1/50th of one cubic foot of water per second.

April 23, 1914.

The water supply of this ditch system is obtained by diversion from the Kaweah River at Terminus Beach located in the S.W. 1/4 of Section 27, T.17 S., R.27 E, M. D. E. & M. and is delivered to consumers through 13.62 miles of open ditch, flume, siphons and concrete pipe. There were 17 customers served in 1947, including the Wallace Ranch Water Company, all being charged at the uniform rate of 14 cents per miner's inch day, established by this Commission in Decision No. 19964, dated June 28, 1928, 32 C. R. C. 44, confirmed on rehearing by Decision No. 21249, decided June 18, 1929, 33 C. R. C. 237.

Mr. W. H. Dubendorf, one of the consumers, and also representing several other water users unable to be present, testified that while the general higher costs of labor and materials necessarily indicated greater costs of ditch operation, he did not believe that the utility was entitled to charge as much as twenty-five cents per miner's inch day, which he characterized as unreasonably high.

Protest was entered by Wallace Ranch Water Company, a mutual water distributing organization and consumer of Foothill Ditch Company, upon the ground that said company was unable to secure counsel to represent it at the hearing in sufficient time to protect its interests properly and upon the further ground that the rate requested by applicant is exorbitant and will yield an excessive rate of return.

Pacific Mutual Life Insurance Company appeared as an intervenor as pledgee of 872 shares of stock of Wallace Ranch Water Company and, therefore, an interested party. Among other things, this intervenor claimed that Wallace Ranch Water Company held ownership in and to at least a one-third easement in a portion of the Foothill Ditch, ownership in and to the three second feet of water diverted and delivered to said Wallace Ranch by applicant, and that by reason of having such a proprietary interest, said Wallace Ranch Water Company is entitled to a preferential and more favorable rate than the other water users.

In this connection it should be pointed out that this same claim has been presented to this Commission in prior rate proceedings involving Foothill Ditch Company since 1915, and while in 1915 and again in 1921 a preferential rate was established by the Commission in favor of the Wallace Ranch Water Company, such

preferential right was abolished by Decision No. 19964, issued June 29, 1928, (34 C.R.C. 44), and confirmed by Decision on Rehearing, No. 21249, dated June 18, 1929, (33 C.R.C. 237). The jurisdiction of this Commission in this matter was upheld by the Supreme Court of the State of California in Wallace Ranch Water Company versus Foothill Ditch Company, 5 Cal. (2d) 103, 53 Pac. (2d) 929.

This very issue was treated exhaustively in the Decision on Rehearing, No. 21249, supra, and may therefore be considered settled as far as this proceeding is concerned, in view of the fact that there has been no subsequent change in the status of the matters involved up to the present time.

The record in this proceeding further shows that due and proper notice of hearing was given all interested parties in compliance with the instructions issued by this Commission and in accordance with our rules of procedure. As a matter of fact an individual mailing notice of the hearing held herein was sent by this Commission to Harold Belmont, Secretary of Wallace Ranch Water Company, and duly received by him. The difficulty and delay in securing counsel by said company does not appear to have prejudiced its rights and interests in this matter.

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Note: The following formal proceedings involved Foothill Ditch Company, Decision No. 18178 being perhaps most important and containing a considerably detailed history of the utility and its operating problems and practices:

Decision No. 2309	4/20/15	(6 C.R.C. 680),
Decision No. 2308	4/20/15	(6 C.R.C. 678),
Decision No. 2313	4/20/15	(6 C.R.C. 694),
Decision No. 3763	10/4/16	(11 C.R.C. 542),
Decision No. 6344	5/20/19	(16 C.R.C. 789),
Decision No. 9759	11/17/21	(20 C.R.C. 835),
Decision No. 8811	3/31/21	(19 C.R.C. 577),
Decision No. 13725	6/20/24	
Decision No. 18178	4/6/27	(29 C.R.C. 610),
Decision No. 18515	6/14/27	
Decision No. 19964	6/29/28	(34 C.R.C. 44),
Decision No. 21249	6/18/29	(33 C.R.C. 237).

Mr. J. W. C. Pogue, President of Foothill Ditch Company, testified that during the past five years, 1942 to 1946, both inclusive, the total operating expenses of the Company were \$60,211 and for that period the total operating loss amounted to \$8,135 or an average loss per year of \$1,627. The following figures were submitted by Mr. Pogue:

<u>Year</u>	<u>Miner's Inches</u>	<u>Operating Revenue</u>	<u>Operating Expenses</u>	<u>Operating Loss</u>
1942	71,771	\$ 10,047.94	\$ 10,128.10	\$ <u>(80.16)</u>
1943	71,961	10,074.54	11,555.79	<u>(1,481.25)</u>
1944	73,420	10,278.80	12,088.22	<u>(1,809.42)</u>
1945	76,693	10,737.02	13,901.83	<u>(3,164.81)</u>
1946	78,126.5	<u>10,937.71</u>	<u>12,537.54</u>	<u>(1,599.83)</u>
Totals		\$52,076.01	\$60,211.48	\$ <u>(8,135.47)</u>
Average Yearly Loss				\$ <u>(1,627.09)</u>

Note: (Red Figure)

Mr. Clyde F. Norris, one of the Commission's engineers, presented a report in which he estimated the historical cost of the operative properties of the system to be \$61,499 and nonoperative properties \$2,726 as of August 30, 1947. The depreciation annuity was computed by the 5% sinking fund method and amounted to \$386. The revenues received for 1946 amounted to \$10,938, and the revenues for 1947 were estimated to be \$10,500, based upon the average annual available water for delivery during the five years last past. The analyzed and adjusted operating and maintenance expenses were set out at \$11,710, indicating a deficit of \$772 for 1946 operations. The Commission's engineer estimated the 1947 maintenance and operating expenses to be \$11,712. On the basis of the rates requested the revenues receivable for 1948 were estimated to be \$18,750, with expenses \$13,302, the principal increase being attributable to higher income taxes. The operations of this utility for 1947 appear to have resulted in a loss of approximately \$1,200. It is apparent that the Company is entitled to increased revenues. The average annual water delivery for the 32-year period 1915 to 1946, both inclusive, is 72,000 miner's inch days, and on this basis, the 25-cent rate would produce an average annual gross revenue of \$18,000 and result in a net return of 8.61% on the operative fixed capital. A rate

of 23 cents per miner's inch day should yield a gross annual revenue of \$16,560 and a net return of 6%. Under the circumstances it appears that a rate of 23-cents per miner's inch day of 24 hours is a fair and reasonable charge for the service rendered and will, therefore, be established in the following Order.

### O R D E R

Application as entitled above having been filed with the Public Utilities Commission of the State of California, public hearings having been held thereon, the matter having been duly submitted, and the Commission now being fully advised in the premises,

IT IS HEREBY FOUND AS A FACT that the rates now charged by Foothill Ditch Company, a corporation, for water delivered to its customers in and in the vicinity of the town of Exeter, in the County of Tulare, are unjust and unreasonable in so far as they differ from the rates herein established, and that the rates herein established are just and reasonable rates to be charged for the service rendered; and, basing its Order upon the foregoing finding of fact, and upon the further statements of fact contained in the Opinion which precedes this Order,

IT IS HEREBY ORDERED that Foothill Ditch Company be and it is hereby authorized and directed to file with the Public Utilities Commission of the State of California, within thirty (30) days from the date of this Order, the following schedule of rates to become effective for all water service rendered on and after the first day of March, 1948:

#### Schedule No. 1

#### METER RATES

##### Applicability:

For all water service delivered for agricultural purposes.

##### Territory:

Area supplied by Foothill Ditch system in Tulare County in the general vicinity of the town of Exeter.

##### Rates:

	Per Miner's Inch* Day of 24 Hours.
For all water delivered.....	\$0.23

Note: \*The miner's inch used herein will be the equivalent of 1/50th of a cubic foot per second.

# 3

For all other purposes the effective date of this Order shall be  
twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of  
February, 1948.

R. B. Dunning  
Justice F. Palmer  
Charles F. Russell  
Harold F. Kille  
Samuel D. Patten  
Commissioners.