

ORIGINALDecision No. 54C48

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of SUTTER BUTTE CANAL CO. for)	
authority to transfer all of its)	
public utility property to)	Application No. 38259
RICHVALE IRRIGATION DISTRICT,)	Amended
BIGGS-WEST GRIDLEY WATER DISTRICT,)	
SUTTER EXTENSION WATER DISTRICT)	
and to BUTTE WATER DISTRICT.)	

Brobeck, Phleger & Harrison by George R. Rives
and Gordon E. Davis, for Sutter Butte Canal
Co.

Minasian & Minasian by P. J. Minasian, for
Richvale Irrigation District, Biggs-West
Gridley Water District, Sutter Extension
Water District and Butte Water District.

Albert E. Sheets, for Ernest E. Hatch,
protestant.

Eldon Dye and Joseph Q. Joynt, for California
Farm Bureau Federation, interested party.
George F. Tinkler, for the Commission staff.

O P I N I O N

Sutter Butte Canal Co., a corporation, presently engaged in the business of selling and distributing water for irrigation in Sutter and Butte Counties, requests authority to dispose of its public utility property to Richvale Irrigation District, Biggs-West Gridley Water District, Sutter Extension Water District and Butte Water District (hereinafter referred to as "Richvale", "Biggs", "Sutter" and "Butte", respectively, and sometimes referred to collectively as "districts"). The districts have joined in the application, as amended.

A public hearing was held before Examiner Daly on September 18, 1956, at Sacramento and the matter was submitted.

By prior authority of this Commission, applicant has sold portions of its public utility properties to Richvale, Biggs and

Sutter. It was stated that the prior sales have clearly demonstrated that, due to the tax exempt status of the districts and their non-profit character, the districts can serve landowners within their boundaries at lower rates than applicant. Landowners within applicant's present service area have organized Butte for the purpose of acquiring the major portion of the remaining assets of applicant and serving themselves with water for irrigation through that district. Upon the sale to Butte, the other districts have agreed to purchase smaller shares of the assets of applicant in order to serve the remaining lands now served by applicant and which are not within the boundaries of Butte.

All of the area now served by applicant would be included within the boundaries of the four districts with the exception of two groups of fringe areas. It has been agreed, however, that one group comprising 263 acres belonging to five individual owners would be served by Richvale and the other group totaling approximately 1,240 acres belonging to six individual owners will be served by Biggs. These lands would be served upon the same terms and conditions as are properties lying within the boundaries of the respective districts, except that the districts may charge either applicant's presently effective rates or the rates applicable within the district involved (including both assessments, if any, and water tolls) plus a surcharge of 50 per cent thereof, whichever is greater. It is asserted that the rates of Richvale and Biggs, with the surcharge added, would be lower than the rates of applicant at the present time.

Applicant has a tariff rule which provides that if a consumer fails to take water within a 5-year period applicant may discontinue to serve him. Under the proposed agreement the districts would adopt applicant's 5-year rule and make it applicable to the fringe area owners.

The consideration to be paid in the aggregate is \$617,000, which would be paid by the districts as follows:

Richvale	\$ 8,400
Biggs	24,000
Sutter	23,000
Butte	561,600

To finance its proposed purchase Butte is authorized to issue and sell, at competitive bidding, \$572,000 of its bonds. The other districts would make their payments out of treasury funds.

The protestant herein is an individual owning property in one of the fringe areas. He is a farmer and has approximately 450 acres under cultivation in the affected area. The land is contiguous to the Biggs district. His protest is directed toward the proposed 5-year rule and the proposed rate alternative, which would permit the Biggs district to charge its present rate plus a surcharge of 50 per cent or applicant's present rate, whichever is higher.

Protestant has not purchased water since 1952 with the exception of this year when he required water for 150 acres of rice. Under application of the 5-year rule his right to claim water for the major portion of his land would expire unless exercised by December 31, 1957.

It is protestant's contention that the 5-year rule is impractical if one properly rotates his crops and tries to farm in accordance with the national farm program. Just a few crops, he stated, require the land to be flooded. Flooding the land just to preserve a right to water, he testified, would be imprudent and uneconomical farming for it would not only be a waste of water, but would render the land useless for many crops until the following year.

He stated that he has no objection to paying the district's rate plus the 50 per cent surcharge, for the surcharge would help to equalize the expenses and assessments which have been paid by the

members of the district. He contends, however, that it would be discriminatory to require him to pay the presently higher rate of applicant.

Although he has no protest to the proposed transfer as such he stated that he prefers the service of a public utility subject to state regulation where he is provided an opportunity to be heard, to the service of a district of which he is not a member, has no voice and is given fringe consideration only.

The record shows that the Biggs district was formed in 1942. Protestant's property was originally included in its boundary, but was excluded therefrom at the instance of protestant's mother and father, who then owned the property.

Although applicant's tariff provides for a 5-year rule it has never been invoked. The Bigg's district has no such rule for its members. Applicant contends that the rule is necessary for the purpose of estimating future demands for water. Applicant is of the opinion that the rights of the fringe area property owners have been equitably preserved through the merits of a third party beneficiary contract. Protestant admitted that applicant's present rates and service are reasonable and adequate, therefore, applicant argues, if the proposed transfer is authorized his position and rights would be substantially the same as they are now.

After consideration the Commission is of the opinion that protestant's objections are well taken. The 5-year rule appears to serve little or no purpose. Applicant has never invoked the rule to date, but if it were to do so it would appear that the land affected would be forever precluded from the right to claim water. If that is true the effect upon the value of farm land once the rule was invoked would be uncertain. The district has no such rule for its members and its strict imposition against 11 property owners, who have

heretofore had the protection of this Commission, could leave them abandoned and unprotected.

With regard to the proposed rates it is difficult to understand why applicant's higher rates would be applied when it is agreed that the 50 per cent surcharge fairly equalizes the expenses and assessments paid by district members. There does not appear to be any logical basis for charging the higher rate of applicant.

The application will be granted provided the 5-year rule and the alternate rates of applicant are deleted as provisions of the agreement.

Applicant requests authority to execute a deed from applicant to Richvale covering certain property, which inadvertently was not specifically described in any of the three prior conveyances to Richvale. The request will be granted.

After consideration the Commission is of the opinion and so finds that the requested transfer of the properties referred to in the exhibits attached to the application and according to the terms of the agreements, as set forth in the copies attached to the application, as amended, and the conditions set forth herein, will not be adverse to the public interest. The action herein taken, however, shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

O R D E R

Application having been filed and the Commission having been informed in the premises,

IT IS ORDERED:

1. That, after the effective date of this order and on or before May 31, 1957, Sutter Butte Canal Co., a corporation, is hereby authorized to transfer to Richvale Irrigation District, Biggs-West

Gridley Water District, Sutter Extension Water District and Butte Water District its public utility properties, water rights and other interests as more particularly described in the exhibits attached to the application, as amended.

2. That the authority granted in paragraph 1 hereof is made subject to the condition that Sutter Butte Canal Co., shall amend its agreement with the districts heretofore mentioned by deleting therefrom any provision making the fringe area property owners subject to a 5-year rule and any provision requiring said landowners to pay the present rates of Sutter Butte Canal Co., in the alternative. A copy of said amended agreement shall be filed with this Commission within sixty days after the date hereof.

3. That Sutter Butte Canal Co., a corporation, may execute a deed from applicant to Richvale Irrigation District in the form and substance as set forth in Exhibit K attached to the application.

4. That within sixty days after the execution of the deed transferring the aforesaid properties Sutter Butte Canal Company shall file with this Commission a certified copy of each deed.

5. That on or before the date of actual transfer, Sutter Butte Canal Co. shall refund all deposits which customers are entitled to have refunded, and within thirty days thereafter shall notify this Commission in writing of the completion of such refunding. Unless Sutter Butte Canal Co. discharges its obligation to make refund of deposits, prior to the actual transfer of the public utility properties herein concerned, such obligation shall devolve upon Richvale Irrigation District, Biggs-West Gridley Water District, Sutter Extension Water District and Butte Water District as to the customers of Sutter Butte Canal Co. which will upon transfer be served by said water districts respectively. As a condition to the grant of authority, herein, the Commission hereby finding that the

public interest so requires, said named water districts shall assume and become obligated to discharge each and every lawful obligation of Sutter Butte Canal Co. to make refund of deposits as herein provided, according to the terms and conditions thereof, and the purchase by said water districts of the herein concerned public utility properties shall be deemed an acceptance by them of the foregoing conditions and agreement thereto.

6. That Sutter Butte Canal Co. shall, within sixty days after the sale of said properties, file with this Commission a statement showing the date when it ceased to deliver water to the areas involved in this transfer and to which areas water service is thereafter to be rendered by one or another of Richvale Irrigation District, Biggs-West Gridley Water District, Sutter Extension Water District or Butte Water District.

7. That upon due compliance with all the conditions of this order, said Sutter Butte Canal Co. shall stand relieved of all further public utility obligations and liabilities in connection with the operation of the public utility water system hereinabove authorized to be transferred.

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

Dated at San Francisco, California, this 5th day of NOVEMBER, 1956.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners
Commissioner E. L. Ford did
not participate in the disposition of
this proceeding.