

ORIGINAL

Decision No. 48472

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VINCENT PINELLI,

Complainant,

vs.

Case No. 5431

THE SAN JOAQUIN CANAL COMPANY,
a corporation,

Defendant.

Roy Lower, for complainant.
J. E. Woolley and Vincent J. McGovern,
for defendant.

O P I N I O N

Nature of Proceeding

Complainant herein asks the Commission to authorize and direct The San Joaquin Canal Company to include within its service area 43 acres of land owned by him, and to exclude from its service area six parcels of land owned by others and aggregating 43 acres. Each of the six owners has assigned his rights to water service to complainant. The defendant in its answer raised no objection to the transfers and alleged they would not interfere with service to any of its consumers.

Public Hearing

The complaint was filed on January 10, 1953, and the answer on January 28, 1953. A public hearing was held before Examiner Gillard in Los Banos on March 17, 1953, and the matter was submitted for decision on that date.

Complainant's Property

Complainant owns 73 acres of land in the County of Merced, 30 acres of which are within defendant's service area. This proceeding seeks to include the other 43 acres, which in the

past have been receiving temporary-secondary service from defendant. This area has been and can be serviced from existing canals. It is asserted to be of good quality and productiveness.

Land Sought to be Excluded

Five of the six parcels sought to be excluded are situated within the city limits of Los Banos. The other is in an area which is in the process of being annexed to the city.

One parcel consisting of 13.7 acres is owned by the City of Los Banos and for many years has been a city park with buildings, barbeque pits and other improvements. It received water from defendant until 1950 for irrigating trees and grass but since then water from the municipal system has been utilized.

The other five parcels have been or are being subdivided for residential purposes. Two of the individual owners thereof last received water from defendant in 1952 and two others in 1949 and 1948, respectively. Relative to the fifth parcel, defendant's records were checked as far back as 1943 and no contract for water was disclosed.

Available Water

Defendant's assistant chief engineer testified briefly herein as to the availability of water. His testimony is substantially the same as that given by the chief engineer in the last proceeding involving defendant (Decision No. 48294, dated February 17, 1953). Under usual circumstances, temporary-secondary water users receive no water during July, August and September, and during those months water must be prorated among the regular consumers because demand is greater than supply.

Position of Complainant and Defendant

The parties to this proceeding apparently take the position that a water service right is lost by five years of

nonuser, but that if water has been contracted for within that period, the service right is alive and subject to an absolute right of transfer.

A five-year period of nonuser has been mentioned in prior proceedings, but those cases arose upon the application of the defendant to exclude certain lands from the service area and to include others of similar acreage. For example, Decision No. 29501, in Application No. 20280, dated February 1, 1937, discloses that defendant had been suffering from declining revenues and the purpose of the proceeding was to exclude certain lands not being irrigated and to include additional lands that would be irrigated so that defendant could secure full revenue for all available water. However, several owners within the service area protested the exclusion of their land and claimed they would irrigate in the future, and upon such representations defendant withdrew its request that they be excluded, even though they had not used water for over five years. Also, in a supplemental decision (Decision No. 34089, dated April 8, 1941) certain lands included in the service area under Decision No. 29501 were excluded because the owners had never purchased water. It will be noted that five years had not elapsed between these decisions.

Conclusions and Findings

The fundamental test for exclusion of property from defendant's service area is that its water cannot or will not be used beneficially upon such property.

The complainant is one of a group of temporary-secondary water users which controls approximately 1,400 acres of land adjacent to defendant's service area.

The testimony herein does not indicate that defendant has a surplus of water that could be made available permanently to any additional group on an equitable basis. On the contrary, the

evidence discloses that the water supply is insufficient to serve the present permanent customers during the critical summer months without proration.

For the foregoing reasons we conclude that the requested transfers are not in the public interest and that the complaint 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 complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 14th day of April, 1953.

R. I. [Signature]
 President

Justus F. Calver

Harold [Signature]

Wm. [Signature]

[Signature]
 Commissioners