

Decision No. 18108

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 SAN DIEGUITO WATER COMPANY, a corpora-)
 tion, and City of San Diego, a Municipal) Application No. 13,520
 Corporation, for the approval of a)
 lease covering certain properties.)

O'Melveny, Millikin, Tuller & McNeal,
 by William W. Clary, for Applicant,
 San Dieguito Water Corporation.

S. S. Higgins, for City of San Diego, Applicant.

W. A. Sloane, for San Dieguito Irrigation
 District.

C.M. Monroe, for the Santa Fe Irrigation District.

LOUTRETT, Commissioner:

O P I N I O N

In this application San Dieguito Water Company and City of San Diego asked the Commission to ratify and approve a certain agreement of lease and option to purchase (Exhibit "A" herein) covering certain water properties in said agreement referred to, entered into between them on October 5, 1925, and to authorize them to execute any further instruments necessary to assure the validity of this agreement.

A public hearing was held at San Diego after due notice had been given so that all interested parties might appear and be heard.

The evidence submitted shows that the water properties in question are at the present time essential to supply the inhabitants of the City of San Diego with water for domestic purposes. In view of the present demand of the City for water, of

its steady growth in the past, and its contemplated growth in the future, it is evident that public interest was served by the leasing of these properties to the City as provided for in said agreement.

Prior to the making of said lease the San Dieguito Water Company had entered into contracts for the furnishing of water to Santa Fe Irrigation District and Del Mar Water, Light & Power Company, respectively; and had assumed the obligations of Santa Fe Land Improvement Company under another contract which had previously been entered into between said Santa Fe Land Improvement Company and San Dieguito Irrigation District, which contract provided for the furnishing of water by said Company to said District. All said contracts were attached to said agreement of lease. Under the terms of said lease the City of San Diego is obliged to assume and perform fully all of the obligations of San Dieguito Water Company arising under or out of any of said contracts and also all of the obligations of Santa Fe Land Improvement Company arising under or out of said contract with San Dieguito Irrigation District. It further appears that the City of San Diego by a supplemental contract (Exhibit "B" herein) with the San Dieguito Water Company and San Dieguito Irrigation District entered into March 12, 1925, guaranteed to the San Dieguito Irrigation District a perpetual water supply from Lake Hodges Water System. None of these consumers interpose any objection to this application.

Both applicants allege that said agreement of lease and option was originally entered into under the belief that San Dieguito Water Company was not a public utility and that the approval of this Commission thereto was not necessary. Acting under this belief these parties entered into said agreement and pursuant to it all of the water properties described therein were turned over to the City of San Diego on December 1, 1925, and said City has been operating said properties and supplying water to all the former consumers of

the San Dieguito Water Company since that date. Pursuant to said agreement the City of San Diego voted bonds in the amount of \$500,000.00, said bonds were sold and said amount was paid to San Dieguito Water Company for the option to purchase said property in accordance with the terms of the agreement.

Since December 1, 1925, San Dieguito Water Company has not had possession or control of any of said water properties, or any other water properties, and has not been engaged in selling water to any persons or corporations. It is clear, therefore, that San Dieguito Water Company did, on December 1, 1925, abandon all service of water of every kind and character and since that date has never resumed any such service.

Neither of the applicants admit that San Dieguito Water Company is now or ever has been a public utility. Applicants join in this application for the purpose of removing any question which might later be raised concerning the validity of said agreement of lease and option and of the transfer to the City of possession of said property. Since these properties now constitute a vital part of the water supply of the City of San Diego it is essential from the standpoint of public interest that any possible question that might be raised as to the validity of said agreement of lease and option be removed.

The Commission has assumed jurisdiction over the application herein for the reason that by virtue of the above mentioned contract with Del Mar Water, Light and Power Company, and by virtue of certain water service rendered to the City of San Diego, applicant San Dieguito Water Company appears to have operated as a public utility as the term is defined in Section 2(dd) of the Public Utilities Act. (See Railroad Commission Decision 17793, Case 2059, Smith Realty Co. v. San Dieguito W. Co.)

The following form of order is submitted.

O R D E R

Application having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully informed in the matter,

IT IS HEREBY ORDERED that that certain agreement of lease and option to purchase, entered into by and between San Dieguito Water Company and City of San Diego, applicants hereto, dated October 5, 1925, copy of which was filed with the application herein, and that the transfer of possession of the properties described therein to said City of San Diego, made December 1, 1925, pursuant to the terms of said lease, be and the same are hereby ratified and approved.

IT IS FURTHER ORDERED that San Dieguito Water Company and City of San Diego be and they are hereby authorized to make and execute such further and other instruments of confirmation of said agreement as the parties may deem necessary or appropriate to vest in said City of San Diego the leasehold estate described in said agreement of lease and option and all rights thereunder and make said agreement valid and effective in respect of all of its covenants and provisions; and copies of any such instrument or instruments shall be filed with this Commission within twenty (20) days after the same are executed.

IT IS FURTHER ORDERED that that certain agreement entered into by and between San Dieguito Water Company, City of San Diego and San Dieguito Irrigation District, dated March 12, 1926, be, and the same is hereby ratified and approved; that said parties may execute such other and further instruments as may be deemed necessary or appropriate to make said agreement valid and effective in respect of all its covenants and provisions and to vest in said San Dieguito Irrigation District, all rights under said agreement; and the copies of any such instrument or instruments shall be filed

with this commission within twenty (20) days after the same are executed.

IT IS HEREBY FOUND AS A FACT that San Dieguito Water Company did, on December 1, 1925, entirely abandon the sale and delivery of water and that since that date said Company has never carried on any sale or delivery of water or engaged in the service of water or in the business of selling water to any person, firm or corporation and said abandonment is hereby approved, authorized, ratified and confirmed.

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 28th day of March, 1927.

Ernest
H. B. Bondie
C. S. Sweeney
Leon O. Whalley
Thos. S. Rourke
Commissioners