

LBM

Decision No. 18580

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 CLEAR LAKE WATER COMPANY,
 a corporation, for authority to create
 a bonded indebtedness of \$500,000.,
 to secure the same by mortgage or deed
 of trust, to issue and sell its capi-
 tal stock of the par value of \$1,000,000
 and to issue and sell its first mortgage
 gold bonds of the par value of \$500,000.)
 to acquire certain properties.)

ORIGINAL

Application No. 13763

Herman Weinberger, for applicant;
 White, Miller, Needham and Harber, by Irving Needham,
 for the trustee, California Trust and Savings Bank.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to make an order authorizing the Clear Lake Water Company to acquire the properties of the Yolo Water and Power Company, set forth in the offer by Robert Gill, filed as Exhibit "C", and the properties of the Yolo County Consolidated Water Company; and authorizing Clear Lake Water Company to execute a mortgage or deed of trust to secure an authorized bond issue of \$500,000. and to issue (application amended at hearing) \$350,000. of said bonds and \$1,000,000. of common stock to acquire the properties referred to in this application. Both Robert Gill and Yolo County Consolidated Water Company have joined in this application.

This application involves the transfer of the properties formerly owned by Yolo Water and Power Company and the properties now owned by Yolo County Consolidated Water Company to the Clear Lake Water Company. The Yolo Water and Power Company was organized on or about December 11, 1911. Its report for the year ending December 31, 1926 shows \$10,000,000. of stock and \$9,900,000. of bonds outstanding. While \$9,900,000. of bonds are reported as outstanding, only \$2,392,000. of the bonds have been actually issued. Pursuant to the authority granted by Decision No. 1639, dated July 1, 1914 in Application No. 1133, Yolo County Consolidated Water Company leased its properties to the Yolo Water and Power Company. The testimony shows that the Yolo Water and Power Company owns all of the outstanding stock of Yolo/^{County} Consolidated Water Company, except shares necessary to qualify directors, and that the properties of the two companies have been operated as a unit.

Yolo Water and Power Company defaulted in the payment of bond interest, with the result that the bondholders instituted foreclosure proceedings. On March 25, 1927 M. S. Sayre, Judge of the Superior Court of the State of California, in and for the County of Lake, entered a decree of foreclosure. The foreclosure proceeding was instituted by the California Trust and Savings Bank, trustee under the mortgage executed by the Yolo Water and Power Company. In its decree the court finds that the Yolo Water and Power Company was indebted to the plaintiff as trustee in the sum of \$2,392,000. representing the principal of the bonds of the Yolo Water and Power Company, and \$740,025.00 of interest thereon, together with the sum of \$11,000. for attorney's fees and trustee's compensation of California Trust and Savings Bank, and the sum of \$438.60 of costs and disbursements by said trustee lawfully incurred in the foreclosure action and in the execution of the trust by said California Trust and Savings Bank. The court in its decree further finds that there is due from Yolo Water and Power Company to plaintiff, the sum of \$17,500.

as trustee's compensation for the intervenor, the Oakland Bank, for its attorneys, and for its expenditures up to and including the date of the decree. The court further finds that the foregoing sums, aggregating \$3,160,963.60, is a valid and subsisting lien upon all the properties, real and personal, of Yolo Water and Power Company. The court ordered the properties of the company to be sold, and appointed Roy W. Blair as commissioner to make the sale. It further ordered that the sale of the properties be made without any right of redemption. The report of Roy W. Blair, filed with the court, shows that the properties were sold on May 14, 1927 to Robert Gill. It is of record that he represented the holders of bonds of Yolo Water and Power Company, who deposited the same for the purpose of acquiring the properties. It appears that the amount of bonds deposited and applied to the purchase price of the properties was \$2,221,000. leaving undeposited \$171,000. The sale of the properties was confirmed by Judge Sayre on May 19, 1927. The properties sold are described in detail in Exhibit No. 4.

The territory served by the distribution system of the water system referred to in this proceeding, is located in the immediate vicinity of Woodland. The water system obtains its water from Clear Lake, which is about 60 miles northwest of the Capay diverting dam referred to below. The transmission and distribution system consists of about 230 miles of canals, of which 190 miles were owned by the two companies. The system has two diverting dams; one at Capay, located on Cache Creek, about 20 miles west of Woodland; and one located near Woodland, known as the Moore's Dam. The Capay dam, according to the record, is of the concrete gravity type, some 500 feet long, and was installed in 1912 and 1913. The water which is released from Clear Lake, is diverted by the Capay Dam into two of the main canals of the system. The diversion to the south of Cache Creek is carried by the Winters Canal and serves the area located south of the creek and west of Woodland, the towns embraced being Esparto, Capay, Madison, Winters and Davis. The Adam system irrigates all lands

north of Cache Creek as far east as the town of Yolo and also supplies the Moore system and serves the territory in and around Woodland. The water from the Adams system is released from Cache Creek at a point about seven miles west of Woodland and is diverted into the Moore system by the Moore diverting dam, a wooden structure installed in 1902. Of the 75,000 acres of land which may be irrigated from the system, there are at this time from 25,000 to 30,000 acres under irrigation.

In Exhibit No. 2, prepared by R. Daugherty, the valuation of the properties as of April 30, 1927 was submitted as follows:-

Historical cost	\$1,482,714.
Historical cost depreciated	1,158,849.
Reproduction value	2,222,491.
Reproduction value depreciated	1,734,022.

The valuations submitted by R. Daugherty are based upon a valuation of the properties prepared by Walter H. Davis, a civil and hydraulic engineer, who was formerly chief engineer for the Yolo Water and Power Company. The detailed valuation prepared by Walter H. Davis was introduced in this proceeding as Exhibit No. 1, and is as of October 1, 1925. In preparing Exhibit No. 2, R. Daugherty deducted from the valuation prepared by Walter H. Davis the property retired subsequent to October 1, 1925 and added to such appraisal the actual cost of additions and betterments.

Exhibit No. 2 also contains a statement of the gross revenue, the operating expenses and gross corporate income for the five years ending December 31, 1926 and an estimate for the year 1927.

The gross revenues for the period mentioned are as follows:-

YEAR	Total Gross	Operating expenses (inclusive of de- preciation)	Gross corporate income
1922	\$114,153.37	\$44,021.01	\$70,132.36
1923	76,850.64	44,294.08	32,556.56
1924	15,857.21	30,745.61	14,888.40(1)
1925	88,784.97	38,353.64	50,431.33
1926	103,122.73	42,143.69	60,979.04
(Estimated 1927)	125,000.00	42,100.00	72,900.00
	(1) Loss		

The operating expenses, as reported in Exhibit No. 2 have been adjusted and reflect what W. Daugherty regards as a reasonable operating expense. The gross corporate income represents the amount available to pay interest, amortize bond discount and expense, pay dividends and for surplus.

It will be noted that the company's earnings for the period mentioned have fluctuated materially. This fluctuation is primarily due to an insufficient water supply and not a lack of demand.

Applicant Clear Lake Water Company has submitted a copy of its proposed mortgage or deed of trust. In it the company covenants that it will not declare or pay any dividend upon its capital stock unless at the time of the declaration and/or payment of any such dividend there shall be deposited with the trustee a sum of money (in addition to any moneys received by the trustee pursuant to any other provisions of the indenture) sufficient to provide for the payment of the interest to accrue upon the bonds issued and outstanding for a period of three years after the declaration and/or payment of any such dividend. The company further covenants that it will not declare and/or pay any dividends upon its capital stock except out of earnings derived from the operation of its properties remaining after the deduction of operating expenses (including maintenance and repairs, taxes, rentals and insurance) depreciation and amortization of debt discount and expense, all interest charges, and the deposit of cash hereinbefore mentioned. The mortgage further provides that any moneys deposited with the trustee pursuant to the provisions just stated may, so long as the company is not in default, be used for the payment of interest thereafter becoming due upon the bonds issued and outstanding, but only upon the order of the company directing the trustee to use all or a part of said moneys for the payment of such interest. Any interest allowed by the trustee on money deposited by the company pursuant to the aforementioned provisions shall, so

long as the company is not in default, be paid to the treasurer of the company or his order. We believe that all earnings of the company, over and above interest and other fixed charges should, until such time as the said interest fund is accumulated, be paid into said fund unless the Commission permits the company to use said earnings for additions and betterments.

The company's proposed mortgage or deed of trust secures the payment of an authorized bond issue of \$500,000. bearing interest at the rate of six percent per annum and maturing on July 15, 1952. In this proceeding, as stated, the company asks permission to issue \$350,000. of its bonds to pay in part for the properties which it intends to acquire. The proposed mortgage or deed of trust provides that the remainder of the bonds may from time to time be certified and issued in amounts not exceeding sixty percent of the actual and reasonable expenditures made by the company on or after August 1, 1927 for extensions and additions to its plants, properties, system and equipment as the same existed on August 1, 1927, provided that none of such bonds shall be certified unless and until the net earnings of the company for a period of twelve consecutive calendar months ending not more than sixty days prior to the date of filing with the trustee an application for the certification of bonds shall have been equal to at least two times the total annual interest charge of the company.

The proposed mortgage obligates the company to deposit with the trustee on July 15, 1929 and on the fifteenth day of ^{July of} each year thereafter for the purpose of a sinking fund, an amount equal to one and one half percent of the total amount of bonds it has issued and outstanding, but in no event less than \$5,000. This payment may be made either in cash or in bonds of the company, and if in bonds, they shall be accepted by the trustee at their face value. The company reserves the right to redeem on July 15, 1929 or on any interest payment date prior to maturity, its bonds at 101 and accrued interest.

We have considered the evidence submitted in this proceeding and are of the opinion that the Clear Lake Water Company should be permitted to issue not exceeding \$750,000. of its common capital stock, and not exceeding \$350,000. of its six percent 25-year bonds to acquire the properties which Robert Gill has agreed to transfer to it.

ORDER

Robert Gill and Yolo County Consolidated Water Company, having asked permission to sell, transfer and convey their properties, referred to in this proceeding, to Clear Lake Water Company, and said company having asked permission to acquire said properties and issue \$1,000,000. of common stock and \$300,000. of bonds, to execute a mortgage and/or deed of trust, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that said company should be permitted to issue not exceeding \$750,000. of common stock and \$350,000. of bonds and that the money, property or labor to be procured or paid for by such issue is reasonably required by applicant, Clear Lake Water Company, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted as herein provided, therefore,

IT IS HEREBY ORDERED AS FOLLOWS:--

1. Clear Lake Water Company may execute a mortgage or deed of trust substantially in the same form as the mortgage or deed of trust filed in this proceeding on July 1, 1927, provided that the authority herein granted to execute a mortgage or deed of trust is for the purpose of this proceeding only and is granted insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage or deed of trust as to such other legal requirements to which said mortgage or

deed of trust may be subject, and provided further that there be incorporated in said mortgage or deed of trust a description of the properties on which it will be a lien.

2. Clear Lake Water Company may issue not exceeding \$750,000. of common capital stock and not exceeding \$350,000. of six percent first mortgage bonds due July 15, 1952, and deliver said stock and bonds to Robert Gill in full payment for the properties, and for the purposes referred to in his offer filed as Exhibit C. In lieu of delivering said bonds to Robert Gill, Clear Lake Water Company may sell said bonds on or before October 1, 1927 at not less than 93-1/2 percent of their face value and accrued interest, and deliver said proceeds, together with the \$750,000. of common stock to Robert Gill for the aforesaid purposes.
3. The Clear Lake Water Company shall file within thirty(30) days after its execution, two certified copies of the mortgage or deed of trust which it is hereby authorized to execute.
4. This application insofar as it involves the issue of \$250,000 of stock be, and the same is hereby, dismissed without prejudice.
5. Clear Lake Water Company shall deposit with the trustee under its mortgage or deed of trust for the purposes stated in Section seven, Article II(interest fund) or for a sinking fund, Article III of said mortgage or deed of trust, all earnings available for dividends, said deposits to be made until such time as the fund provided in Section seven, Article II is established, unless the Commission permits said company to use all or part of said earnings for additions and betterments. If the company finds it necessary to withdraw any of the

moneys deposited with the trustee pursuant to Section seven of Article II, dividend payments shall cease until the money so withdrawn is returned.

6. The authority herein granted will become effective when Clear Lake Water Company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is \$350. It shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

DATED at San Francisco, California, this 8th day of July, 1927.

Ernesto

Chase

Thos. D. Powell

Commissioners.

Fee \$350⁰⁰/₁₀₀

RAILROAD COMMISSION
STATE OF CALIFORNIA

H. C. Matthews

Fee # 2319