

Decision No. 17519.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of  
J. B. JOHN to sell and THOMAS R. HANNA  
to buy the water plant and system at  
Walnut Creek in Contra Costa County,  
California, formerly owned by Walnut  
Creek Water Company.

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)  
) Application No. 12616.  
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B. M. Melvin for J. B. John.

Courtney Moore for Thomas R. Hanna.

BY THE COMMISSION:

O P I N I O N

This is an application by J. B. John to sell to Thomas R. Hanna a public utility water system known as the Walnut Creek Water Company and located in the incorporated town of Walnut Creek, Contra Costa County.

The application alleges in effect that since April, 1920, the said water plant and system by order and ruling of this Commission has been and now is in the possession of and operated by the said Town of Walnut Creek under the terms of a certain agreement duly ratified and set forth in a resolution adopted by the Board of Trustees of the said Town of Walnut Creek on the 22d day of April, 1920; that during all of the time the said plant and system has been operated by the Town of Walnut Creek, no payment has been made to the owners for the use of the said properties and no accounting has been made by or on behalf

of said Town of earnings or expenses or of the amount set aside to equal the loss in value which the property has suffered in the service of the public. It is further alleged that the owner has given an option to one Thomas R. Hanna, who desires to purchase the properties, and the Commission is therefore asked to authorize the transfer.

A public hearing in this matter was held before Examiner Satterwhite at Walnut Creek, after all interested parties had been notified and given an opportunity to appear and be heard.

This water system was formerly owned and operated by the Walnut Creek Water Company, a corporation, whose interests were acquired by applicant, J. B. John, through the purchase and foreclosure of two mortgages on the property and the execution of a deficiency judgment thereon. Prior to 1920 the financial and other conditions of the Walnut Creek Water Company were such that it was unable to maintain an adequate or dependable water service to its consumers. As a result of this situation and in order to provide water for the community the company entered into an agreement with the Town of Walnut Creek whereby the Town was to take over the operation of the system effective as of April 1, 1920. This arrangement was approved by the Commission in its Decision No. 8090, dated September 13, 1920, rendered in Application No. 5908.

J. B. John now desires to transfer all his rights, title and interests in and to said water plant and system to Thomas R. Hanna, who according to the evidence has agreed to pay for these properties an amount equal to 80 per cent. of the value of said properties as may be determined by the Railroad Commission, and has therefore requested that such value be fixed.

In an application of the type here involved, this Commission is without jurisdiction to value properties for the purpose of fixing a price at which they are to be sold. No provision of law authorizes this Commission to make such a valuation. It follows, therefore, that this application must be dismissed. It will be dismissed without prejudice so that the parties, after having agreed upon a definite purchase price for the properties, may, if they so elect, file an amended application for authority to make the desired transfer.

This Commission cannot authorize the sale of public utility properties without having before it definite information as to the terms of the sale. The price which the purchaser proposes to pay for the properties is a vital factor to be considered by the Commission in determining whether or not the purchaser, if permitted to acquire the properties, will be financially able to successfully continue their operation.

#### O R D E R

J. B. John having made application to the Railroad Commission to transfer his interest in a certain water system serving consumers in Walnut Creek, Contra Costa County, and the vicinity thereof to Thomas R. Hanna, who joins in the application, a public hearing having been held thereon, the matter having been submitted, and the Commission being of the

opinion, for the reasons expressed above, that the application should be dismissed without prejudice,

IT IS HEREBY ORDERED that the above entitled application, being Application No. 12,616, be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 21<sup>st</sup>  
day of October, 1926.

H. B. Wendige

O. Seavey

Leon A. White

Thos. B. Lott  
Commissioners