

In the Superior Court of the County of Sacramento,
State of California.

Sacramento Electric, Gas and Railway *
Company, (a corporation), *
Plaintiff, *
vs. *
C. W. Clarke, H. G. Smith, and A. N. *
Buchanan, *
Defendants. *

This cause came on regularly for trial on the 18th day of July, 1898, before Hon. Joseph W. Hughes, Judge of said Court, sitting in Department Number One thereof, without a jury, a jury having been expressly waived.

L. T. Hatfield, Esq., appeared as Attorney for Plaintiff, and Catlin, Shinn & Catlin, as Attorneys for Defendants, and from the evidence introduced, the Court finds the facts as follows, to-wit:

1.

That the plaintiff is the owner of, and in possession of a canal and dam across the American River; that plaintiff's right thereto commenced May 8th, 1872, by giving due notice thereof, and said dam and canal were completed so as to make use of the water therein in January 1893, and were fully completed July 10th, 1895. Said dam is situated at the point described in the complaint, which is about one mile below the junction of the North Fork and the South Fork of the said American River, and said canal is about 9,000 feet long, extending from said dam to the town of Folsom.

2.

Plaintiff has diverted from said American River, and into said canal only 50,000 cubic feet of water per minute, and has used the same for beneficial purposes; and plaintiff's appliances require 65,000 cubic feet of water per minute through said canal at this time.

3.

The dam of defendants is across the North Fork of the American River at a point as alleged in said complaint, and at a distance of about twenty-two miles above the dam of plaintiff.

4.

Defendants' grantors, a long time prior to any appropriation by plaintiff or its grantors, to-wit: In the year 1854, entered upon the said North Fork of the American River and constructed said dam and canal and diverted 3,000 inches of the waters of said River, measured under a four-inch pressure, equal to 3,600 cubic feet per minute, measured immediately below the first waste gate in said canal below said dam, for sale, rental and distribution for mining, mechanical and agricultural purposes, and ever since have used, distributed and sold the same for such purposes.

5.

That defendants have not at any time, since the appropriation by plaintiff, diverted from said stream a quantity of water greater than three thousand inches measured under a four-inch pressure.

6.

2.

That plaintiff has not been damaged by any diversion

of said water by defendants.

7.

The low water season mentioned in the complaint during which plaintiff is alleged to take all of the natural flow of the American River does not extend through the months of June or November, but does extend through the months of August, September and October of the average years.

*** Conclusions of Law. ***

1.

The defendants are entitled to, and have, a prior appropriation of three thousand inches of the waters of the North Fork of the American River, measured under a four-inch pressure, taken immediately below the first waste gate below their dam, for sale, rental and distribution for agricultural, mining and mechanical purposes at all seasons of each year.

2.

That plaintiff is not entitled to recover any damages from the defendants.

3.

Plaintiff is not entitled to the injunction prayed for in its complaint.

Let judgment be entered accordingly.

Aug 5th 1898.

Joseph H. H. H.
Judge of the Superior Court.