

LBM

Decision No. 20575.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
LOS VERJELS LAND AND WATER COMPANY,)
a corporation, to mortgage its pro-)
perties to secure a loan.)

Application No. 14927

Evan J. Hughes, for applicant.
V. T. McGillicuddy, representing minority
stockholders, protestant.

BY THE COMMISSION:

ORIGINAL

OPINION

In this proceeding the Los Verjels Land and Water Company asks permission to execute a deed of trust for the purpose of securing the payment of an indebtedness of \$45,964.61 to D. McDonald, and to secure the payment of further necessary advances not to exceed \$5,000.00. The company also asks permission to represent such indebtedness by the issue of a one year eight percent note, the interest on such note to be paid bi-monthly.

Public hearings were held in this matter before Examiner Satterwhite on August 13th and on November 23rd.

The Los Verjels Land and Water Company is a corporation organized during 1911. It has constructed a dam on Dry Creek, near Bangor, Yuba County, and a system of canals and ditches for supplying water for irrigation purposes in Yuba County. It reports that it owns about 4,000 acres of land in Yuba and Butte Counties. From January 1, 1928 to August 31, 1928 the company's revenues from the rent of land were \$1,312.78 and from miscellaneous sources \$288.38.

It is alleged in the petition that D. McDonald has advanced to the Los Verjels Land and Water Company \$45,964.61 for the purpose of enabling the company to pay the following indebtedness;-

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|---|--------------------|
| To Hogan D. Cosby for redeeming property for sale under foreclosure | \$17,819.88 |
| To Hogan D. Cosby payment of deficiency judgment under foreclosure to prevent sale on execution | 5,287.67 |
| Bank of Italy to settle foreclosure suit | 10,384.46 |
| S. E. Allen, payment on secured note | 9,700.00 |
| Mary K. Rogers, payment on secured note | 2,345.03 |
| To pay overdraft | 429.57 |
| | <hr/> |
| Total..... | <u>\$45,964.61</u> |

A contract dated March 29, 1928 (Exhibit No.5) between applicant and D. McDonald, shows that the latter agreed to complete applicant's dam according to the plans and specifications of its engineer, pay off applicant's indebtedness in the amount of \$45,964.61, and convey to applicant the Elkins ranch, all for the sum of \$160,000. payable in bi-monthly installments of \$12,000.00, the first payment being due June 1, 1928, provided, however, that the bi-monthly payments shall not in any event exceed the amount collected by applicant from assessments on its capital stock. The payment of the \$160,000 was secured by deed of trust, the execution of which was never authorized by the Commission. On June 11, 1928 applicant and D. McDonald entered into another contract (Exhibit No.6) whereby they modified the contract of March 29, 1928. In the contract of June 11, 1928 applicant agreed to give to D. McDonald an eight percent note, interest to be paid bi-monthly, for the sum of \$45,964.61, secured by a deed of trust upon all the property of the company and to pay him the actual cost of completing its dam and appurtenances plus ten percent. In this contract D. McDonald acknowledges the receipt of \$17,341.91 which shall be applied to the work to be done under the contract. Up to November 23rd D. McDonald had performed no work under the contract.

The testimony shows that an assessment of ten cents per share (par value of stock one dollar) was levied on the stockholders during January, 1928, and another ten cent assessment during March, 1928. Under the former assessment the company received \$18,571.90; under the latter assessment, \$18,253.90. The amounts received from the assessments, together with money which D. McDonald advanced, and other income of the company, was used for the following purposes:-

| | |
|--|--------------------|
| Payment of mortgages | \$37,519.31 |
| Accrued interest | 12,588.73 |
| Salary of J. C. Boyle | 7,200.00 |
| Attorneys fees | 3,500.00 |
| Payment to D. McDonald on account of Elkins Ranch transaction | 2,000.00 |
| Payment on D. McDonald contract | 17,341.91 |
| Labor and maintenance | 1,266.27 |
| Accounts payable | 1,538.89 |
| Miscellaneous expenses, materials, etc. | 1,484.75 |
| Dams and ditches | 247.35 |
| Taxes | 889.56 |
| | <hr/> |
| Total..... | <u>\$85,576.77</u> |

The deed of trust which the company proposes to execute is a lien on all of its properties. It contains no release clause. The failure to incorporate such a clause would prevent the company to sell any of its lands. The principal of the note is due one year after date, while the interest is payable every two months. The proposed deed of trust provides that if the company defaults in the payment of any amounts due, D. McDonald, his successor or assign, may declare all sums secured by the deed of trust immediately due and payable and cause the property to be sold to satisfy the obligation and to accomplish the objects of the trust. In view of the record in this proceeding and the financial condition of this company we do not believe that it is in the public interest to authorize applicant to issue the note or to execute the deed of trust referred to in this application. Accordingly this application will be denied without prejudice.

ORDER

Los Verjels Land and Water Company having asked permission to issue a note in the sum of \$50,964.61, and to execute a deed of trust to secure the payment of such note, public hearings having been held, and the Commission having considered the evidence submitted, and being of the opinion that this application should be denied without prejudice, therefore,

IT IS HEREBY ORDERED that the above numbered application be, and the same is hereby, denied without prejudice.

DATED at San Francisco, California, this 13th day of December, 1928.

Leon Whittell

Chas. J. ...

Ernest ...

M. P. Cass
Commissioners.