

Decision No. 14973.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
 EAST BAY WATER COMPANY,)
 a corporation, for an order authoriz-) Application No. 10947
 ing the issue of bonds and stock or)
 notes.)

ORIGINAL

- E. O. Edgerton and A. G. Tasheira, for applicant.
- Leon E. Gray, for City of Oakland.
- William J. Locke, for East Bay Municipal Utilities District and City of Alameda.
- Edward F. Treadwell, for East Bay Municipal Utilities District.
- C. E. Hickok, for City of Alameda.
- Karl J. Sinclair and John W. Edy, for City of Berkeley.
- D. J. Hall and J. H. Plate, for City of Richmond.
- Edwin H. Williams, for City of San Leandro.
- L. K. Fraser, for City of Albany.
- T. C. Jenkins, for Town of Emeryville and Emeryville Industries Association.
- Oliver Ellsworth, for City of Piedmont.
- Wilbur Walker, for Oakland Merchants Exchange.
- Roscoe D. Jones, for Oakland Chamber of Commerce.
- John Gelder, for Central Oakland Improvement Association.
- Clement Miller, in propria persona, and
- Louis E. Bartlett, in propria persona.

BY THE COMMISSION:

OPINION

EAST BAY WATER COMPANY asks the Railroad Commission to make an order authorizing the company to issue at a price hereafter to be determined, \$7,125,000.00 of unifying and refunding bonds and \$2,698,900.00 of Class "A" six percent cumulative preferred stock, or \$9,500,000.00 of short term notes, and use the proceeds from the sale of such bonds and stock, or notes, to pay for the acquisition and construction of a pipe line from Mallard Slough, Sacramento

River, in Contra Costa County, opposite Chipps Island, to the company's San Pablo Reservoir, together with the necessary lands, rights of way and all other necessary works and appurtenances.

The Commission is also asked to modify Decision No. 14560, dated February 11, 1925, in Application No. 10812, so as to permit the use of a portion of the proceeds obtained from the sale of Series "D" bonds and notes to pay expenses incurred in connection with the above construction until such time as funds become available from the issue and sale of the bonds and stock, or notes, which the Commission is now asked to authorize.

Hearings were had before the Commission en banc on April 2nd, May 5th, 6th, 7th, 8th and final argument on May 18th. The matter has been submitted and is ready for decision.

It is of record that East Bay Water Company, if permitted to issue the securities referred to, will immediately start the construction of what in this proceeding has been referred to as its Sacramento River Project. George H. Wilhelm, chief engineer and general manager of the company, testified that the project contemplates pumping water during the flood period from the Sacramento River at Mallard (opposite Chipps Island, a short distance below the confluence of the Sacramento and San Joaquin Rivers) through a pipe line into the company's San Pablo reservoir; that at Mallard the installation will consist of a 60,000,000 gallon daily sump, intake channel and head works, a 60,000,000 gallon daily pump station building, and 60,000,000 gallon daily pump unit with fittings, controls, plant pipe and electrical wiring and installation; that the pipe line will be 21.7 miles long, of which 15.1 miles will be steel pipe and 6.6 miles, tunnel. The steel pipe will be 72 inches in diameter and of the capacity of 60,000,000 gallons daily, and that the tunnels will have a capacity of 200,000,000 gallons daily. On account of the limited pumping period, the project, according to Mr. Wilhelm, will produce a minimum of 25,000,000 gallons daily in conjunction with the company's

local storage of flood waters. From Mallard the pipe line is to follow a direct routing over and through the hills to the company's Pinole reservoir site, thence through such reservoir site and range of hills to the San Pablo reservoir, where the water would be delivered at an elevation of 320 feet. Necessary additions to the company's San Pablo filter plant would be made to treat the additional water supply. The cost of the project is estimated at \$9,520,057. No money has been expended on the project except for preliminary engineering and investigations.

The company explained that it was, in this proceeding, not proposing a final solution of the water supply problem for the East Bay communities and that the design of its Sacramento River project is such as to care for the needs of those communities for the next few years, and until water from a mountain source can be delivered. The company's representatives urge that this project can be fitted into a Mokelumne or any other northern water supply project with practically no loss of investment. Applicant introduced evidence to show that as pure a water supply can be obtained from the Sacramento River as from any other available source.

The granting of the application is opposed by the East Bay Municipal Utilities District; by the Cities of Oakland, Berkeley, Alameda, Richmond, Albany, San Leandro; by the Oakland Chamber of Commerce and Merchants Exchange of Oakland and the Oakland Labor Council; by the Alameda Chamber of Commerce; by the Downtown Properties Association of Oakland; and by other civic improvement clubs and organizations.

The East Bay Municipal Utilities District, through A.P. Davis, its chief engineer and general manager, takes the position that the proposal of the company does not fit into the District's plan to bring in water from the Mokelumne River, that for the District to take over the properties which the company proposes to construct,

would result in a loss of \$4,711,652.00 to the District and that the construction of the Sacramento River project by the company may make it more difficult, if not entirely impossible, for the district to acquire the company's water production, storage, transmission and distribution properties. He is also of the opinion that it is more expensive to treat Sacramento River water than Mokolumne River water, assuming that the latter has to be treated, and that in the event of the failure of any link in the filtration process, the communities might be served with a dangerous water, if such water is taken from the Sacramento River. The view that we take of this proceeding makes it unnecessary to determine whether Sacramento River water can be so treated as to make it safe for human consumption.

The Commission is called upon in this proceeding to authorize the issue of bonds and stock, or notes, for the purposes above recited.

Section 52 of the Public Utilities Act, after defining the purposes for which public utilities may issue stock, bonds, notes or other evidences of indebtedness, provides-

" That such public utility, in addition to the other requirements of the law, shall first have secured from the Commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order."

The Commission thus by statute is directed to make a finding that the money, property or labor to be procured or paid for by the issue of stock and bonds, or notes, which applicant now seeks permission to issue, is reasonably required by it. Applicant urges that the communities served by it are risking a water shortage and that such risk would be removed by the construction of its proposed Sacramento River project. Mr. Wilhelm, however, explained

that the communities were not confronted with any water shortage during 1925, and testified that if

"We had a normal year next year as to rainfall and run-off, we would have no shortage in 1926. If we had an unusual year in 1926-27 with plenty of rainfall and run-off, we would have no water shortage in the year 1927. The same thing is true for the year 1928. And if you can positively guarantee me that we will have rainfall enough each year to fill San Pablo, Upper San Leandro and Chabot, why, I would say we do not need any additional water supply until probably 1940."

Representatives of the District admit and agree with the company's representatives that an additional water supply should be made available to the East Bay communities as soon as possible. Both Mr. Davis, and Mr. George C. Pardee, president of the East Bay Municipal Utilities District, through their testimony, call attention to the fact that the people of the District, the boundaries of which are substantially co-terminous with the territory served by the East Bay Water Company, have, by a large majority, voted in favor of getting an additional water supply from the Mokelumne River, and have voted bonds for that purpose. Both testified that if for any reason a water shortage should develop, the District would be able to take care of the situation, by constructing the western division of its Mokelumne project and bring water into the District from the San Joaquin River.

Quoting from the testimony of Mr. Pardee--

"Commissioner Brundige: It is the policy of the district to take care of the temporary supply, if the temporary supply is found to be necessary?"

Mr. Pardee: I think we can go farther than that, Mr. Commissioner, and say this: That the district is going to immediately proceed to bring in its conduits and its tunnels, and if necessary, a pipe line over the hills without the tunnels, from the San Joaquin--first thing it is going to do--even though there be no immediate pressing necessity for it, on the ground that possibly, printed in very small type, agate type, possibly there may be an imminent famine next year. Having that in mind, the district is going to do everything they can to avoid such possibility.

Commissioner Brundige: And if, when this water shortage occurs, if it ever does occur, and that time is prior to the taking over of the distributing plant, you would still go ahead with your plans?

Mr. Pardee: Yes.

Commissioner Brundige: You would still bring in the water and be in position to sell water, even if you had to turn it into the reservoirs of the East Bay Water Company for distribution to the inhabitants of the East Bay district?

Mr. Pardee: Surely.

Commissioner Brundige: And you have no doubt of the ability of the district to perform exactly that service?

Mr. Pardee: None whatever.

Commissioner Brundige: And you could do exactly that thing?

Mr. Pardee: Exactly that thing.

Commissioner Brundige: You assume full responsibility for that?

Mr. Pardee: Entirely; representing the people of the District, we do."

The record in this case is not such as to enable the Commission to make the finding that it is required to do by Section 52 of the Public Utilities Act. On the contrary, we are confronted by evidence showing that another agency, the East Bay Municipal Utilities District, has been created and directed by the majority of the voters of such District to bring in an additional water supply, and unequivocally asserts not only its willingness and desire, but also its ability to bring in a temporary supply of water pending the completion of the District's Mokelumne project, if and when it shall appear that such temporary supply is necessary. It seems clear, therefore, that the responsibility for bringing in a temporary supply of water, pending the completion of the Mokelumne River project, should rest upon the District, that the evidence proves the willingness of the District to assume such responsibility, as well as the desire of the people residing in the district to hold the District responsible for providing such supply. To authorize the issue of the bonds and stock, or notes, under the circumstances disclosed by

the record in this proceeding would, we feel, result in a duplication of facilities and of wasteful expenditure of money, both of which are contrary to public policy, and neither of which are in the public interest.

We believe that this application should be denied without prejudice.

ORDER

EAST BAY WATER COMPANY having applied to the Railroad Commission for permission to issue bonds and stock, or notes, a public hearing having been held and the Railroad Commission being of the opinion that for reasons set forth in the Opinion which precedes this order, this application should be denied without prejudice:

IT IS HEREBY ORDERED that the application referred to herein be, and the same is hereby, denied without prejudice.

DATED at San Francisco, California, this 21st day of May, 1925.

H. H. Bondage

C. L. Sewer

Egerton Shore

George D. Squires

Ernest J. ...

Commissioners.