

Decision No. 84667**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NORMAN ADAMS, LLOYD L. CAHOON,
BOB HIGHT, RICHARD McCULLOUGH,
JACK PINEO, ROY ST. MARTIN,
PAUL SPRATT, and VON TWITCHELL,

Complainants,

vs.

YUBA INVESTMENT COMPANY,
Defendant.

Case No. 9711
(Filed April 16, 1974)

Stanley A. Coolidge, Jr., Attorney at Law, for complainants.
Lawrence A. Santi, Jr., for defendant.
Eugene M. Lill, for the Commission staff.

O P I N I O N

This is a complaint by Norman Adams, Lloyd L. Cahoon, Bob Hight, Richard McCullough, Jack Pineo, Roy St. Martin, Paul Spratt, and Von Twitchell, against the Yuba Investment Company, a corporation. A duly noticed public hearing was held before Examiner Arthur M. Mooney in Marysville, on September 12 and October 29, 1974, and the matter was submitted upon the filing of transcripts on December 19, 1974.

The complaint alleges that defendant supplies water for agricultural irrigation purposes in the portion of Yuba County known as Loma Rica; that each of the complainants are residents of Loma Rica and users of water supplied by defendant; that during the 1973 irrigation season, defendant, although he had a sufficient supply of water available, failed to supply each of the complainants with the full amount of water ordered and paid for by him; that this failure by defendant was willful in that it knew, prior to the 1973 irrigation season, that its main ditch was in disrepair and clogged with grass and weeds; and that although defendant has promised to clean and

repair the ditch, it remains in substantially the same condition. Complainants seek an order directing defendant to clean and repair the irrigation ditch and maintain it in a suitable condition to assure that each complainant receives the amount of water he has ordered and paid for.

Defendant, in its answer, requests that the complaint be dismissed and sets forth the following reasons as justification therefore: Since August 1, 1973, defendant has been denied access to parts of its irrigation ditch which has made it impossible to properly examine and service it; complainants have tampered with the water flow by installing obstructions in the ditch and altering head-gate settings creating temporary shortages for down stream customers; in 1973, defendant's cost for maintaining and operating the ditch exceeded revenues; and in 1974, though delayed by climatic conditions, it has expended funds in excess of revenues to clean and repair the ditch.

Background

Water for the irrigation system is obtained from Dry Creek with the diversion from the creek by a masonry dam. There is a concrete arch dam storing water in a reservoir known as Lake Mildred upstream of the diversion. An earthen canal conveys the water five or six miles to a metal flume which is supported by a wooden structure and crosses a 100-foot ravine. There is a siphon and several small flumes along this stretch of the canal which meanders through relatively hilly terrain. The flow is entirely by gravity. No customers are served by this section of the canal. From the metal flume, the canal extends approximately $1\frac{1}{2}$ miles, and this is a section that serves the customers. This part of the ditch is dug into the ground on the up hill side and dirt is used for the banks on the low side. It is irregular in size ranging from 12 to 24 inches in depth, and the width at the bottom is from 6 to 12 inches and at the top approximately 16 inches. The customers obtain delivery through wood gates with appropriate size openings cut into each gate. The customers distribute the water they receive by

allowing it to flow over their land, except for one customer who has installed a receiving tank and uses sprinklers to irrigate.

Defendant utility first came under Commission jurisdiction in 1913. It has been operated under several different names over the years. The present shareholders of defendant utility are Earl W. Cates and Lawrence Santi. By Commission Resolution No. W-1339 dated November 22, 1971, defendant was authorized to increase its rate to its customers to \$67.50 per miner's inch ¹/_{for} the irrigation season. This is the current rate charged by defendant.

Complainant's Evidence

Evidence on behalf of complainants was presented by a registered civil engineer. He testified that he visited the ditch and walked along it from the metal flume to the last user on August 5, and September 8, 1974 and that the first user was approximately ten feet from the flume and the last user was over a mile from it. He stated that he checked the flow of water at the flume and interpolated it into miner's inches; that on his first visit it was 33 miner's inches; and that on his second visit it was 60 miner's inches. The witness testified that he also measured the openings in the gates of the ten customers of defendant and the number of miner's inches each was receiving and that his measurements are summarized in Exhibit 1. Of the ten customers, eight are complainants herein and two are not. According to Exhibit 1, there was not sufficient water in the canal on August 5, 1974 to furnish the six customers closest to the flume the number of miner's inches the openings in their gates could accommodate, or to furnish any water whatsoever to the four customers who were farthest away. The exhibit shows that a total of 6.87 miner's

1/ A miner's inch is a measure for the flow of water, and is the amount discharged through each square inch of an opening 2 inches high in a plank 1½ inches thick, under a head of 6 inches to the center of the opening. This is equal to 11.220 U.S. Gallons per minute. It is defined by statute, for Northern California, as being 1/40 cubic foot per second.

inches was being delivered to customers on that date. It also shows that although on September 8, 1974 there was more water in the canal and the total amount of miner's inches delivered to customers was 10.24, one customer was receiving the number of miner's inches the opening in his gate would accommodate, five were receiving less, and four were receiving none. The engineer stated that he observed wood and rock obstructions at several locations in the canal to raise the height of the water and divert it through a customer's gate; that these appeared to be there for years; that basically the ditch as an earthen structure is in good condition; that there is a heavy growth of grass and vegetation within the ditch and along its sides; that this impedes the flow of water, increases its surface area, and results in water loss due to the use by the vegetation and the increase in the evaporation; that on his second visit to the canal the vegetation growth was as heavy or heavier than on his first visit, and there was no evidence that any attempt had been made to remove it; and that if the vegetation were cleared from the ditch and any holes that might be in it were repaired, the sixty miner's inches which were flowing from the flume on his second visit should be sufficient to give all customers the amount of water they were entitled to. He asserted that the amount of water loss through evaporation per mile is approximately 20 to 25 percent.

With the exception of Von Twitchell, all complainants or their spouses appeared as witnesses. Following is a summary of the evidence they presented: All complained that they have not received the amount of water defendant agreed to furnish them during the 1973 and 1974 irrigation seasons. Some had the amount of water they ordered for the 1974 season cut down by defendant. Several have received some refund from defendant. Of the three customers located farthest from the water supply, the last one has received no water in 1974, and the other two have received water only part of the time.

Since August 5, 1974, there has been more water in the canal. The amount of weeds and other growth in the ditch has increased since 1973. One uses the water to irrigate an orchard, the others use it to irrigate pasture land, several also use it for cattle, and with the reduction in the amount of water ordered, none are receiving sufficient water for these purposes. Although defendant's tariff provides that its employees shall be authorized ingress and egress across customer's property for the purpose of inspecting and maintaining the canal, one admitted that he had ordered defendant's canal tender off his property because he had not requested permission to cross the property and did not appear to be there for the purposes of his employer. Others, on being cross-examined by defendant, denied that they had ever prevented the ditch tender from crossing their property, placed obstructions in the canal, or tampered with the settings in their irrigation gates.

Defendant's Evidence

Von Twitchell, a complainant herein, was subpoenaed by defendant as an adverse witness. Following is a summary of his testimony: He is the foreman of the Sugar Loaf Land and Cattle Company and takes care of his employer's 4,400 acres of land. This is used as a hunting preserve by the owners and their guests and the grazing rights on the property are leased to a Mr. Carmichael who in turn subleases 15 acres of the grazing rights to the witness. The witness has contracted with defendant to obtain water for the land he subleases. Parts of the irrigation ditch cross his employer's land. Defendant has title to 15 feet of property on either side of the center line of the irrigation ditch here. There are three gates onto his employer's land and dirt roads leading from them across its property to the irrigation canal. One of the gates has defendant's chain lock on it. The witness will move this lock to another gate if defendant wants to go through it to reach a particular part of the

ditch. However, unless there is an emergency, he requires defendant to give him several days notice because of the other duties he has for his employer. He has denied defendant access across his employer's property during periods of high fire hazard and also when the dirt roads have been too wet to travel. His employer has a bridge across the canal for a fire road. Oral permission was obtained from defendant for this, and it in no way obstructs the canal. He does not know whether any of his employer's fences are within the property of defendant on either side of the canal. The witness does not recall ever having denied defendant the right to bring in equipment to maintain the ditch. Defendant has not furnished to him the amount of water agreed upon. There are no roads within the 30-foot ditch easement. He has observed a little work by defendant on the canal during 1974; however, it has not been sufficient to improve the water supply.

A former employee of defendant testified as follows regarding his duties as ditch tender during 1973: He would check the customers' gates and the water levels along the system. If he found a problem in the system, he would cure it. There were five people working on the canal at this time. Because of the difficulty in obtaining diesel fuel in early 1973, most of the clearing of weeds and brush had to be done by hand. There was a good flow of water during 1973. The main problem areas were where cattle had knocked down the banks of the canal and where caterpillars had crossed over it. Some of the customers had adjusted the openings in their irrigation gates. Several had placed obstructions in the ditch at their gates and were receiving more water than they were entitled to. This reduced the amount of water available to the customers down stream from them. One of the customers threatened him when he was adjusting the customer's gate and told him to keep his hands off it. All possible was done to see that all customers got the amount of water they were entitled to. There was enough water in the ditch for

everyone, but because of the tampering with the gates by some of the customers and the obstructions placed by them in the ditch, there were times when the last several customers received no water.

Staff's Evidence

The following evidence was presented by the Commission staff: A staff engineer visited the irrigation ditch on May 29 and July 12, 1974. At the time of the first visit, defendant was using a rotational system whereby three customers would receive a larger flow of water for several days during the week, instead of a constant flow rate for all customers, and when the second inspection was made, defendant had reverted to the continuous delivery system. At the first visit, two of the customers entitled to receive water on that date were receiving substantially more than they had contracted for, and on the second date, one was receiving no water and the balance were receiving less than they had contracted for. The customers are not receiving the water they had ordered and paid for. There is much vegetation growing in close proximity to the canal. There is substantial water loss due to transpiration through the vegetation and leakage from the ditch, including leaks around the customers' take-out gates. The ditch, under the conditions observed, is capable of delivering approximately 24 miner's inches just before the first take-out. The company has signed contracts for the delivery of 23 miner's inches. A constant flow delivery will provide water to more customers, because of water losses which increase when the ditch is permitted to dry out. There was evidence that some effort had been made to clear out the ditch. The only way to get more water to the customers is to cut down on the water loss in the ditch. A flow of 60 miner's inches at the metal flume should, under normal circumstances, be sufficient to furnish each customer with the amount of water he had ordered if the vegetation is cleared from and around the ditch and the leaks are repaired.

Recommendations

Counsel for complainants recommended that the Commission issue an order directing defendant to give a partial rebate to the customers for the amount of water they have paid for and not received, to clean and repair the ditch from the metal flume to the last customer and make sure there are no leaks at the take-out gates, to set the take-out gates so that the head of water will furnish the number of miner's inches each has ordered, and to make periodic checks of the ditch to assure that a sufficient flow of water will continue, and directing the customers to refrain from tampering with the take-out gates and from altering or otherwise interfering with the flow of water onto their properties and on down the canal.

The representative of defendant asserted that the greatest problem defendant has had is the lack of cooperation it has received from its customers. He recommended that defendant be authorized to refuse service to any new customers; that it not be required to increase the amount of water it has agreed to serve its present customers; and that it be allowed to cancel any customer who threatens bodily harm to any of its employees. He stated that defendant has every intent to fulfill its obligations to its customers and that with better cooperation from them, it could accomplish this.

The Commission staff recommended that defendant be required to clean the ditch of all vegetation growth and repair all leaks therein, establish flow gauging stations on the ditch, maintain a daily log of flows and do maintenance work promptly when water losses are indicated, repair or replace the customer take-outs, continue constant flow deliveries, apportion service to the present customers until capable of delivering adequate water, and deny service to new customers.

Upon review of the evidence, it is apparent that the canal has not been maintained in an adequate condition to deliver to customers the amount of water defendant has agreed to furnish them. We concur with both counsel for complainants and the Commission staff that defendant should be directed to remedy this situation. It is apparent that the system is not of sufficient size or capability to serve any additional customers, and we agree with the recommendation by both defendant and the staff that it not be required to serve any additional customers.

Complainants are placed on notice that it is their responsibility to comply with applicable rules of defendant's tariff regarding the settings on take-out gates, defendant's right of ingress and egress from the canal, and the water flow. Without cooperation in such matters, it should be obvious to all complainants that defendant cannot provide an adequate service to them.

Findings

1. Defendant operates a water system in Yuba County and furnishes water for irrigation purposes to 10 customers located between Loma Rica Road and Las Verjeles Road. The system extends approximately $7\frac{1}{2}$ miles from Dry Creek, and the customers are located along the last $1\frac{1}{2}$ miles of the system. The canal is an earthen ditch. Its depth ranges from 12 to 24 inches and its width at the bottom is from 6 to 12 inches and at the top is approximately 16 inches.
2. During 1973, none of the customers of defendant received all of the water defendant had agreed to furnish them.
3. During 1974, several of the customers received none or little of the water defendant had agreed to furnish them, and the balance of the customers did not receive the full amount of water defendant had contracted to furnish them.
4. There is no reasonable basis on which a determination can be made on this record of the difference in price between the amount of water a customer paid for and the amount he actually received during 1973 and 1974.

5. During 1973 and 1974, there was a substantial amount of brush and other vegetation in and around the canal in the service area. Although some effort was made by defendant to remove this, the efforts have not been completely successful. This has impeded the flow of water through the canal and has caused water loss.

6. During 1974, there has been water loss in the canal because of leaky take-out gates and at various other locations.

7. During 1974, some of the customers have placed diversions in the canal to divert the flow of water to their take-out gates and this has affected the flow of water to customers down stream from them. Also, some customers have tampered with the settings on their take-out gates.

8. Rule No. 15 of the utility's tariffs provides that violation of its rules or regulations or interference with the proper discharge of the duties of a representative of the utility is sufficient cause for shutting off water.

9. At certain locations along the ditch, cattle have caused dirt from the banks to fall into the canal and caterpillars have been driven across the canal which have affected the flow of water.

10. With the proper amount of water released into the system, the cooperation of customers, the cleaning of vegetation from the ditch, and the repair of all leaks, including those at take-out boxes, the canal system would furnish to all customers the amount of water defendant has agreed to furnish them.

11. The system is not adequate under ideal circumstances to accommodate any new customers or to furnish any additional amounts of water to present customers over and above the amount defendant has now agreed to furnish them.

Conclusions

1 Defendant should be directed to clean the ditch of all vegetation and to repair all leaks in the canal, including those at take-out gates.

2. Defendant should be directed to establish an inspection program of the canal and maintain it in an adequate condition that

will assure a constant flow of water sufficient to furnish customers with the amount of water it has agreed to supply to them.

3. Defendant should be directed to continue constant flow deliveries to its customers.

4. Defendant should be directed to release sufficient water into the canal to assure that all customers receive the amount of water they have contracted for.

5. Defendant should not be required to accept any new customers.

6. Defendant's Rule No. 15 appears reasonable and should be enforced.

7. Defendant should not be required to make reparation to complainants.

O R D E R

IT IS ORDERED that:

1. Defendant shall clean its irrigation ditch of all vegetation and shall repair all leaks in its canal, including those at take-out gates.

2. Defendant shall establish a program of inspection to assure that there is a sufficient flow of water in the canal to furnish all customers with the amount of water it has contracted to furnish them, and shall do all maintenance work promptly when water losses are indicated.

3. Defendant shall continue constant flow deliveries to its customers.


4. Defendant shall release sufficient water into the canal to assure that all customers receive the amount of water it has agreed to furnish them.

5. Defendant shall not be required to accept any new customers.
6. Defendant shall exercise authority under Rule No. 15 of its tariffs, to discontinue service to a customer without notice when it discovers that a customer has obtained service by fraudulent means.


7. The Secretary of the Commission is directed to provide a copy of this decision to all complainants in this action.


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


Dated at San Francisco, California, this 15th day of JULY, 1975.



President







Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.