

Decision No. 42069

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

EMORY O'BANION,
 vs. Complainant,
 THE SAN JOAQUIN CANAL COMPANY,
 a corporation, Defendant.

Case No. 4941

R. H. HOWARD,
 vs. Complainant,
 THE SAN JOAQUIN CANAL COMPANY,
 a corporation, Defendant.

Case No. 4944

ROBERT MATHIS,
 vs. Complainant,
 THE SAN JOAQUIN CANAL COMPANY,
 a corporation, Defendant.

Case No. 4945

Linneman & Burgess by L. A. Linneman,
 for Complainants; Vincent J. McGovern,
 for Defendant; George W. Fink, for Grass
 Lands Water Association, Inc.; J. J. Deuel,
 for California Farm Bureau Federation.

POTTER, COMMISSIONER:

O P I N I O N

The San Joaquin Canal Company operates an irrigation canal system in the Counties of Fresno, Merced, and Stanislaus, diverting water from the San Joaquin River and serving an area comprising approximately 155,500 acres of land.

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Complainant Emory O'Banion owns 200 acres of land in Section 32, and 210 acres in Section 31, both in Township 11 South, Range 12 East, M.D.B. & M. Part of the above lands lie in Fresno County, the other part being in Merced County.

Complainant R. H. Howard owns 556 acres of land in Section 3, Township 12, South, Range 12 East, M.D.B. & M., in Fresno County.

Complainant Robert Mathis is the owner of all of Section 10, Township 12 South, Range 12 East, M.D.B. & B., located in Fresno County.

The land of one of these complainants and a portion of the land of another complainant lie above and at a higher elevation than the company's canals and cannot be served therefrom by gravity. The lands of all three complainants are outside of the regularly established service area of the canal company and are not entitled to irrigation water as regular consumers. Complainants in general allege that their lands are fertile and are capable of raising the general crops produced throughout this territory if provided with adequate water for the irrigation thereof. They each state that they can obtain by purchase under year-to-year contracts with the United States through the Department of the Interior, Bureau of Reclamation, water to be released by said Bureau from Friant Dam for use upon their lands. Each of said complainants asks for an order by this Commission requiring The San Joaquin Canal Company to transport water purchased from said Bureau through the company's Parallel Canals to a point of delivery adjacent to their respective lands, and the fixing of a service charge therefor.

In each of the answers to these three complaints filed by defendant canal company, defendant states that its canal system now is and has been at all times since its construction dedicated to the diversion of waters of the San Joaquin River under rights owned and claimed by defendant and the distribution of such waters to lands

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within its duly established service area; that the lands of each of the complainants are not now and never have been within said service area, and have never received irrigation service from defendant.

Defendant further states that it renders no service comparable to that requested, but alleges that pursuant to orders of this Commission it transports water purchased from the United States to Grass Lands Water Association, Inc. for off-season irrigation of 100,000 acres of grass lands; to Panoche Water Association and Edwin L. Lott for approximately 36,000 acres; and, restricted supplemental irrigation to 6,000 acres of lands of San Hamburg, the latter lying within defendant's regularly established service area. Defendant states further that the simultaneous use of its canal system for distributing its own water to its regular consumers and for the transportation of other water for the convenience of individual users would create serious operational problems and complicate administration; that there are probably several thousand acres of lands similarly situated along defendant's canals, the owners of which will demand the transportation of purchased water if complainants' requests are authorized. Defendant, therefore, prays that the complaints be dismissed.

A public hearing in the three above-entitled complaints was held at Los Banos, at which time said complaints were combined for the taking of evidence and for decision.

The record in these matters shows that Mr. Emory O'Banion's lands have never been farmed, but he proposes to install a pumping plant and construct a ditch at an estimated cost of \$4,200 and lift water from the company's Parallel Canal to irrigate his lands. Mr. O'Banion testified that he had at one time a signed contract, now expired, with the United States through the Bureau of Reclamation providing for the release of water from Friant Dam for his use. The complainant desires that transportation of future contract water to his land be provided by defendant canal company.

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The 556 acres of land owned by Mr. R. H. Howard have never been farmed but these lands could raise crops with sufficient water for irrigation thereof. The lands owned by Mr. Robert Mathis adjoin those of Mr. Howard and have been farmed to the extent of 125 acres in melons and barley, irrigated by a well which yields only a flow estimated to be 750 gallons per minute, insufficient for his general irrigation requirements. Neither Mr. Howard nor Mr. Mathis have contracts with the United States for Friant water but testified that they had been informed by officials of the Bureau of Reclamation they could obtain the required water on year-to-year contracts.

Mr. Howard and Mr. Mathis have pooled their irrigation interests and have agreed to share the expense of installing a pumping lift system, taking purchased water from the Parallel Canal and using in part the ditch heretofore constructed by Dr. Edwin L. Mott for delivering the water to certain of their lands. This lift system was estimated by Mr. William F. Wooley, a consulting engineer, to cost completed \$19,750 and be capable of delivering 25 second feet of water. Mr. Howard agrees to pay \$12,525 of the above cost, the balance to be paid by Mr. Mathis.

According to the record, water purchased from the Bureau of Reclamation by Grass Lands Water Association, Inc., by Panoche Water Association and Edwin L. Mott, and by Sam Hamburg, is transported at present by defendant canal company under special written contracts for such transportation approved by this Commission. Altogether the above service covers 142,000 acres, 100,000 acres of which is off-season delivery of water for flooding wild pasture grass. Most of the other service to the 42,000 acres occurs during the regular irrigation season. The service requested by complainants also will be required during the regular irrigation period.

The evidence shows that the Parallel Canal now has sufficient capacity to carry the maximum amount of water required by complainants, over and above the prior demands of the regular consumers and other water users. However, to a large extent this capacity is the result of the enlargement of the company's canal by and at the expense of the Panoche Water Association and Dr. Edwin L. Lott. The evidence also shows that already the present deliveries of foreign water purchased as private transactions by individual consumers and associations have most seriously complicated the problem of water allocation and delivery to all consumers served by defendant's canal system. No uniform accounting of the exact times and quantities of water spilled at Friant Dam by the Bureau of Reclamation for private purchasers is definitely made known to the utility, nor the exact quantities of such water, if any, spilled to make up for seepage, evaporation and transmission losses from Friant Dam to Mendota Pool. The problem is complicated further by the multiplicity of utility water rights to appropriation, private appropriative and riparian water rights of individuals, private canals, canal companies, and mutual water companies which must be determined by the company through its committed deliveries from Mendota Pool, a common source of re-distribution. Thereafter additional problems of canal seepage and transmission losses must be accounted for by defendant on its own canal system before delivery to the ultimate purchaser.

In each of the three instances where this Commission permitted the transportation of water purchased from the Bureau of Reclamation through the defendant's canals, the transportation was under a special written contract with the company, approved only after a definite showing before this Commission that the canal capacity was sufficient to carry the additional flow of water required without injuriously affecting or unduly interfering with the dedicated public

utility service the company is obligated to provide for its regular consumers. Panoche Water Association and Edwin L. Nott spent a large sum of money in order to enlarge the company's canal to provide sufficient additional carrying capacity to avoid and prevent any impairment of regular utility irrigation service to the company's water users. Transportation of water to lands of Sam Hamburg, and for Grass Lands Water Association, Inc., likewise was in each instance based upon individual written contracts with defendant and approved by this Commission only after the making of the necessary and proper showing before it that such transportation of additional water would not interfere with the public utility duties and obligations of the canal company.

When the above special contracts were before this Commission for consideration, there appeared no immediate prospect of additional requests for the transportation of Bureau of Reclamation water. Although the defendant contracted to perform the transportation of said purchased foreign waters, at no time has it ever held itself out as dedicating all or any part of its canal system and facilities to such service. As a matter of record, defendant has expressly disclaimed any such intent, and in these complaints resists and refuses any further transportation service.

A large number of the regular consumers on this canal system, together with various interested organizations appearing in these proceedings, seriously oppose further extension of the transportation of water to additional purchasers of the Bureau of Reclamation. They contend that any further burden placed upon the company's canal system unquestionably will injuriously affect the interests of the regular water users and will further impair the ability of the utility to furnish the dedicated service which it is obligated to provide. There can be no question but that the dedication of water service

to the public by The San Joaquin Canal Company embraces only the sale and distribution of water diverted by it from the San Joaquin River under its water rights to consumers residing within a service area definitely limited and formally established by this Commission.

The evidence presented herein indicates that at the present time the considerably involved allocation of the proper quantities of water from Mendota Pool to the various respective owners of water rights lawfully entitled thereto, together with the additional burden of transporting and allocating private waters, already has most seriously complicated distribution problems, but, more important, has very substantially increased the costs of the canal company's operations in the distribution of water to all consumers served.

While the defendant heretofore in the above specific instances voluntarily agreed to transport private water emanating from outside sources, it is clear that expansion of such service cannot continue indefinitely without impairment of the dedicated service rendered its regular water users and without unduly and unnecessarily adding substantially to the burden of costs of operation which must be borne by the consumers.

In the light of the record herein the Commission would not be warranted in ordering defendant against its consent to provide the transportation service requested by complainants. It appears therefore that the complaints should be dismissed.

The following form of Order is recommended.

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O R D E R

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 that the above-entitled complaints be and they are hereby dismissed.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Public Utilities Commission of the State of California.

Dated at San Francisco, California, this 21st day of September, 1948.

A. E. Anderson
Justice J. C. Green
Justice S. J. Powell
Harold P. Kula
Commissioners.