

Decision No. 47049

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WESTERN YOLO WATER USERS ASSOCIATION,)
Complainant,)

v.)

CLEAR LAKE WATER COMPANY,)
Defendant.)

Case No. 5281

Martin McDonough, for complainant;
Chalmers, Cowing & Sans, by Ralph H. Cowing,
for defendant.

OPINION ON REHEARING

The Commission granted rehearing in this case on the petition of complainant association, which alleged lack of notice of, and an opportunity to meet, the issue of total abrogation of defendant's Rule 3a raised at the original hearing on the association's complaint. The complaint sought only modification of the rule so as to include within the company's primary service area about 1,500 acres of rice land now receiving secondary water service.^{1/} The rehearing was held at Woodland before Examiner Gregory.

Complainant is an unincorporated association of rice growers whose lands are located north of Cache Creek, in Yolo County, between the Old Hungry Hollow Ditch, now filled,

^{1/} Defendant, prior to the rehearing, filed with the Commission and served upon complainant a pleading tendering the issue of complete abrogation of Rule 3a.

and the new Hungry Hollow Gravity Canal, partially constructed in 1942 at a higher level to the west for the original purpose of extending water service to about 9,000 acres of grain and pasture land in the vicinity of Zamora, outside the area previously served by the company. The extension project was abandoned when a complaint filed by this same association in 1943 resulted in promulgation of Rule 3a, which, in substance, established a prior right to water service for lands under the system as it existed on December 31, 1943, and which apply for water on or before March 15th of any year. (Western Yolo Water Users Association v. Clear Lake Water Company, 45 CRC 13.) Complainants' lands, comprising 14 parcels ranging from 10 to 398 acres, can be supplied by gravity from the relocated Hungry Hollow Canal and have been receiving water from that canal for several years.

The company takes the position, in substance, that total abolition of Rule 3a will enable it to develop some new outlets for additional water available as a result of reductions in canal losses of from 50.8%, in 1938, to 19.5%, in 1951; that it ended the 1951 irrigation season with about 73,500 acre-feet of water for which there was no sale; that since 1943 about 6,000 additional acres of land in its service area have been supplied by pumped water from wells reducing the demand for canal water to that extent; that it would not be justified in spending money for an increased water supply without prospect of increased sales; that it would be discriminatory to modify Rule 3a

so as to accord complainants full service rights while denying such rights to other landowners within its service area.^{2/}

The record establishes that there are no lands within the company's present service area now subject to Rule 3a, other than those included in the complaint herein, that can be supplied from the company's existing system. No requests for modification of Rule 3a have been received by the company from anyone except complainants herein.

Exhibits prepared by the company indicate that an average of 10,707 acres of rice annually could have been irrigated over the past 25 years (1927-1951) had the system been maintained at the level of improvement reached in 1947. An average of only 5,580 acres of rice land, however, actually received irrigation, thus leaving an average of 3,770 acres annually that might have been irrigated by water estimated to have been wasted during the period. Based on the foregoing assumptions and estimates, the record shows that in only eight of the 25 years did the company have water, in excess of that needed for general crops, which could have been applied to the irrigation of rice.^{3/}

It is clear that there are times when this utility has more water than it can beneficially apply to the lands

^{2/} The company's physical operations, including certain restrictions surrounding the storage and release of water in Clear Lake, are described in previous decisions. See Western Yolo Water Users Association v. Clear Lake Water Company, supra; Yolo County Rice Growers' Association v. Clear Lake Water Company, 46 CRC 501; Re Clear Lake Water Company, 48 CPUC 219.

^{3/} 1927, 1935, 1936, 1937, 1940, 1941, 1942, 1951.

under its system, just as it is also plain that in dry years there is not enough water to satisfy the legitimate requirements of all classes of users. The peculiar conditions, noted in previous decisions, under which this company must store and divert its water at Clear Lake, together with the lack of facilities for storage following diversion from the lake, added to the uncertainties of annual precipitation in the area, all make extremely problematical any rational prediction of either the volume of the supply or its permissible rate of flow.

We are dealing here with a small group of land-owners in the company's service area, principally rice growers, who for a number of years have been subjected to a restriction in their use of water originally designed to halt a projected expansion by the company of its facilities to lands outside its normal area of service, with consequent dilution of the supply of water available to those within the area. There is no objection on the part of the company or of anyone else, so far as this record discloses, to modification of Rule 3a so as to accord full service rights to these lands.

Nor does there appear to exist any cogent reason for limiting modification of the rule only to these rice lands, since improved supply and transmission factors have served to make available to the company, especially in years of adequate rainfall, more water than it could sell. A rule originally designed to discourage delivery of water outside a water company's normal service area, once the reason for the rule has ceased, should not be continued in effect as against

potential irrigators within the area, unless it clearly appears that conditions of supply and use within the area reasonably require retention of the rule. ~~We cannot say that~~ ^{Q.1M} the record here presents ^{no} substantial evidence of a need for continuation of Rule 3a. It will, accordingly, be canceled.

O R D E R

Rehearing having been held in the instant proceeding, evidence having been received and considered, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that the order, in Decision No. 45998, canceling Rule No. 3a of the Rules and Regulations of Clear Lake Water Company and directing said company to publish notice of such cancellation, be and it hereby is reaffirmed.

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

Dated at San Francisco, California, this 22nd day of April 1952.

R. J. [Signature]
President.
Justice F. [Signature]
Harold P. [Signature]
[Signature]
[Signature]
Commissioners.