

ORIGINALDecision No. 49807

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 ARROYO DITCH COMPANY for authority
 to amend rules providing for a
 specific location for the wholesale
 delivery of water to agricultural
 consumers.

Application No. 34610
 As Amended

Willow Springs Water Users Association,
 Complainant,

vs.

Case No. 5483

Arroyo Ditch Company,

Defendant.

Pierce Deasy, for Arroyo Ditch Company.
Edson Abel, for California Farm Bureau
 Federation, Amador County Farm Bureau
 and Willow Springs Water Users
 Association, protestants in Appl. No. 34610.
Walter H. Harrington, Jr. and Edson Abel, for
 Willow Springs Water Users Association,
 complainant in Case No. 5483.
George Winkler, for 26th District Agricultural
 Association, and Harold E. Colburn, for
 City of Plymouth, interested parties.

O P I N I O NStatement of the Case

Arroyo Ditch Company, by an application filed August 5, 1953 and later amended, seeks authority to discontinue retail deliveries of irrigation water from its ditch system west of Plymouth, Amador County. The utility also asks permission to entertain proposals for a contract with Willow Springs Water Users Association, composed of stockraisers and growers of pasture west of Plymouth, which would provide for wholesale delivery of water at the Plymouth Fairgrounds at a seasonal rate of 50 cents per miner's inch-day, subject to a minimum daily delivery of 150 miner's inches, in place of the present seasonal rate of 30 cents for a like quantity

delivered at the intakes of the several irrigators. No such proposal, however, has as yet been received from the association, although a counterproposal was advanced at the hearing. It is also alleged that the present rate works confiscation of the company's property.

The amended complaint of Willow Springs Water Users Association alleges, in substance, that the company, on numerous occasions during the 1953 season, failed to deliver the minimum of 150 miner's inches of water contracted for under the seasonal schedule; that the company deliberately wasted water on occasions; that it failed to maintain the ditches properly and to keep adequate records of the supply and its diversion; that the company threatened to discontinue service, change the point of delivery, and reject payment of charges and that it refused to deliver water to one Harold Colburn, Jr., alleged to be a member of the association. Complainant asks that payments for water theretofore made be adjusted "to the amount of water actually delivered from day to day" and that disciplinary measures be taken against the company for failure to comply with the Commission's order in Decision No. 47018, issued April 22, 1952, in Application No. 30660, in which the seasonal irrigation rate was established and the company was ordered to repair its ditches and to file monthly progress reports with the Commission. The company entered a general denial to the amended complaint.

Public Hearing

The two cases were heard on a consolidated record at Plymouth on December 9 and 10, 1953, before Examiner Gregory.

The Evidence

Arroyo Ditch Company, a California corporation, in 1941 acquired the Enterprise Ditch system in portions of El Dorado and Amador Counties formerly owned by Arroyo Mining Company and its

predecessors and has since supplied water for domestic, agricultural, industrial and mining purposes in the general vicinity of the City of Plymouth, including water for resale to the City of Plymouth and its predecessor, Plymouth Water Works, and irrigation water to some 20 ranchers west of Plymouth comprising the Willow Springs Water Users Association.

From time to time during the past six or seven years the company, the Plymouth Water Works, the city and the ranchers have been engaged in litigation before the Commission involving rates and service. A detailed account of these proceedings would serve no useful purpose here but may be found in prior decisions which have attempted to reconcile the various contentions of the parties and to provide a workable solution to their problems. (1)

Briefly, the physical problem stems from the fact that the company, which claims the right to divert at least 1,000 miner's inches of water from the Middle Fork of the Cosumnes River some 18 miles east of Plymouth, has for many years been unable, due to deterioration of its flumes and other works and to progressive drying up of streams in summer, to convey adequate amounts of water at times when needed to meet the demands of the City of Plymouth and the agricultural users.

In 1952, after numerous attempts by the ranchers and the company to reach an agreement for guaranteed deliveries of and payments for water during the irrigation season, lasting from May 1 to October 31, the Commission, by Decision No. 47018, authorized the

(1) See Dec. 40332, May 27, 1947, Appl. 27113; Dec. 45963, July 17, 1951, Dec. 46484, December 4, 1951, Dec. 47018, April 22, 1952, all in Appl. 30660. The records in the foregoing proceedings, so far as pertinent, have been incorporated in the instant case.

company to charge for seasonal irrigation water at the rate of 30 cents per miner's inch for a 24-hour day, subject to a guaranteed minimum demand of 150 miner's inches, to be applied for by March 15 accompanied by a deposit of \$1.50 for each miner's inch. Deliveries of water and payment of charges, for the 1952 season only, were to be in accordance with mutually satisfactory arrangements to be arrived at between the company and its consumers.

On July 31, 1952 the company and the association executed an agreement, for the year 1952 only, providing for delivery of 100 inches continuous flow of water, plus 20 inches for loss and evaporation, through a weir near Plymouth until October 31, 1952 and thereafter as long as required but not later than December 31, 1952, at the rate of 30 cents per miner's inch-day. The agreement also provided that the association would have the exclusive use of the ditch system below the weir, would be responsible for its maintenance and that the company would not charge for water delivered prior to July 1, 1952.

Operations in 1952 both before and after execution of the foregoing agreement were generally satisfactory, due to rains in May, to repairs to the flumes east of Plymouth later in the season and to cleaning of the ditches. There were some shortages, however, during the midsummer months.

On or about March 15, 1953 the association, pursuant to Schedule No. 1-A and Rule No. 4 of the company's tariff, presented its demand for the 1953 irrigation season of 150 miner's inches of water at the rate of 30 cents per miner's inch-day of 24 hours, to be delivered at the individual users' weirs, and paid the required initial deposit of \$1.50 per miner's inch.

On or about April 28, 1953, representatives of the company informed the president of the association, at a conference, that

unless the association would accept delivery of water at Plymouth, no water would be delivered. The record indicates, however, that there was some water in the ditch system below Plymouth on May 1. At that time the president of the association, having been requested by the company to act as liaison agent for it in dealings with the members, was attempting to work out a schedule for deliveries of water and for installation or repair by the company of weirs at the intakes of the individual members. It appears that the matter was not considered urgent at that particular time as it was then raining. The schedule, including the list of weirs, was handed to the company on May 6. The president of the association thereupon agreed to act as liaison agent if the company would agree to certain conditions, including the placing of certain weirs by the company along the ditch to check the heads of water and the furnishing by the company of manual labor for cleaning and repairing ditches and installing weirs. The company so agreed.

During the period from about May 6 to July 1, 1953, while the president of the association was acting as liaison agent for the company, there were numerous occasions, in particular from June 23 to 26, when deliveries of water were substantially less than the amounts demanded and paid for and the facts were so reported to the company, whose bookkeeper admitted on June 25 that water had been short throughout that month. The reason for these shortages does not clearly appear on the record. It is a fact, however, established by uncontradicted testimony, that on the morning of June 25, 1953, a substantial quantity of water, estimated by a qualified hydraulic

(2) There are no measuring devices on the ditch system east of Plymouth from the Middle Fork diversion down, nor did the company maintain any accurate measuring devices on its system west of Plymouth during 1952 or 1953.

engineer who measured the flow at approximately one-third of a cubic foot per second (about 13-1/3 statutory miner's inches), was spilling from a wasteway in the company's ditch, about one-third of a mile north of the Fiddletown Road east of Plymouth, into Big Indian Creek from whence it would eventually return to the Cosumnes River. This spilled water was water which at that time was on order by members of the association and the major portion of it would have been available to them had it not been wasted. Other measurements made by the same individual at various points along the ditch system east and west of Plymouth on June 24 and 25 revealed heads substantially less than those to which the association members were entitled. The heads of water gradually increased during August and full heads were received during September and October.

It is clear on this record that during the 1953 irrigating season the company, on occasions, failed to deliver to members of the association the full amounts of water to which they were individually entitled. Lack of adequate methods of measurement, however, precludes a finding as to any specific amounts by which deliveries of water at the intakes of individual members of the association were short of entitlements.

Proposal of Willow Springs Water Users Association

The association, during the course of the hearing, advanced a proposal (Exhibit 10) whereby, in substance, a water district would be formed to take over ownership and operation of the ditch system west of Plymouth Fairgrounds, at no cost to itself, and purchase water from the company at 15 cents per miner's inch, to be delivered through an automatic measuring device located at the fairgrounds. With a seasonal demand of 200 inches (including 50 inches for normal ditch losses), the water so purchased would cost the district about \$5,400. The association representative who presented the proposal

conceded, however, that he had no data upon which to predicate the economic feasibility of such a plan from the company's standpoint.

Results of Operation - 1952-1953

Results of operation for 1952 and 1953, according to the company's exhibits, are summarized below:

<u>Item</u>	<u>1952</u>	<u>1953^c</u>
Revenue ^a	\$8,324.25	\$11,860.35
Expense ^b	9,132.29	10,260.40
Net Income	(808.04)	1,599.95

(Red Figure)

- a Includes \$4,200 from sales to City of Plymouth.
- b Does not include depletion, depreciation, deferred maintenance or automobile expense.
- c January 1 - October 31, 1953.

Another exhibit, based on the assumption that the contractual arrangements proposed by the company in its amended application, including the 50-cent rate, are made effective for the calendar year 1954, indicates total revenues \$16,950, total expenses \$14,435.96 and net revenue \$2,514.04, with no expense allowance for depletion, depreciation or deferred maintenance, the latter estimated at \$5,000 annually.

Stockholders of the company, between the inception of its utility operations in 1941 and the end of 1952, advanced \$34,000 to pay for costs of operation and maintenance. The loans are unsecured, bear no interest and have not been repaid. The company's officials were not able to state whether or not similar loans from stockholders in 1952, totaling \$5,000, were included in the foregoing balance sheet item of \$34,000.

Summary and Conclusions

The issues as framed by the pleadings in these two cases are narrow. The company, in its amended application, requests

authority to discontinue retail delivery of irrigation water through its ditches west of Plymouth and that it "be authorized to entertain any proposals from any prospective users westerly from the city limits of the City of Plymouth" upon certain conditions, related earlier.

The association, in its reply to the original application, observes that if it assumed operation of the system west of Plymouth it would be faced with the same maintenance expense as the company, but that there are circumstances under which an arrangement might be acceptable, viz., "a reduction in the price of water and delivery of title of the ditch to the association."

The association, by its amended complaint, asks that payments for water theretofore made to the company "be adjusted to the amount of water actually delivered from day to day and that disciplinary measures be taken against defendant for its willful failure to carry out the order of the Commission." There is also a prayer for general relief.

The company's request to be relieved from its obligation as a public utility to deliver water to its individual consumers in accordance with its schedules of rates, rules and regulations, being dependent upon the execution between it and the association of an agreement changing the point of delivery and increasing the rate for deliveries at such point, is premature since no agreement on these points has yet been reached. Nor has the association's proposal to take over the ditch system west of Plymouth, being conditioned in part on the execution of an agreement calling for formation of a district and payment of a rate of 15 cents per miner's inch for water delivered at the Plymouth Fairgrounds, evoked a response from the company.

In short, neither proposal, depending as each does upon mutually satisfactory arrangements yet to be concluded, affords a basis upon which the Commission can issue an effective order at this time. If the parties, however, should later be in a position to submit a reasonable arrangement for the Commission's consideration and approval, the Commission will take prompt action toward the issuance of whatever permissive authorization may appear appropriate.

The complaint, calling for an adjustment in amounts paid for water delivered to the association during the 1953 irrigation season, must be dismissed since the evidence of record relating to shortages in deliveries of water, the burden for production of which was on the association, is not specific enough on that issue to justify an order for reparation based on overcharges. Nor has the seasonal irrigation rate of 30 cents per miner's inch, contained in Schedule 1-A of the company's tariff, been shown to be unreasonable or discriminatory.

We are of the opinion and we find it to be in the public interest that the company should be authorized to extend the time beyond March 15, 1954 for receipt of demands for water under Schedule No. 1-A, for the 1954 season, and for payment of the initial deposit required to accompany such demands, as provided in said schedule, inasmuch as this decision will not be issued in time for the company or association to know whether a change in the rate or point of delivery will result from the order herein. Accordingly, the order will provide for the filing of a schedule, effective for 1954 irrigating season only, which will extend to April 15 the final date for the filing of applications for irrigation service and the payment of the required deposits therefor.

O R D E R

Public hearing having been held herein, the matters having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED:

(1) That Arroyo Ditch Company shall file in quadruplicate with this Commission after the effective date of this order, in conformity with General Order No. 96, the schedule of rates shown in Appendix A attached hereto and, after not less than five days' notice to the Commission and the public, to make said rates effective for service rendered on and after April 1, 1954.

(2) That Arroyo Ditch Company shall before May 1, 1954 construct and install in its main ditch at a suitable location in the general vicinity of the fairgrounds in the City of Plymouth, a standard water measuring device which shall include an approach section of wood or concrete of appropriate dimensions, and such weir, flume, meter or other suitable device as will permit flow measurements to be taken within the accuracy of good irrigation practice. Said company shall on or before May 15, 1954 notify this Commission in writing of its compliance with the foregoing provision, and shall report the type and location of measuring device installed.

(3) That Arroyo Ditch Company shall each day during the period between May 1, 1954 and October 31, 1954 record the flow of water passing the standard measuring device ordered herein to be installed, and not later than ten days after the end of each calendar month, report to the Commission in writing the daily flows recorded during such preceding calendar month.

(4) That, except as herein provided, Application No. 34610 is hereby denied without prejudice, and the relief sought by Case No. 5483 is hereby denied.

(5) That, finding the public interest so requires, the effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 16th day of March, 1954.

A. J. [Signature]
President

James J. Calmes

[Signature]

[Signature]

[Signature]
Commissioners

APPENDIX A

Schedule No. 1-B

MEASURED RATE SERVICE - 1954 SEASON

APPLICABILITY

For all water delivered during the 1954 irrigating season from May 1 to October 31, for agricultural purposes.

TERRITORY

Area supplied by Enterprise Ditch System in El Dorado and Amador Counties in the general vicinity of the City of Plymouth.

RATES

	Per Miner's Inch [*] -Day of 24 Hours
For all water delivered	\$0.30

* A miner's inch shall mean a continuous flow of water under a pressure head of 6 inches to the center of the opening and equivalent to 1.5 cu. ft. per minute or 1/40 of a cu.ft. per second.

SPECIAL CONDITIONS

1. All applications for irrigation service under this schedule must be filed with the Company by April 15, 1954 and signed by the irrigator or his duly authorized agent, and must be accompanied by a deposit of \$1.50 for each miner's inch applied for. This deposit is a credit on the applicant's water bill and is the minimum annual charge per miner's inch of water covered by the application.
2. The company shall not be required to furnish water under this schedule during the 1954 season if the total number of miner's inches applied for, as provided in Special Condition No. 1, is less than 150, in which case Schedule No. 1 shall apply to all water delivered for agricultural purposes.
3. The rate provided in Schedule No. 1 (\$0.50 per miner's inch-day) shall apply to all deliveries of water for agricultural purposes made prior to May 1 or subsequent to October 31 during the 1954 season, or to the delivery of any water, for agricultural purposes, in excess of the amounts applied for pursuant to Special Conditions Nos. 1 and 2.
4. This schedule shall be effective only during the 1954 season and automatically expires on December 31, 1954.