

Decision No. 19824

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 WHITTIER WATER COMPANY, )  
 a corporation, EDWIN G. HART, INC., )  
 a corporation, LA HABRA HEIGHTS )  
 COMPANY, a corporation, LA HABRA )  
 HEIGHTS MUTUAL WATER COMPANY, a )  
 corporation, LA MIRADA MUTUAL )  
 WATER COMPANY, a corporation, )  
 ORCHARD DALE SERVICE COMPANY, a )  
 corporation, HILLSIDE DISTRIBUTION )  
 CO., a corporation, for orders; (a) )  
 to sell and convey property; (b) )  
 to discharge vendor from public )  
 utility obligations; (c) to sub- )  
 stitute purchaser in public utility )  
 service; (d) that public conveni- )  
 ence requires new construction and )  
 service. )

Application No. 14456

In the Matter of the Application of )  
 ORCHARD DALE SERVICE COMPANY, )  
 a corporation, for (a) order auth- )  
 orizing the issue of capital stock; )  
 (b) order authorizing execution of )  
 mortgage; and (c) certificate of )  
 public convenience and necessity. )

Application No. 14680

Finlayson, Bennett and Morrow,  
 by James S. Bennett, for Whittier Water Company

Farrand and Slosson,  
 by Leonard B. Slosson, for purchasers.

R. T. Waters, for Orchard Dale Water Company and other  
 users.

BY THE COMMISSION:

O P I N I O N

In Application No. 14456 the Railroad Commission is  
 asked to make an order authorizing Whittier Water Company to sell  
 part of its water properties, known as the Judson Water System, to

the La Mirada Mutual Water Company, and that company, in turn, to sell a part of such system to Orchard Dale Service Company. The Whittier Water Company also asks to be relieved of certain public utility obligations.

In Application No. 14680 Orchard Dale Service Company asks the Railroad Commission for permission to sell and deliver water to the public within the territory now being served by the properties to be transferred at the same rates now charged by Whittier Water Company, and for permission to execute a trust deed and note for \$50,000.00 and to issue \$60,300.00 of stock.

Whittier Water Company, among other properties, owns and operates what is known as the Judson Water System, which includes, according to Exhibit 1, about forty (40) acres of water bearing land contiguous to the San Gabriel River; certain wells and pumping plants located on these lands; transmission mains of concrete pipe and conduit about 21,000 feet long, to the Orchard Dale pumping plant. From this pumping plant a transmission main, operated under lease by Whittier Water Company, extends through the Orchard Dale District to the Colima Road, a distance of about 6,000 feet. An 18 inch pipe line, owned by Whittier Water Company, extends along the Colima Road about 8,000 feet to Whittier Boulevard.

It appears that Whittier Water Company is engaged in selling and distributing water, chiefly for irrigation purposes, as a public utility water company and also in disposing of water not dedicated to public use, under contract.

Whittier Water Company reports that the two classes of water and service are mingled and it alleges that the differences between the two have caused dissatisfaction among its patrons.

This application has been filed, in part, pursuant to a plan to segregate the different classes of business and to relieve it of certain litigation in connection with its water rights in its Judson Water System.

In this connection it seems that in 1917, the Superior Court in and for the County of Los Angeles confirmed to Whittier Water Company the right to take from the Judson lands, one thousand (1,000) miner's inches of water by means of pumping from one or more wells. Of the one thousand inches the company heretofore has conveyed to La Habra Heights Mutual Water Company one hundred and seventy-five (175) inches. Of the remaining eight hundred and twenty-five (825) inches La Habra Heights Company has claimed to own, by virtue of a contract with Whittier Water Company, an additional one hundred and twenty-five (125) inches. Litigation has been pending over these one hundred and twenty-five (125) inches.

In order to effect the segregation of the two classes of business and a settlement of the litigation, Whittier Water Company, under date of June 3, 1927, made and entered into an agreement with Edwin G. Hart, Incorporated, whereby it agreed to sell the Judson Water System to Edwin G. Hart, or his nominees. Under the arrangements made, Whittier Water Company proposes to convey to the La Habra Heights Company the one hundred and twenty-five (125) miner's inches of water under controversy, in consideration of the settlement of the pending litigation; to convey to La Habra Heights Mutual Water Company an easement to produce on and divert from Lot 1 of Tract 1910 of the Rancho Paso de Bartolo, one hundred and seventy-five (175) miner's inches of water and to transport such water to the Orchard Dale pumping plant, in consideration of the release of an obligation on the part of Whittier Water Company to deliver or construct pipe lines for the delivery of said one hundred and seventy-five (175) inches, and to convey to La Mirada Mutual Water Company,

for \$132,000.00, six hundred (600) miner's inches of water, Lot 1 of Tract 1910, referred to above, subject to the aforesaid easement, and the physical property comprising the water system. It reserves to itself only one hundred (100) of the one thousand (1000) miner's inches originally confirmed to it. It alleges that the one hundred (100) miner's inches of water together with such other water which it owns will be sufficient to meet the demands of its remaining consumers.

La Mirada Mutual Water Company upon acquiring the water and properties from Whittier Water Company, plans, in turn, to transfer to Orchard Dale Service Company <sup>the right to</sup> two hundred (200) of the six hundred (600) miner's inches of water it will receive from Whittier Water Company, together with an easement and right of way for the transportation of such water, and part of the distribution lines now used by Whittier Water Company in its Judson System. As consideration, Orchard Dale Service Company proposes to execute and deliver to La Mirada Mutual Water Company a trust deed and promissory note for \$50,000.00, payable on or before December 31, 1942, with interest at the rate of 6.5 percent per annum, and to issue \$60,000.00 of its common capital stock. It also proposes at this time to issue \$300.00 of stock to its incorporators.

When the transactions referred to herein have been carried into effect, nine hundred (900) miner's inches of the one thousand (1,000) originally confirmed to Whittier Water Company will be held as follows:-

By La Habra Heights Mutual Water Company . . . . .	175
By La Habra Heights Company. . . . .	125
By La Mirada Mutual Water Company. . . . .	400
By Orchard Dale Service Company. . . . .	200

The physical properties of Whittier Water Company comprising the present Judson Water System will be held by La Mirada Mutual Water Company and Orchard Dale Service Company, the former holding the forty (40) acres of land, the pumping plants and the transmission system; and the latter holding the right to two hundred (200) miner's inches of water, the easement referred to and the distribution system in the Orchard Dale and Luitweiler districts.

The purchasers have caused to be organized Hillside Distribution Co., to develop and distribute the nine hundred (900) miner's inches of water acquired from Whittier Water Company. The Hillside Distribution Co. proposes to issue nine hundred (900) shares of the total par value of \$9,000.00, to the holders of nine hundred (900) inches of water referred to above, in proportion to their ownership of such water. It will be its function to manage and operate the wells, pumping plants and system of La Mirada Mutual Water Company and deliver water, in a wholesale manner, at cost, to its stockholders. Orchard Dale Service Company thus will receive its water supply, by virtue of its ownership of two hundred (200) miner's inches, through the La Mirada Mutual Water Company's system as operated by the Hillside Distribution Co., and will make retail deliveries to irrigators and domestic consumers within its proposed service area - the Orchard Dale and Luitweiler districts - at the public utility rate now in effect under the Whittier Water Company.

La Mirada Mutual Water Company and Hillside Distribution Co. have filed, as Exhibits <sup>"B"</sup>/"C" and "D" attached to Application No. 14680, copies of declarations whereby they agree that the Commission may examine their books, records and accounts for the purpose of determining the actual cost of operating and maintaining the wells,

pumping plants and distribution systems through which Orchard Dale Service Company will receive its water supply. The form of the declarations is satisfactory. The parties in interest should file verified copies of the same properly filled out and duly and legally executed.

#### ORDER

Applications having been filed with the Commission, as indicated above, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the applications should be granted as herein provided, and that the money, property or labor to be procured or paid for by Orchard Dale Service Company through the issue of the stock and notes herein authorized is reasonably required for the purpose specified herein, which purpose is not in whole or in part reasonably chargeable to operating expense or to income,

IT IS HEREBY ORDERED as follows:-

1. In settlement of the action now pending in the Superior Court, in and for the County of Los Angeles, in which the La Habra Heights Company is Plaintiff and Whittier Water Company is Defendant, Whittier Water Company may convey to La Habra Heights Company one hundred and twenty-five (125) miner's inches of water out of the one thousand (1,000) miner's inches of water confirmed to the Whittier Water Company by judgment of the Superior Court, in and for the County

of Los Angeles, entered November 20, 1917, in Book 421 at page 213 of Judgments by deed substantially in the form of the contract, Exhibit "A" attached to the petition in Application No. 14456, and convey an easement to La Habra Heights Mutual Water Company by deed in substantially the form of the contract attached to the petition in Application No. 14456 and marked Exhibit "D".

2. Whittier Water Company may convey to La Mirada Mutual Water Company six hundred (600) miner's inches of water out of the aforesaid one thousand (1,000) inch water right together with Lot 1 of Tract 1910 of the Rancho Paso de Bartolo in the County of Los Angeles and the pipe lines and equipment, by deed in substantially the form of the contract attached to the petition in Application No. 14456 and marked Exhibit "B".
3. Upon the assumption of the public utility service by the Orchard Dale Service Company, referred to in this order, Whittier Water Company is relieved and discharged of the obligations to serve water as a public utility within the area or to the users designated upon the contract and the map attached thereto filed as Exhibit "C" in Application No. 14456.
4. La Mirada Mutual Water Company shall sell and convey to the Orchard Dale Service Company, free and clear of all liens and encumbrances, the following properties:-

"200 miner's inches of water out of the 1000  
miner's inches of water confirmed to WHITTIER  
WATER COMPANY by the judgment of the Superior  
Court of the State of California in and for  
the County of Los Angeles, entered November

20, 1917, in Book 421, page 213, of Judgments of said Court, in an action therein then pending, entitled "Cate Ditch Company, et al, Plaintiffs, vs. Whittier Water Company, et al., Defendants", together with an easement and right of way for the production and transportation of said 200 inches in and through the wells and pumping plant or plants used for the production of said 1000 inches, now or hereafter situated on Lot 1 of Tract 1910 of the Rancho Paso de Bartolo, as per map recorded in Book 21 of Maps, page 159, in the office of the County Recorder of said County of Los Angeles. (not including, however, any well or pumping plant of Whittier Water Company situate on that portion of said Lot 1 reserved by said company in deed from it to beneficiary herein conveying said Lot 1), and in and through that certain pipe line known as the "La Mirada pipe line" and any replacement thereof or substitution. therefor from said wells and pumping plant or plants to the point or points in said La Mirada pipe line where said Whittier Water Company has heretofore delivered water into certain lateral pipe lines known as its "Orchard Dale Service Lines";

Also certain pipe lines known as "Colima 18" ", "Orchard Dale", "Luitweiler", "Mendenhall 8" "Cein", and "Clark Domestic lines", and all other pipe lines or interests or easements therein, meters and equipment in the "Orchard Dale" and "Luitweiler" tracts heretofore used by said Whittier Water Company in distributing water in said tracts."

5. Orchard Dale Service Company is authorized to dedicate to the public use the 200 miner's inches of water and the water properties it will receive from La Mirada Mutual Water Company and is hereby granted a certificate of public convenience and necessity to sell and deliver water to the public within the Orchard Dale and Luitweiler districts, more particularly described in the petition in Application No. 14680; such water to be sold and delivered at the rates now charged by Whittier Water Company.
6. Orchard Dale Service Company is authorized to execute and deliver to La Mirada Mutual Water Company a deed of trust substantially in the same form as



that attached to Application No. 14680 and its promissory note secured thereby in the principal amount of \$50,000.00 payable on or before December 31, 1942, with interest at the rate of 6.5 percent per annum, in part payment for the properties to be received from La Mirada Mutual Water Company.

7. Orchard Dale Service Company is authorized to issue to La Mirada Mutual Water Company six hundred (600) shares of its capital stock of the total par value of \$60,000.00 in further consideration for the properties to be received from La Mirada Mutual Water Company.

8. Orchard Dale Service Company is authorized to issue and sell, for cash at not less than par, \$300.00 of its capital stock and to use the proceeds for organization expenses.

9. The authority herein granted is subject to the following conditions:-

(a) The \$50,000.00 note and the \$60,000.00 of stock herein authorized to be issued, shall be the total consideration paid by Orchard Dale Service Company for the properties to be received by it from La Mirada Mutual Water Company under the authority herein granted.

(b) The securities herein authorized to be issued by Orchard Dale Service Company shall not hereafter be urged before this Commission or other public body or court, as a

measure of value of the properties to be acquired by Orchard Dale Service Company for the purpose of fixing rates, or any purpose, other than this transfer.

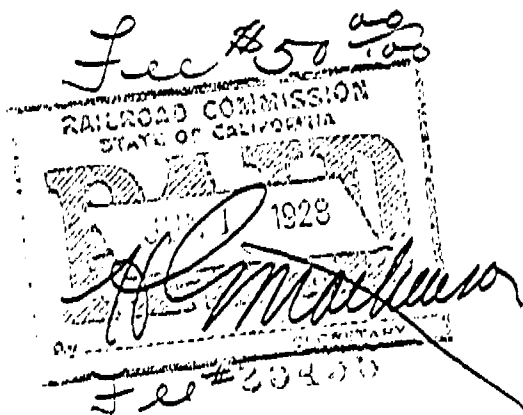
- (c) Within ten (10) days after acquiring control and possession of the properties as herein authorized, Orchard Dale Service Company shall file a statement showing the exact date upon which it acquire such control and possession and upon which Whittier Water Company relinquished such control and possession.
- (d) Within sixty (60) days after the transfers of properties herein authorized have been made, applicants shall file with the Commission certified copies of all the deeds of conveyance executed to effect such transfers.
- (e) La Mirada Mutual Water Company and Hillside Distribution Co. shall file with the Commission declarations or stipulations, duly and legally authorized by their boards of directors, similar in form to Exhibits "B", "C" and "D" attached to the petition in Application No. 14680.
- (f) The authority herein granted to execute a deed of trust is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said deed of trust as to such other legal requirements to which

said deed of trust may be subject.

- (g) Orchard Dale Service Company shall keep such record of the issue and delivery of the stock and the note herein authorized and of the disposition of the proceeds, as will enable it to file, on or before thirty (30) days thereafter, 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.
- (h) The authority herein granted to issue a note will become effective when Orchard Dale Service Company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Fifty (\$50.00) Dollars. In other respects the authority herein granted will become effective twenty (20) days from the date hereof.

DATED at San Francisco, California, this 29<sup>th</sup>

day of May, 1928.



Leon Whittell  
Ch. Service  
Ernest East  
Thos. S. Powell

Commissioners.