water shall not be less than 6 per cent upon the value of the 'canals, ditches, flumes, chutes, and all other property actually used and useful to the appropriation and furnishing of such water.' The rates, when fixed are binding for one year and until established anew or abrogated. . . . The question before the court has been narrowed to a single issue. If the plaintiff is entitled to 6 per cent upon its tangible property alone, it is agreed that the order must stand. But if the plaintiff has water-rights that are to be taken into account, the rates fixed will fall short of giving it what it is entitled to and must be set aside. . . .

"It is not disputed that the plaintiff has a right as against riparian proprietors to withdraw the water that it distributes through its canals. Whether the right was paid for, as the plaintiff says, or not, it has been confirmed by prescription and is now beyond attack. It is not disputed either that if the plaintiff were the owner of riparian lands to which its water was distributed it would have a property in the water that could not be taken without compensation. But it is said that as the plaintiff appropriates this water to distribution and sale it thereby dedicates it to public use under California law and so loses its private right in the same. . . .

"It seems unreasonable to suppose that the Constitution meant that if a party instead of using the water on his own land, as he may, sees fit to distribute it to others, he loses the rights that he has bought or lawfully acquired. Recurring to the fact that in every instance only a few specified individuals get the right to a supply, and that it clearly appears from the latest statement of the Supreme Court of California (Palmer *vs.* Railroad Commission, Jan. 20, 1914 (47 Cal. 201)), that the water when appropriated is private property, it is unreasonable to suppose that the constitutional declaration meant to compel a gift from the former owner to the users and that in dealing with water 'appropriated for sale' it means that there should be nothing to sell. (See San Diego Water Co. *vs.* San Diego, 118 Cal. 556, 567; 50 Pac. Rep. 633; 38 L. R. A. 460; 62 Am. St. Rep. 261; Fresno Canal and Irrigation Co. *vs.* Park, 129 Cal. 437, 443; 62 Pac. Rep. 87; Stanislaus Water Co. *vs.* Bachman, 152 Cal. 716; Leavitt *vs.* Lassen Irrigation Co., 157 Cal. 82.)"

According to this decision the water-right must receive the same consideration as other property when rates are to be fixed.