

ORIGINAL

Decision No. 48294

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGE JOHNSON and ALESIA
JOHNSON, husband and wife,

Complainants,

vs.

Case No. 5398

SAN JOAQUIN CANAL COMPANY,
a corporation,

Defendant.

MARTIN AMARAL and
MARION L. HAUSER

Complainants

vs.

Case No. 5406

SAN JOAQUIN CANAL COMPANY

Defendant

Alesia Johnson, for complainants
in Case No. 5398.

Roy Lower, for complainants
in Case No. 5406.

Vincent J. McGovern, for defendant.

George D. Moe, for Department of Public
Works, protestant in Case No. 5398.

Eldon N. Dye, for California Farm
Bureau Federation, interested party.

O P I N I O N

Nature of Proceedings

Complainants herein ask the Commission to authorize and direct The San Joaquin Canal Company to transfer existing water service rights to lands owned by complainants. In each case the water service rights involved pertain to lands which are not owned by complainants. The defendant in its answer raised no objection to the transfer in Case No. 5398, but in Case No. 5406 defendant resisted on the ground that the transfer would result in an increase in its service area.

Public Hearing

Case No. 5398 was filed on July 30, 1952 and the answer thereto on August 14, 1952. In Case No. 5406 the filing dates of complaint and answer were September 16, 1952 and October 14, 1952. Because of the similarity of the factual situations presented, the cases were both set for hearing on the same day. A public hearing was held on December 17, 1952 in Los Banos before Examiner Gillard upon a consolidated record. The Division of Highways, owner of the parcels of land sought to be excluded in Case No. 5398, requested and was granted a continuance to February 2, 1953. On January 8, 1953 the Division of Highways filed a statement herein setting forth that it had no objection to the transfer involved, and thereafter, on January 27, 1953, with the written consent of all parties, the matter was removed from the calendar and submitted for decision.

Physical Facts, Case No. 5398

George and Alesia Johnson own a parcel of land consisting of 154 acres, and the boundary line of the service area of defendant runs through this parcel. Eighty-three acres thereof are within the service area and received water, but the balance of 61 acres lies without the service area. They seek to include 6 acres of this latter area within the service area by having transferred to them the water service rights pertaining to 6 acres of land owned by the Division of Highways. In 1951 this Division acquired a strip of land, within defendant's service area, near the City of Newman and constructed a new section of highway for the purpose of eliminating a curve in the old highway. Between the old and the new roads an elongated "island" was thus created, consisting of approximately 6 acres. In its statement filed herein on January 8, 1953, the Division asserted it does not plan to use within the foreseeable future the water service rights attributable to such area, and therefore has no objection to the proposed transfer and exclusion of its 6 acres from the service area.

Physical Facts, Case No. 5406

Martin Amaral owns an 18.8-acre parcel of land situated adjacent to defendant's service area which can be serviced from existing ditches. This acreage, along with 6,000 other acres, was excluded from the service area by Decision No. 29501 dated February 1, 1937, upon the application of the Canal company, on the ground that water had not been used or purchased from it for over five years.

Marion L. Hauser owns a separate parcel of land containing 6.7 acres located adjacent to one of defendant's distribution canals. Pumping would be required to irrigate this piece.

The two separate parcels of these complainants total 25.4 acres. They desire to have these lands included within the service area, and to have excluded therefrom 25.5 acres, consisting of:

1. A 4.8-acre parcel belonging to the City of Newman. This area was last irrigated in 1945. Since that time the city has constructed on it a recreation area with buildings, swimming pool and baseball playing field. The Mayor and City Clerk have relinquished the water service rights to this parcel.
2. A 20.7-acre parcel belonging to Louis T. Coelho. Part of this area is farmed and irrigated from a well on the property. The greater portion of it now used as a rodeo and fair grounds and has constructed upon it a race track, corrals, buildings and concession stands. The record does not disclose the number of acres devoted to farming and to commercial purposes. The entire area was formerly irrigated from defendant's canals. Coelho has relinquished his water service rights.

Defendant's Position

In Case No. 5398 defendant in its answer alleged it had no objection to the transfer. At the hearing its counsel stated the reason for this was that only 6 acres were involved, and that if 1,000 acres were involved it would take a different position because the principle involved in this transfer is wrong.

In Case No. 5406 defendant contested the transfers because they would increase the service area and were not bona fide

transfers of exercisable rights. At the hearing, counsel for defendant impliedly consented to the transfers because of the relinquishments of service rights signed by the owners (Coelho and City of Newman), even though the existence of such relinquishments was alleged and copies thereof were attached to the complaint. Counsel declined to amend the answer to conform to this position.

Defendant's Service Area and Water Supply

The only evidence of record relative to defendant's service area and the availability of water to meet the demands of its customers comes from the brief testimony of its chief engineer. There are approximately 152,700 acres in defendant's service area. What portion of that consists of nonirrigable land is not disclosed herein, but the testimony indicates that between 130,000 and 140,000 acres are the most that have been irrigated in the past. Nonirrigable land consists, among other things, of those areas utilized for roads, highways, buildings, corrals and related farm purposes.

In addition to the regular customers within the service area, defendant serves the owners of approximately 114,000 acres outside the service area on a "temporary-secondary" basis when there is a surplus of water. A surplus of water is only available in the spring and early summer and after the winter rains have commenced, and is not available for summer crops. Even in a year of heavy rainfall when surplus water is available, there is insufficient water for the regular customers within the service area during the month of August. Under "normal" conditions, water supply is insufficient to meet 100% of the demand within the service area from July 15 to the first week in September. During this period of time, the flow in the San Joaquin River is below the amount defendant is entitled to take, and there are not sufficient facilities to regulate the early runoff to enable defendant to realize its full entitlement in August.

Question Involved

The question presented for decision is whether or not the Commission should authorize the transfer of water service rights pertaining to nonirrigable lands within the service area, to other productive land, and thus increase the number of irrigable acres within its gross service area.

Conclusions and Findings

F. We ~~believe~~ ^{conclude} that under the facts presented herein the question must be answered in the negative. We are sympathetic with the desires of complainants to secure water for their properties and realize they have expended energy and money in locating the nonirrigated land involved and in bringing these proceedings. We also realize that the amount of water needed for the small acreages involved in these proceedings would make little impression upon the total water available. However, there are thousands of acres of nonirrigable land within the gross service area. If the principle were established herein that service rights to such lands could be transferred, the Commission and the defendant could be placed in a very serious position. The same principle, in equity and in fairness, would have to be applied in future cases whether the transfers involve 30 or 300 or 3,000 acres.

Until such time as the defendant has sufficient water to supply 100% of the demand for water for summer crops within its service area, we must conclude that requests for transfers of water service rights involving factual situations of the type presented herein are not in the public interest. The complaints therefore must be dismissed.

O R D E R

A public hearing having been held and based upon the conclusions and findings contained in the foregoing opinion,

IT IS ORDERED that the complaints be and they are hereby dismissed.

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

Dated at San Francisco, California, this 17th day of February, 1953.

A. J. Dandrea
President.

Justus F. Quillen

Harold F. Kula

Samuel H. Patton

John E. Mitchell
Commissioners