

Decision No. 17832

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
AGUA CALIENTE WATER WORKS,)
Wm. F. White, Owner, for permission)
to sell its properties.)

ORIGINAL

Application No. 13381

In the Matter of the Application of)
BOYES HOT SPRINGS CO.,)
a corporation, for permission to)
sell its public utility water)
properties.)

Application No. 13383.

In the Matter of the Application of)
L. F. Cowan)
for permission to sell certain)
properties to Sonoma Water and)
Irrigation Company.)

Application No. 13382.

Knight, Boland & Christin,
by C.F.J. Kilmartin, for applicants.

R. N. Barrett, for Consumers League of Sonoma.

Harry T. Kyle, for Lincoln D. Green,
a creditor of W. F. White.

Frank Sprague, for W. F. Turner.

BY THE COMMISSION:

O P I N I O N

In Application No. 13381, W. F. Turner, the holder of the record title, and Wm. F. White, who has a contract to purchase the water system from W. F. Turner, known as the Agua Caliente Water Works, ask permission to sell said water works to L. F. Cowan, who

has agreed to pay for the properties \$5,000.00 in cash and \$5,000.00 per value of common stock of Sonoma Water and Irrigation Company.

In Application No. 13383, Boyes Hot Springs Co. asks permission to sell a public utility water system to L. F. Cowan for the sum of \$1,000.00 cash.

In Application No. 13382, L. F. Cowan asks permission to sell said two water systems to Sonoma Water and Irrigation Company for \$12,532.05 in cash. L. F. Cowan agrees that if the applications are granted, he will, in order to assist the Sonoma Water and Irrigation Company, make a gift to said company in the sum of Six Thousand Five Hundred Thirty-two and 5/100 (\$6,532.05) dollars, which represents the difference between what cash he is actually paying for said properties and the amount he is receiving therefor from the Sonoma Water and Irrigation Company.

R. C. Specht, a consulting engineer, and witness for applicants, testified that in his opinion the Agua Caliente Water Works properties had a present value of about \$9,947.91 (Exhibit attached to petition shows \$10,047.91) and the Boyes Springs properties \$2,484.14, making a total of \$12,432.05. There are about 105 consumers connected with the former and 46 consumers connected with the latter system. E. Noble, an assistant engineer for the Railroad Commission, testified that in his opinion the present value of the Agua Caliente system was \$7,095.00 and that of the Boyes Springs system \$2,466.00, making a total of \$9,561.00. The view that we take of these matters makes it unnecessary to reconcile the differences in the present value of the properties as reported by the two engineers, nor reconcile such values with the price which L. F. Cowan has agreed to pay for the properties.

It is urged on behalf of Sonoma Water and Irrigation Company that the purchase of the properties will increase its net revenue and that the gift which L. F. Cowan has agreed to make to the corporation will enable it to continue to pay dividends on its \$100,000.00 of outstanding eight percent preferred stock and thereby prevent it from becoming insolvent.. The \$100,000.00 of stock was issued under the Commission's decision No. 9583, dated October 31, 1921, as amended. In that decision the Commission allowed the company to expend twenty percent of the proceeds from the sale of the stock to pay stock selling commissions and expenses. Records on file with the Commission show that the \$100,000.00 of stock has been sold and that of the \$80,000.00 of net proceeds, \$55,289.07 was expended for the acquisition and construction of properties and the payment of indebtedness, leaving \$24,710.93 on hand or due from stock purchasers.

The testimony shows that Sonoma Water and Irrigation Company now has a deficit and that its net earnings are not sufficient to cover its preferred stock dividend requirements. Of the aforementioned \$24,710.93 the company now proposes to use \$12,532.05 to acquire the water plants from L. F. Cowan, a director of the company, and for which he has agreed to pay \$6,000.00 in cash and \$5,000.00 of common stock of Sonoma Water and Irrigation Company. While it might be said that under the proposal outlined herein the properties will cost the company only \$6,000.00, the fact remains that the approval of the sale of the properties to the company for \$12,532.05 means that \$6,532.05 obtained by the company from the sale of stock will be diverted to the payment of dividends. The gift of \$6,532.05 by L. F. Cowan to the company, is, it seems to us, a subter-

fuge designed primarily for the purpose of making said amount available for the payment of dividends. Such a procedure will not be approved by the Commission.

Inasmuch as L. F. Cowan testified that he would not purchase the properties unless he were permitted to sell them to the corporation along the lines indicated herein, nothing will be accomplished by authorizing the transfer of said properties to L. F. Cowan. We therefore believe that Application No. 13381 and Application No. 13383 should be dismissed without prejudice and Application No. 13382 should be denied without prejudice.

ORDER

Applications having been filed with this Commission to sell and transfer the public utility water plants referred to in the opinion which precedes this order, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that Application No. 13381 and Application No. 13383 should be dismissed without prejudice and that Application No. 13382 should be denied without prejudice.

IT IS HEREBY ORDERED that Application No. 13381 and Application No. 13383 be, and the same are hereby, dismissed without prejudice, and that application No. 13382 be, and the same is hereby, denied without prejudice.

DATED at San Francisco, California, this 3^d
day of January, 1927.

J. B. ...
C. ...
E. ...
Leon ...
4. ...
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