

Decision No. 15050.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ED FLETCHER,)
sole surviving partner of the part-)
nership formerly composed of James)
A. Murray, now deceased, Ed Fletcher)
and William G. Henshaw, doing busi-)
ness under the firm name and style of)
CUYAMACA WATER COMPANY, for an order)
authorizing the sale of a certain)
water system in San Diego County, now)
owned and operated by said copartner-)
ship, to the LA MESA, LEMON GROVE AND)
SPRING VALLEY IRRIGATION DISTRICT, of)
the County of San Diego, State of Cal-)
ifornia.)

Application No. 10619.

Crouch & Sanders, and Flint & MacKay,
by Arthur R. Smiley, for applicant.
S. J. Higgins, City Attorney, for the City
of San Diego.
Sweet, Stearns & Forward, by F. W. Stearns,
for the La Mesa, Lemon Grove and Spring
Valley Irrigation District.
Jesse George, for Fred M. Patterson et al.
Titus and Macomber, by F. J. Macomber, for
the Boston Ranch.
P. S. Thatcher, City Attorney, for City of
El Cajon and for the El Cajon Valley.
W. Garfield, for K. B. Finley et al.
Herbert Kelly, for Jerry Sullivan et al.
C. S. Preston, for Fred M. Patterson et al.
Henry J. Parker, in propria persona.
James O'Keefe, City Attorney, for the City
of La Mesa.

BRUNDIGE, SQUIRES and DECOTO, Commissioners:

O P I N I O N

In this proceeding Ed Fletcher, sole surviving partner
of the partnership formerly composed of James A. Murray, now
deceased, Ed Fletcher and William G. Henshaw, doing business

under the firm name and style of Cuyamaca Water Company, asks authority to transfer the major portion of its public utility properties to La Mesa, Lemon Grove and Spring Valley Irrigation District. It is alleged in the application in this proceeding that said District is duly organized and existing under and by virtue of the laws of the State of California and is fully empowered to acquire and operate said water system.

La Mesa, Lemon Grove and Spring Valley Irrigation District has filed a statement in this proceeding setting forth that it has legally exercised the option to purchase the properties, authority to transfer which is requested in the application herein, and that on the 7th day of November, 1924, said District voted bonds wherewith to provide payment of the purchase price of the properties mentioned in said application herein, and further states that it is the intention of said Irrigation District to complete the transaction and accept title to said properties upon approval of this application by the Railroad Commission.

The application in this matter further alleges in effect that Cuyamaca Water Company is now engaged in the business of supplying water to the District, and to the area included in the District as well as the distribution of water for domestic and agricultural purposes to municipalities, towns and private consumers of water in San Diego County; that by reason of the death of James A. Murray the co-partnership was dissolved, and said applicant as sole surviving partner is by law obligated to settle the affairs of said partnership without delay, which can best be accomplished by the sale of its properties; and that it is to the best interests of the public that said District acquire this water system that it may own the water production and distribution facilities supplying it with water. Wherefore the Commission is requested to

authorize the transfer of the properties according to the terms and conditions set out in the application herein.

The option of purchase excludes that portion of the distribution system of Cuyamaca Water Company serving the territory known as Normal Heights and Kensington Park, which are located outside of the city limits of the City of San Diego, and also outside of the proposed boundaries of the District, but provides for the sale by the District to applicant of sufficient and adequate water to supply this area. The option also provides for the purchase of Mission Gorge dam site, including certain lands and water rights, by the District, if it desires, for the sum of \$150,000.

The City of San Diego filed formal protest against the granting of this application, alleging that the Cuyamaca Water Company proposes to transfer to the District a right to 11 million gallons daily of the waters of the San Diego River; that the City of San Diego by reason of its being the successor to the Mexican Pueblo of San Diego, is the owner of the prior and paramount right to the use of all the waters of the San Diego River and that the proposed transfer of these rights would be an interference with the rights of the City of San Diego upon the river and to the waters thereof. In a supplemental protest the City further alleges that it is now and for the past ten years has been a consumer of the Cuyamaca Water Company, and as a consumer protests against the proposed transfer for the reason that the City would be deprived of the water now being purchased from the company, as the District cannot legally sell water to consumers residing outside of the District boundaries; that the present supply of water will all be used by the District, and as it cannot legally develop the additional supply of water to meet its requirements, the consumers outside the District

will be deprived of the water to which they are entitled.

Formal protests were filed by one Fred H. Patterson and also by S. F. Wysoki et al., being irrigation consumers of the Cuyamaca Water Company, residing in the El Cajon Valley, alleging that they will be deprived of water for irrigation purposes; that the terms of the option contract of sale and purchase are discriminatory against protestants, giving advantage to lands owned by Fletcher and Thumb; that no water is reserved or provision made for supplying water to protestants and other land owners of El Cajon Valley.

Protests against the granting of this application were filed by one J. E. Murphy and certain other property owners and tax payers upon the ground that the title of applicant to the waters, reservoir sites and dam sites sought to be sold to the District is in litigation in the courts and the Commission is therefore requested to refuse authority for the sale of these properties until such litigation is ended. A similar protest was filed by K. B. Finley and certain others residing in the La Mesa, Lemon Grove and Spring Valley District.

Joseph C. Tyler, M. S. Sprague and Vincent Whitney, owners of the Boston Ranch, filed a conditional protest in which it was alleged that a considerable sum of money had been expended by the former owners of said ranch under agreement with applicant for the delivery of water to irrigate said ranch. For this reason protestants requested that no sale of applicant's water system be authorized unless the purchaser thereof assumes all the liabilities to continue water service to said ranch under the terms of said agreement.

The Cuyamaca Water Company has been before the Railroad Commission on numerous occasions in the past, the decisions rendered in many of these cases having contained a very full and complete description of the system and the methods of

operation. For this reason it will be unnecessary to go into these matters further in this proceeding.

Public hearings in this proceeding were held in San Diego on the twentieth and twenty-first days of January, 1925, after all interested parties had been duly notified and given an opportunity to appear and be heard.

At the hearing Thomas E. King, engineer for the District, testified that the La Mesa, Lemon Grove and Spring Valley Irrigation District was organized November 1, 1913, and that it included at that time an area of about 13,000 acres; that the water development on the San Diego River as now proposed by the District would produce in connection with the Cuyamaca Water Company supply, a net safe yield of 12,300 acre feet annually, or 11 million gallons daily; that this quantity of water would permit the District to extend its boundaries to include 19,500 acres, and also would provide ample water for all the company's consumers located outside the District boundaries, which the District would be obligated to serve and would also agree to serve. It was also shown by Mr. King that the purchase price of the Cuyamaca system was \$1,100,000; that on November 7, 1924, the District had duly voted bonds in the amount of \$2,500,000 to provide funds for the purchase of the Cuyamaca system under the terms of the option herein and for the purpose of developing more water on the San Diego River and to provide facilities for the further extension of the present distribution system to serve the District area.

The evidence shows that the District's entire project had been approved by the State Engineer, and that the California Bond Certification Commission had approved of the District issuing bonds to the extent of \$2,500,000, and that on November 7, 1924, the people of the District voted that amount of bonds.

In answer to the objections of representatives of the City of San Diego and of representatives of various consumers now outside the District boundaries, the officials of the District testified that it was the intention and desire of the District to assume all the service obligations of the Cuyamaca Water Company, and said officials further agreed to provide service to all the present consumers located outside the present boundaries. The evidence indicates that the present boundaries of the District can be extended to include a large area now served by the Cuyamaca Water Company but at present outside of the District area, and no apparent reason exists, so far as the testimony is concerned, which would preclude the District from serving water to consumers located beyond its legally constituted boundaries.

The City of San Diego contended that by virtue of being the successor of the Mexican Pueblo of San Diego, it is the owner of the paramount rights to all of the waters of the San Diego River, and that the City had already duly voted bonds to construct a dam and storage reservoir at El Capitan, being the first unit of a very comprehensive water supply development of the San Diego River.

The various conflicting claims to the prior water rights in this river clearly indicated to the Commission that unless there could be effected through negotiation and agreement a voluntary settlement of these disputes, that the costly litigation already in progress over these water rights in all probability would continue for many years and result in seriously delaying the proposed plans of both the District and the City of San Diego to complete their respective projects for the development of the resources of the San Diego River.

In order to avoid these difficulties it was suggested by the Commission that informal negotiations be undertaken to the end that a plan for the joint development of the river be worked out which would be acceptable both to the City of San Diego and the District.

Informal conferences were held in San Francisco on January 29, and on February 20 and 21, 1925, in which the Commission, the City of San Diego, the La Mesa District and the Cuyamaca Company participated, and a plan was worked out which it was believed was fair and equitable and to the mutual advantage both of the City and the people of the District and which would permit the immediate development of the waters of the river in the benefits of which both would share. After agreement had been reached upon the terms of the proposed settlement it was the expressed desire of the officers of the City of San Diego that the terms of the proposed settlement be submitted to the people of San Diego for their approval or disapproval at an election to be speedily called. With this proposal the Commission was in full accord, and, in order that the issues involved in the proposed settlement might not be further complicated or the voters of the City of San Diego in any way influenced in their judgment in this matter the Commission felt that it was proper and desirable that the decision in the matter of the application for a sale of the property of the Cuyamaca Company to the La Mesa, Lemon Grove and Spring Valley Irrigation District be withheld pending such election. For various reasons delay in calling such election ensued. In order that the people of San Diego be given full opportunity to express their views at such election when it became certain that an election could not be called and held before the expiration of the date of the option for purchase given by the Company to the District, the Commission requested an extension of the

option from May 7, 1925, to June 17, 1925. This extension of the option to purchase was granted. At this time an election has not yet been called by the City Council of San Diego and it is apparent to the Commission that the prospect of submitting to the people of San Diego the proposed settlement now is so remote that there appears to be no good or sufficient cause for longer withholding decision in the present proceedings.

After a careful consideration of the testimony and the evidence presented in this proceeding, it is believed that public interest will best be served by the granting of this application.

The following order is recommended:

O R D E R

Ed Fletcher, sole surviving partner of the partnership formerly composed of James A. Murray, now deceased, Ed Fletcher and William C. Henshaw, doing business under the firm name and style of Cuyamaca Water Company, having filed application for authority to transfer certain public utility property to the La Mesa, Lemon Grove and Spring Valley Irrigation District, and said District having filed a petition signifying its desire to purchase said system, public hearings having been held thereon and the matter having been submitted,

IT IS HEREBY ORDERED that the above application be and the same is hereby granted, subject to the following conditions:

1. That the authority granted shall apply only to that certain public utility property of Cuyamaca Water

Company more particularly set forth and described in Exhibit "A" entitled "Description of Cuyamaca System" and in Exhibit "C" under the sub-title "List of Properties" and attached to and made a part of the application herein.

2. That the authority herein granted shall apply only to such transfer as shall have been made on or before sixty (60) days from the date of this order, and a certified copy of the instrument of conveyance shall be filed with this Commission by said Ed Fletcher within thirty (30) days from the date on which it is executed.

3. That within ten (10) days from the date on which Ed Fletcher actually relinquishes control and possession of the properties herein authorized to be sold, he shall file with this Commission a certified statement indicating the date on which such control and possession was relinquished.

4. That the consideration given for the transfer of this property shall not be urged before this Commission or any other public body as a finding of value of the property for rate fixing or for any purpose other than the transfer herein authorized.

5. That the authority herein granted shall be contingent upon the La Mesa, Lemon Grove and Spring Valley Irrigation District filing with this Commission within thirty (30) days after the date of this order, a duly authorized resolution by its Board of Directors agreeing that said District will serve an adequate

supply of water in the quantities to which they may be entitled, to all of the present consumers of the Cuyamaca Water Company outside the boundaries of said District, except such consumers as under the terms of said option as set out in Exhibit "C" attached to the application herein, may be served by said Cuyamaca Water Company.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of June, 1925.

H. H. Brundage
W. S. Beatty
Egerton Shaw
George W. Squires
Wm. H. ...
Commissioners.