

# ORIGINAL

Decision No. 54576

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WALLACE RANCH WATER COMPANY, a  
corporation, )

Complainant, )

vs. )

Case No. 5780

FOOTHILL DITCH COMPANY, a corpo-  
ration, )

Defendant. )

Leonard M. Ginsburg, for complainant.

J. Thos. Crowe, for defendant.

John D. Reader, for the Commission staff.

## O P I N I O N

The complaint herein, filed June 4, 1956, alleges that defendant is a corporation engaged in the business of transporting and delivering water for agricultural irrigation purposes in the vicinity of Lemon Cove and Exeter in Tulare County, and that complainant is a mutual water distributing organization and consumer of defendant; that defendant operates a ditch known as "Foothill Ditch" diverting water from the Kaweah River and transporting it to the lower terminus of the ditch, a distance of approximately 18 miles; that, of the water so diverted, complainant is the owner of three cubic feet per second; that defendant delivers water, to which it is entitled, to customers other than complainant; that complainant receives its three cubic feet per second of water at various points between a point designated as "Recorder No. 2" and a point designated as "Recorder No. 3", the latter point being approximately 5 miles from the headworks of said ditch; and that no customers other than complainant receives water between said points.

The complaint further alleges that by Decision No. 21249, dated June 18, 1929 in Application No. 14272, it was recited that there were then 14 points from which Wallace Ranch Company took water from the ditch; that it was found that the establishment of 14 measuring points would be unreasonable, and that it was expected that the ditch company and Wallace Ranch Company could agree upon a reasonable number of diversion points and their location, and that, in the case of their failure to agree, the Commission would be glad to use its good offices to determine the matter upon request of either party; and that said decision ordered Foothill Ditch Company within 90 days to install such measuring devices as should be necessary to properly determine the amount of water to be delivered to Wallace Ranch Water Company; and that within 30 days said ditch company file rules and regulations to govern relations with its consumers; and that pursuant to said decision certain rules and regulations were filed which, among other things, provide:

- "3. Water will be measured and delivered only through gates or other measuring devices located in the canals, flumes, or pipelines of the company;
- "4. Water will be delivered to each user at only one point, provided, however, that water will be delivered to users at such additional points as shall be directed by order of the Railroad Commission of the State of California ... ."

It is next alleged that from the date of said decision until April, 1956, a period of approximately 27 years, the method of delivery has varied from 1 to 13 take-out points determined in the sole discretion of the directors of Wallace Ranch Water Company; that said complainant has determined the amounts of water delivered to its respective customers on the basis of the proportionate amounts taken as shown by certain devices known as "measuring orifices", which said devices are asserted not to be accurate as to the amount of water taken, but that complainant can determine therefrom the

proportion of water taken by each of its users and divide the cost thereof accordingly; and that defendant up until April of 1956 has measured the aggregate amount of water delivered to complainant by the use of two measuring devices, one being situated at said Recorder No. 2 and the other at Recorder No. 3, the difference between the two readings being considered as the amount delivered to complainant, and it has been charged on said basis.

Attached to the complaint is a copy of an agreement between the parties whereby, among other provisions, Wallace Ranch Water Company has leased to Foothill Ditch Company the easement held by the Ranch Company in Foothill's ditch for a monthly payment of \$100 and the Ranch Company agrees that so long as said agreement is in effect it will not take or transport its water from the Kaweah River to the lands of its stockholders in any manner or way except through the said ditch maintained by the Ditch Company. The wrong asserted by complainant consists of the facts alleged in paragraph 12 as follows:

- "12. That thereafter, and on or about the 30th day of April, 1956, defendant did charge applicant the sum of One Hundred Fifty-seven and Fifty-five One-hundredths Dollars (\$157.55) for water purported delivered to applicant by defendant during the month of April, 1956; that said statement was purportedly arrived at by taking readings from the said measuring orifices used by applicant to determine the proportionate amount of water consumed by each of applicant's users; that said charge was arrived at by abandoning the measuring system theretofore used for a period of approximately twenty-seven (27) years under the order of this Commission, as aforesaid, and the charges represented by said billing are, as applicant is informed and believes, and thereupon alleges, exorbitant and unreasonable, and not based upon the rates hereinbefore established by this honorable Commission."

The prayer of the complaint requests an order requiring the defendant to make due reparation to the complainant of the amount of overcharges found to have been made by the defendant; and that the

Commission direct the attorney for the complainant to commence an action or proceeding in the Superior Court in and for the County of Tulare, State of California, to stop or prevent the further violation of the orders of the Commission with regard to measuring devices and take-out points, as hereinabove set forth.

On July 5, 1956, defendant filed its answer alleging that as a consequence of a recent costly disaster it sought to avoid an application for increase in its rates by endeavoring to arrange for a more efficient and more economical method of operating the Foothill Ditch; that in such regard it has informed complainant that it intends to install accurate measuring devices to measure the quantity of water delivered to complainant, and at each of the outlets presently serving complainant, without any decrease in the number of said outlets; that the method of measuring water delivered to complainant by computing the difference between the two Recorder Stations Nos. 2 and 3, is manifestly inaccurate; that defendant has delayed the installation of such accurate measuring devices for many years, as a convenience to complainant and because the use of accurate measuring devices will inescapably involve expense to complainant in adjusting its distribution system so as to accept water delivered through such accurate measuring devices; that defendant has purchased such accurate devices and is prepared to install the same, but that complainant has refused to accept delivery of water to which it is entitled through such accurate measuring devices by refusing to connect its facilities for the distribution of said water to the outlets from such accurate measuring devices; and that defendant should not be compelled to continue to measure the quantity of water transported for, and delivered to, complainant by means of measuring devices which are concededly inaccurate.

Defendant prays that complainant take nothing and that the Commission make an order directing the immediate installation of accurate measuring devices at each of the outlets on the Foothill Ditch required to properly serve said complainant, up to not exceeding the number of outlets presently serving said complainant, and directing said complainant to connect its distribution facilities to such required number of outlets from such accurate measuring devices.

Public hearing was held in Visalia on September 18, 1956, before Examiner Rowe, at which time oral and documentary evidence was adduced, and the matter submitted upon the filing of briefs which have been received.

From the evidence of record the Commission finds that defendant, Foothill Ditch Company, prior to April 30, 1956 has not been charging complainant for water in accordance with its filed tariffs, rules and regulations; that commencing April 30, 1956, the charges have been more nearly in conformity with such tariffs, rules and regulations but that the use of the measuring devices owned by complainant and located at points not in the canals, flumes or pipelines of the Ditch Company, has been unauthorized and not in compliance with said tariffs, rules and regulations.

The Commission is further of the opinion and finds defendant should install accurate measuring devices at all points at which complainant is to receive water. That complainant must rearrange its water system to be able to receive such water at one point with two additional standby outlets equipped with accurate measuring devices.

From the evidence it further appears that complainant has not in any respect been damaged by the use of the two methods of measuring the amount of water delivered to complainant in the past. The method employed prior to April 30, 1956 is found to have amounted

to an unreasonable preference to complainant. The record in this case, however, does not support the determination of the amount of such preference.

It has heretofore been held that Wallace Ranch Water Company received its water from defendant public utility on the same basis as any other customer.<sup>1</sup> Any vested right complainant may have to receive water under its water rights and easement in Foothill Ditch are now possessed by defendant under the lease, copy of which is attached to the complaint herein. Under the rules and regulations of defendant (Rule No. 4), it is provided that water will be delivered to each user at only one point, provided, however, that water will be delivered to users at such additional points as shall be directed by order of the Railroad Commission of the State of California. The following order will allow the continued use of 14 outlets to serve complainant for the 1957 irrigating season. When complainant has completed the construction of its system so that only three outlets can properly serve it, defendant will be required to install the necessary measuring devices on the ditch to comply therewith. Complainant's request for reparation will be denied because it has failed to prove that it has at any time been required to pay for more water than it has received or that it has paid more for the water received than it was required by law to pay and we hereby so find. However, defendant's use of complainant's measuring devices cannot be permitted to continue beyond the time required for complainant to revise its distribution system. Complainant stated that construction of its system to permit defendant to install measuring devices could be accomplished at least for the 1958 irrigating season. Because of the costs involved it would

---

<sup>1</sup> Decision No. 41253, dated February 24, 1948, in Application No. 28404, and Wallace Ranch Water Co. v. Foothill Ditch Co. 5 Cal. 2nd 103 at 121.

not be reasonable to require defendant to install accurate measuring devices on all of complainant's existing take-out points for use during only one irrigating season. Defendant, however, will be required to install measuring devices on a maximum of three locations for service to complainant within 30 days after complainant has completed its construction prior to the start of the 1958 irrigating season.

This decision is consistent with and in furtherance of Decision No. 21249 issued June 18, 1929 in Application No. 14272. It is still the opinion of the Commission that it is unreasonable to require defendant to maintain more than one outlet and two standby outlets to serve complainant. The complaint should be dismissed.

O R D E R

Complaint as above-entitled having been filed, answer thereto having also been filed, public hearing having been held and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that complainant is denied relief, and the complaint is hereby dismissed.

IT IS FURTHER ORDERED that:

1. Foothill Ditch Company may render service through the measuring devices owned by Wallace Ranch Water Company until thirty days after such time as Wallace Ranch Water Company shall have completed the revision of its system to permit the installation of measuring devices at a maximum of three locations for the receiving of water service or until the end of the 1957 irrigating season, whichever is the shorter period.

2. Foothill Ditch Company shall render service to Wallace Ranch Water Company through its own measuring devices at a maximum of three locations commencing within thirty days after such time as Wallace Ranch Water Company shall have revised its system

to accommodate said three measuring devices unless such revision of Wallace Ranch Water Company facilities shall not have been accomplished at least thirty days prior to the commencement of the 1958 irrigating season.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of February, 1957.

Walter E. Mitchell  
President  
Ray L. Linterman  
Walter D. ...  
E. ...

\_\_\_\_\_  
Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.