

ORIGINAL

Decision No. 13488

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
 VENICE CONSUMERS WATER COMPANY, a)
 public utility corporation, for)
 authority to issue its first mort-) Application Number 9844
 gage bonds of the face value of)
 \$350,000.00, preferred stock of the)
 par value of \$55,000.00 and common)
 stock of the par value of \$153,000.00.)

Wm. E. Neblett, with Wm. G. McAdoo, for Applicant.
 P. C. Rentfro for Mrs. Alma F. Lowe, Intervenor.

BY THE COMMISSION :

O P I N I O N

In the above entitled application the Railroad Commission is asked to make an order authorizing Venice Consumers Water Company to execute a deed of trust and issue under such deed of trust \$350,000.00 of bonds, to issue \$55,000.00 of 7 per cent cumulative preferred stock and \$153,000.00 of common stock. Reference will hereafter be made to the purposes for which applicant intends to issue the bonds and stock.

Venice Consumers Water Company was organized on or about May 23, 1923 with an authorized capital stock of \$1,000,000.00 divided into \$500,000.00 of 7 per cent cumulative preferred and \$500,000.00 of common stock. The preferred stock is redeemable at the option of the company at \$105 per share and all unpaid dividends. By decision Number 12557, dated August 29, 1923, the Commission authorized applicant to issue \$700 of common stock to its directors. This is the only stock now outstanding.

Former proceedings before this Commission show that Benjamin Brodsky obtained options to purchase properties of the City Water

Company of Ocean Park, Venice of America Water Company and Fredericks Water Company. These options have been assigned to the Venice Consumers Water Company. The transfer of the properties of the City Water Company of Ocean Park to the Venice Consumers Water Company is authorized by Decision Number 12453, dated July 31, 1923; the transfer of the properties of the Venice of America Water Company by Decision Number 12489, dated August 14, 1923 and the transfer of the properties of Fredericks Water Company by Decision Number 12490, dated August 14, 1923. The properties have been acquired and consolidated by the Venice Consumers Water Company and are now being operated by that company. The Venice Consumers Water Company has agreed to pay for the properties of the City Water Company of Ocean Park \$287,500.00 of which \$87,500.00 has been paid. The remainder due is payable in \$200,000.00 of 6 per cent bonds or \$190,000.00 in cash. Applicant proposes to pay the balance due in cash. For the Venice of America Water Company properties applicant agreed to pay \$45,000.00 in cash or 7 per cent preferred stock and for the Fredericks Water Company properties \$10,000.00 in cash or 7 per cent preferred stock. These last two companies will be paid in 7 per cent preferred stock. The total consideration paid or to be paid for the properties is \$332,500.00. If the request of applicant is granted it would issue against such properties approximately \$202,000.00 of 6½ per cent bonds, \$55,000.00 of 7 per cent preferred stock and \$153,000.00 of common stock, a total of \$410,000.00.

As of May 31, 1923 The Chester H. Loveland Engineers estimated the historical original cost of the properties to which reference has been made and the cost of certain additions and betterments, etc., as follows :-

Original cost as of date of contracts of sale	\$ 619,969.00
Net additions to plant since date of contracts	
(May 30, 1923)	22,174.00
Materials and supplies	3,277.00
Proposed additions to plant	129,000.00
Organization expenses	10,000.00
Total	<u>\$ 784,420.00</u>

The \$619,969.00 includes an estimate of the present value of land, \$80,025; an allowance of \$211,000.00 (\$588.00 per miner's inch) for water rights, and \$5,000.00 for organization expenses. Both the land and water right values represent present values and not an estimate of original cost.

The engineering department of the Railroad Commission estimates the original cost of the physical properties, including the land at present market value, at \$447,606.00 as of March 1, 1924 as compared with \$430,143.00 reported by The Chester H. Loveland Engineers. If depreciation had been calculated on a 6 per cent sinking fund basis the Loveland engineers estimate that there should be in the reserve for accrued depreciation \$45,115.00 as compared with an estimate of \$54,320.00 by the Commission's engineers. The latter estimates the accrued depreciation on a straight line basis at \$91,234.00. No comparable figure was submitted by the Loveland engineers.

The following figures on reproduction cost new and reproduction cost less depreciation have been submitted :-

	Reproduction Cost New	Reproduction Cost New Less Depreciation
Loveland engineers	\$ 939,933.00	\$ 816,555.00
Less additions and better- ments and allowance for organization expense	<u>139,000.00</u> \$ 800,933.00	<u>139,000.00</u> \$ 677,555.00
Less water right valuation	<u>211,000.00</u>	<u>211,000.00</u>
Leaving	\$ 589,933.00	\$ 466,555.00
Commission's engineers. . .	\$ 570,848.00	\$ 446,578.00

The above deductions were made in such tabulation from the Loveland engineers' reproduction cost new and reproduction cost new less depreciation figures so as to arrive at figures which are comparable to the figures submitted by the Commission's engineers.

The Chester H. Loveland Engineers' report includes an allowance of \$211,000.00 for water rights. Reference is made in such

report as well as in the testimony to Decision Number 2547 (Volume 7, Opinions and Orders of the Railroad Commission of California, page 444) to support a value of \$588.00 per miner's inch for water. The Commission in that decision made no specific finding as to the value of water rights. Quoting from the decision :-

"While it is true that Irwin Heights Water Company and the other water companies who have pumped water for five years and appropriated it for public use, would undoubtedly prevail as against any attempt from those which have stood by and permitted this appropriation to be made, to enjoin the further pumping of water (Katz vs. Walkinshaw, 141 Cal. 116, 136; Newport vs. Temescal Water Company, 149 Cal. 531; Barton vs. Riverside Water Company, 155 Cal. 509; Miller & Lux vs. Enterprise Canal and Irrigation Company, 49 Cal. 251, 256, decided February 19, 1915), the evidence in this case does not satisfy me that the facts in connection with the water situation in this basin are such that these water companies, in turn, could successfully bring action to enjoin another appropriator of water for public use from sinking wells in the water-bearing lands referred to by Mr. Malloy and taking therefrom water for public use in the City of Santa Monica.

Even assuming that it is physically possible to develop these additional waters, which I find to be the fact, and that the new appropriator for public use could successfully withstand the efforts of the existing water companies to enjoin such development, which I believe from the facts as shown in these proceedings would be the case, nevertheless, the fact that the existing water companies have an actually developed supply of water as contrasted with a probability, however certain it may seem, of developing water, and that their rights to the continued use of the water which they have heretofore developed and used are secure, except possibly against land owners who may be able to recover damages if they can prove a diversion from their lands to their injury, are facts which add value to the property of these water companies, and for which just compensation must be paid."

Nowhere in the decision does the Commission express an opinion as to the value of the water rights. The testimony of engineers in some other proceeding as to what the Commission did find as a value of such rights is not conclusive and cannot here be recognized as the conclusion of the Commission. We do not think that the testimony in this proceeding warrants the Commission to place a value of \$211,000.00 on the water rights of the Venice Consumers Water Company.

Applicant intends to expend \$129,000.00 of the proceeds obtained from the sale of bonds to pay in part the cost of the following improvements :-

12" Cast Iron Pipe

7,000' -- under paving	\$37,800.00
4,000' -- no paving	17,680.00
8" Cast Iron Pipe -- Class B, 1000'	2,640.00
6" Cast Iron Pipe -- Class B, 5000'	9,800.00
4" Cast Iron Pipe -- Class B, 12000'	17,400.00
Services and Meters (New), 600	12,000.00
Meters (New on old services) 600	7,500.00
Electric Wiring at New Well and Booster Plant	700.00
Well #8, Developing Filter Chamber	500.00
New Unit at Booster Plant,	
8" Centrifugal Pump, 100 H.P. Motor, starter, Switches, Etc.	1,420.00
Additional Work on Sump and Suction	750.00
Superintendent's House at Pumping Plant, Complete, Master Meter, and other small additions to equipment and buildings	3,500.00
Office furniture	825.00
Reservoir, 1,000,000 gallons capacity	<u>20,000.00</u>
	\$132,515.00

In addition, applicant intends to use \$10,000.00 of the proceeds obtained from the sale of bonds to pay organization expenses. The valuation to which reference has been made includes \$5,000.00 for organization expenses which added to the \$10,000.00 now proposed to be expended makes a total of \$15,000.00. Such an organization expense, we think, is excessive and will therefore allow only \$5,000.00 of the proceeds obtained from the sale of bonds to be used to pay organization expenses.

Applicant asks permission to issue to Benjamin Brodsky \$50,000.00 of common stock because he assigned to applicant his options

to purchase the properties referred to above. It is urged that Mr. Brodsky was successful in purchasing the properties of the several companies at a price considerably lower than originally asked for by the owners of the property, and that therefore he is entitled to common stock of applicant corporation in the amount of \$50,000.00. This does not constitute sufficient reason for the issue of the \$50,000.00 of stock.

Evidence has been introduced as to the actual and estimated earnings of the properties acquired by applicant. This evidence has been considered in connection with applicant's operating expenses including the depreciation annuity, the interest on the proposed bond issue, the interest on the balance in the reserve for accrued depreciation, the amortization of debt discount and expense and sinking fund payments.

It is the opinion of the Commission that Venice Consumers Water Company should be authorized to issue not exceeding \$300,000.00 of 6½ per cent bonds, \$55,000.00 of 7 per cent preferred stock and \$153,000.00 of common stock for the purpose of acquiring the properties formerly owned by City Water Company of Ocean Park, Venice of America Water Company, Fredericks Water Company, and to acquire and construct the improvements to which reference is made in this opinion, and pay not exceeding \$5,000.00 for organization purposes. The Commission will not authorize applicant to issue any additional stock or bonds for the aforesaid purposes.

Mrs. Alma F. Lowe, a stockholder of Fredericks Water Company and represented by P. C. Rentfro, asks the Commission to order the Venice Consumers Water Company to issue the \$10,000.00 of preferred stock which it agreed to pay for the properties of the Fredericks Water Company, to the stockholders of such company and not to the company's treasury. The Commission has not sufficient authority to order such a distribution of the stock.

Applicant has filed a copy of its proposed deed of trust.

Section 22 of the deed of trust reads as follows :-

"Additional bonds may from time to time be executed by the Water Company and shall be authenticated by the Trustee and delivered to the Water Company for the purpose of refunding any indebtedness incurred by it in acquiring or constructing permanent additions to its property or for the purpose of reimbursing the Water Company's treasury for earnings expended by it in acquiring or constructing permanent additions to its property. The term "permanent additions" shall include only permanent improvements, extensions or additions acquired or constructed by the Water Company subsequent to the date of this indenture and usable in connection with its business of acquiring and distributing water. Such additional bonds may be authenticated and delivered only upon compliance with the conditions and subject to the limitations hereafter in this Article set forth."

It is believed that this section should be modified so as to read as follows :-

"Additional bonds may from time to time be executed by the Water Company and shall be authenticated by the Trustee and delivered to the Water Company for the purpose of aiding it in acquiring or constructing permanent additions to its property, or for the purpose of paying indebtedness incurred by it, on account of the acquisition or construction of permanent additions to its property, or for the purpose of reimbursing the treasury of the Company because of income expended for the acquisition or construction of permanent additions to its property. The term "income" as herein used, includes any moneys in the Company's treasury not obtained from the issue of stock or stock certificates or bonds, notes or other evidences of indebtedness. The term "permanent additions" shall include only permanent improvements, extensions or additions acquired or constructed by the Water Company subsequent to the date of this indenture and usable in connection with its business of acquiring and distributing water. Such additional bonds may be authenticated and delivered only upon compliance with the conditions and subject to the limitations hereinafter in this Article set forth."

O R D E R

Venice Consumers Water Company, having applied to the Railroad Commission for permission to issue \$350,000.00 of bonds, \$55,000.00 of preferred stock and \$153,000.00 of common stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the Venice Consumers Water Company should be authorized to issue not exceeding \$300,000.00 of bonds, \$55,000.00 of preferred stock and \$153,000.00 of common

stock, and that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant for the purposes herein stated, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that the VENICE CONSUMERS WATER COMPANY be, and it is hereby, authorized to execute a deed of trust substantially in the same form as the deed of trust filed in this proceeding, provided that Article II of said deed of trust be modified so as not to be in conflict with this decision, and provided further that the authority herein granted to execute a deed of trust is for the purpose of this proceeding only and is granted in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of such deed of trust as to such other legal requirements to which said deed of trust may be subject.

IT IS HEREBY FURTHER ORDERED that the VENICE CONSUMERS WATER COMPANY be, and it is hereby, authorized to issue not exceeding \$300,000.00 of 6½ per cent first mortgage bonds payable April 1, 1944, not exceeding \$55,000.00 of 7 per cent preferred stock and not exceeding \$153,000.00 of common stock.

The authority herein granted is subject to further conditions as follows :-

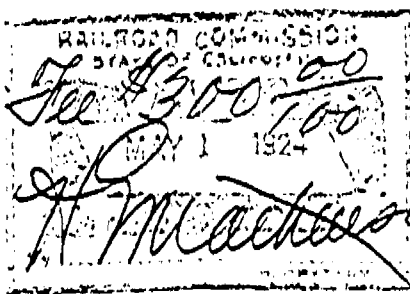
1. The bonds herein authorized to be issued shall be sold by applicant for not less than 94 per cent of their face value and accrued interest, the preferred stock for not less than par and the common stock for not less than 85 per cent of its par value.
2. The proceeds realized from the sale of the bonds and stock shall be used for the purpose of paying for

the properties formerly owned by the City Water Company of Ocean Park, the Venice of America Water Company and Fredericks Water Company, and to acquire and construct the improvements to which reference is made in the foregoing opinion, and pay not exceeding \$5,000.00 organization expenses.

2. Applicant shall file with the Commission two copies of its deed of trust, said copies to be filed as soon as said deed of trust is executed.
3. Applicant shall keep such record of the issue, sale and delivery of the bonds and stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th. day of each month a verified report, as required by the Railroad Commission's General Order Number 24, which order in so far as applicable, is made a part of this order.
4. The authority herein granted will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is \$300.00. No bonds or stock may be issued, sold or delivered after December 1, 1924.

IT IS HEREBY FURTHER ORDERED, that this application in so far as it relates to the issue of \$50,000.00 of bonds be dismissed without prejudice.

DATED at San Francisco, California, this 30th day of April, 1924.



C. Seavey
H. B. ...
Irving Mattson
Eugene ...

Commissioners.