

LBM

Decision No. 21867.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
LOS VERJELS LAND AND WATER COMPANY,)
a corporation, for an order authoriz-)
ing the issuance of a promissory note) Application No. 16098.
and the execution of a deed of trust)
securing the same.)

Devlin and Devlin and Diepenbrock,
for applicant.

Orville C. Pratt, Jr. and Arthur H. Barendt,
for V. T. McGillycuddy and
other minority stockholders,
protestants.

BY THE COMMISSION:

O P I N I O N

Los Verjels Land and Water Company asks permission to issue a \$68,000.00 one year 8 percent note (interest payable semi-annually) and to execute a deed of trust to secure the payment of such note.

The granting of the application is opposed by V. T. McGillycuddy and other stockholders of the company owning about one third of its outstanding stock.

It is urged that the granting of the application will enable applicant to refund its indebtedness, said to be represented by notes and accounts payable, redeem its properties from an execution sale and pay delinquent and current taxes. It is further alleged that D. McDonald, to whom the company desires to issue the note, has received from the company for construction purposes,

\$17,341.91, under an agreement dated March 31, 1928, as amended by an agreement of June 11, 1928, and that he is now willing to proceed with the construction of roads, an equalizing reservoir and the enlargement of some of the company's ditches. The protestants urge that the expenditure of the \$17,341.91 for the purposes stated, is a wasting of the corporation's funds and that the contract of March 31, 1928, under the terms of which the \$17,341.91 was paid, if paid at all, is colorable. They advance other reasons for the denial of the application.

The affairs of applicant are badly involved. Some of the land owners have sued applicant for damages because of its failure to deliver water. Some of the company's properties, including its water system, have been sold to V. F. McGillycuddy under an execution sale which, it is reported, becomes final if the properties are not redeemed prior to December 8, 1929. In addition, The Capital National Bank of Sacramento has given notice that the company has defaulted under its deed of trust dated June 11, 1928 (the execution of which was not authorized by the Commission) and that said bank, upon giving the proper notice, is in a position to cause applicant's properties, other than its public utility properties, to be sold. Furthermore, the company is delinquent in its 1928-1929 taxes and has not the means to pay its 1929-1930 taxes.

It appears that applicant has reached a settlement with the land owners by granting allowances to some of them on unpaid obligations owed to it and has agreed to transfer to some of them 78 acres of land, provided that this application is granted and the land can be transferred free and clear of all liens or encumbrances. Its other liabilities it proposes to pay and discharge through the issue of the \$68,000.00 note.

The situation in which the company finds itself is, in our opinion, largely the result of a conflict between the holders of the majority and the holders of the minority of applicant's outstanding stock. It is quite apparent from the record that this conflict still exists. It appears to us that the holders of the majority of the stock are in the main responsible for much of the litigation now pending against the company. It was they who caused the execution of the deed of trust under which it is now sought to sell the company's properties and who paid \$17,341.91 of the company's funds to a contractor prior to his doing any work, and who for more than a year and a half have not demanded performance of any work by him. The fact that the money may be drawing interest at 8 percent, none of which has been collected, is no excuse for not requiring work to be done.

Though applicant's service has not been satisfactory, it is now before us asking that it be permitted to issue a \$68,000.00 note, and makes the plea that the issue of the note and the expenditure of the \$17,341.91, with accrued interest, will enable applicant to sell some of its land and thus pay its indebtedness. It is admitted that if the company cannot sell any of its land it will not be able to pay either the interest on the note or the principal, in which event the sale of the company's properties may follow. While the note, if authorized, would be issued to D. McDonald, it is recited that he will endorse the same and negotiate and pledge it with The Capital National Bank of Sacramento, as a holder in due course, for the purpose of securing the payment of the obligation owed by D. McDonald to the bank, and that, in addition, an appropriate assign-

ment of the deed of trust shall be made in favor of the bank and delivered to it, together with the promissory note secured thereby.

It further appears from the record in this proceeding, that all construction work costing \$1,000.00 or more, which applicant may desire or require during the term of five years, beginning December 1, 1929, in connection with all its properties, shall be awarded to D. McDonald and performed by him for a compensation of cost plus 10 percent, cost to be determined at the current prices of labor, and equipment to be figured at the current rental rates fixed by the Associated General Contractors of America. Payment is to be made in cash or otherwise, upon terms fully satisfactory to D. McDonald.

We are not satisfied that it is in the public interest that the Commission authorize applicant to issue the \$68,000.00 note or to execute a deed of trust, because the record shows that applicant's income may be inadequate to enable it to pay the interest on the note, let alone pay the principal or any part thereof, and that the failure to pay either the interest or principal constitutes a default which authorizes the trustee, upon giving the necessary notice, to sell the properties. Moreover, we are not convinced that even if the note were authorized, that the properties and the affairs of the company would be managed different from what they have been in the past.

ORDER

Los Verjels Land and Water Company, having asked permission to issue its promissory note for the principal sum of \$68,000.00, and to execute a deed of trust, a public hearing having

been had before Examiner Fankhauser, and the Commission having considered the record in this proceeding, and being of the opinion that this application should be denied without prejudice, therefore,

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

IT IS HEREBY FURTHER ORDERED that this order shall become effective ten days after the date hereof.

DATED at San Francisco, California, this 6th day of December, 1929.

Thos B. Lott
C. L. Seaver
Edmund G. ...
Leon Whitely
W. J. ...
Commissioners.