

LEM

Decision No. 21939.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LOS ANGELES AND SUBURBAN WATER COMPANY,
ORANGE COUNTY WATER COMPANY, GARDENA
VALLEY WATER COMPANY, PEOPLES WATER
COMPANY OF PALMS, HIGHLAND DOMESTIC
WATER COMPANY, OJAI DOMESTIC WATER
COMPANY, PLACENTIA WATER COMPANY,
HARBOR CITY WATER COMPANY, HUNTINGTON
BEACH WATER COMPANY, OAK PARK WATER
COMPANY, OCEAN PARK HEIGHTS WATER
COMPANY, VENICE CONSUMERS WATER COMPANY,
SOUTHERN CALIFORNIA UTILITIES, INC.,
IMPERIAL UTILITIES CORPORATION, LOS
ANGELES WATER SERVICE COMPANY, CLAREMONT
DOMESTIC WATER COMPANY, HOLLYDALE WATER
COMPANY, LA HABRA DOMESTIC WATER COMPANY,
for approval of an agreement of consoli-
dation into a new corporation to be
formed under the name of "American States
Water Service Company of California",
and for an order authorizing said new
corporation to issue \$3,001,400.00 par
value of its capital stock in exchange
for the amount in par value of the out-
standing capital stock of said consti-
tuent companies.

ORIGINAL

Application No. 16054

Paul Overton and W. C. Kennedy,
for applicants.

BY THE COMMISSION:

O P I N I O N

The original petition in this application was filed with the Commission on October 30, 1929. On December 2, 1929, there was filed a petition to amend the application so as to include the Bell Water Company and Haines Canyon Water Company. It appears that subsequent to the filing of the original petition American States Public Service Company, a Delaware corporation, who is the sole owner or controls through wholly owned subsidiaries the entire outstanding

capital stock of the companies mentioned in such petition, with the exception of directors' qualifying shares, acquired all of the outstanding stock of Bell Water Company and Haines Canyon Water Company. We will permit this application to be amended so as to include Bell Water Company and Haines Canyon Water Company.

All of the applicants herein are California corporations, except that the American States Water Service Company of California, herein sometimes referred to as the consolidated corporation, has not yet been organized, but it is proposed to organize the same under the laws of this state. Applicant corporations, herein sometimes referred to as the constituent companies, are engaged in the business of supplying water for domestic, irrigation, commercial and industrial purposes in various communities in the State of California. They are now desirous of effecting a consolidation into a new corporation under the provisions of Section 361-b of the Civil Code of California. In view of the fact that Section 361-b of the Civil Code of the State of California provides that upon the filing of an agreement of consolidation with the Secretary of State, the constituent companies shall ipso facto be consolidated into a new corporation and that said constituent companies shall thereupon cease to exist, it is felt that it is necessary that this Commission make and enter its order approving the consolidation agreement, filed in this proceeding as Exhibit No. 2, prior to the filing of such agreement with the Secretary of State.

The agreement of consolidation recites that the constituent companies are consolidated into a single corporation under the name of American States Water Service Company of California. This corporation is to have an authorized stock issue of \$10,000,000, divided into 100,000 shares of a par value of \$100.00 each. Its

principal office for the transaction of its business will be located in the County of Los Angeles. The \$3,001,400.00 par value of common capital stock, the issue of which the Commission is asked to authorize, will be issued to the American States Public Service Company, (\$3,000,900.00) and to five directors of the company (\$500.00). The agreement of consolidation also recites that in consideration of the payment of \$1.00 to each of the constituent companies, each of said constituent companies grants, bargains, sells, conveys, assigns and delivers to the consolidated corporation all of its properties both real, personal and mixed, and all franchises, rights, privileges and assets of all and every kind and description owned or held by each of said constituent companies, with the same force and effect as if each of said constituent companies had executed and delivered to the consolidated corporation a grant deed and/or a bill of sale specifically describing such property, and each and every parcel or item thereof, it being the intent and purpose of the agreement, and the effect of such consolidation that the consolidated corporation shall succeed, without any other transfer, to all the rights, property, franchises and assets of any and every description whatsoever of each of the constituent companies and that said consolidated corporation shall be subject to all the debts, liabilities and duties of each of the constituent companies in the same manner as if the consolidated corporation had itself incurred them. The agreement of consolidation further recites that any action or proceeding pending by or against any of said constituent companies may be prosecuted to judgment which shall bind the consolidated corporation, or the consolidated corporation may be proceeded against or substituted in its place. It further provides that a certified copy of the order of the Commission approving the agreement shall be attached to the original agreement and filed with the Secretary of State of the State of California.

It is of record in this proceeding that if the constituent companies had been consolidated as of September 30, 1929, the consolidated corporation would have had assets and liabilities as follows:-

<u>ASSETS:</u>	
Fixed capital	\$6,468,227.52
Cash and deposits:	
Cash	44,298.88
Special deposits	6,582.28
Notes receivable	645.54
Accounts receivable:	
Accounts with system corporations	154,279.37
Due from consumers and agents	94,306.68
Miscellaneous accounts receivable	7,643.58
Investments:	
Securities of other corporations	-
Miscellaneous investments	16,308.87
Materials and supplies	34,806.32
Prepaid expenses:	
Prepaid taxes	78.58
Prepaid insurance	2,802.79
Other prepayments	381.87
Other suspense	24,979.66
Construction work in progress	234,190.49
Total assets.....	<u>\$7,089,532.43</u>

<u>LIABILITIES:</u>	
Capital stock	\$3,001,365.00
Notes payable	33,500.00
Accounts payable:	
Accounts with system corporations.	1,030,043.80
Audited vouchers and wages unpaid	78,262.17
Consumers deposits	40,594.50
Miscellaneous accounts payable	14,782.99
Taxes accrued	12,795.31
Service billed in advance	1,021.80
Consumers advances for construction	187,625.62
Donations in aid of construction	8,191.49
Reserve for accrued depreciation	1,234,876.55
Other reserves	6,259.69
Corporate surplus unappropriated	1,432,737.47
Surplus	6,777.68
Due minority stockholders	698.36
Total liabilities..	<u>\$7,089,532.43</u>

The testimony shows that the \$6,468,227.52 reported as being charged to fixed capital does not necessarily represent the original cost of the properties to be consolidated into the American States Water Service Company of California. As a matter of fact, the record indicates that this amount includes appraisal figures of

some of the properties involved in this consolidation.

The \$3,001,400.00 of stock which the American States Water Service Company of California asks permission to issue is equivalent to the amount of stock which the constituent companies now have outstanding, exclusive of inter company holdings. Approximately 87 percent of the outstanding stock was issued under orders of the Railroad Commission. The remaining 13 percent of stock is much less than the investment in the properties of the companies which issued the said 13 percent of stock.

It will be observed that the balance sheet shows accounts payable to system corporations in the amount of \$1,030,043.80. Of this amount \$1,010,500.00 is due to the American States Public Service Company and \$19,543.80 to the South Coast Gas Company. The \$1,010,500.00 is said to represent advances made by the American States Public Service Company to several of its subsidiaries to enable those subsidiaries to retire bond issues which were outstanding at the time the American States Public Service Company acquired its stock interest therein and consisted of the following:-

Gardena Valley Water Company	\$125,000.00
Highland Domestic Water Company...	10,000.00
Placentia Water Company.....	15,000.00
Ocean Park Heights Water Company....	97,000.00
Venice Consumers Water Company.....	291,500.00
Southern California Utilities, Inc.	347,000.00
Imperial Utilities Corporation....	125,000.00

The consolidated balance sheet shows a reserve for accrued depreciation of \$1,234,876.55. It appears from the record that it is possible, and, as a matter of fact, quite probable that some of the amount credited to the reserve for accrued depreciation offsets

charges to fixed capital accounts. In any event, the record does not show conclusively that the \$1,234,876.55 was credited to the reserve for accrued depreciation on account of charges to operating expenses and actually represents earnings which have been reinvested in the properties of the constituent companies.

The consolidated balance sheet shows a corporate surplus unappropriated of \$1,432,737.47. Exhibit No. 5 shows that of this amount \$434,940.22 represents earned surplus and \$997,797.25 capital surplus. The amounts that enter into the capital surplus originated through a revaluation of the properties, through the cancellation of indebtedness, through the transfer of donations in aid of construction and through the transfer of assessments on stock.

The Railroad Commission at a meeting held on April 7, 1922, ordered that from and after July 1, 1922, the uniform classification of accounts for water corporations effective January 1, 1920, shall be modified by adding thereto the following balance sheet accounts:-

28a. CONSUMERS' ADVANCES FOR CONSTRUCTION.

To this account should be credited cash advanced by consumers to cover the cost of extensions or for other specific purposes, in cases where such amounts are to be refunded in whole or in part. Separate sub-accounts should be maintained for each contribution.

After the consumer has been refunded the entire amount to which he is entitled under the agreement or rule, the balance, if any, as shown by the sub-account, shall be transferred to account 28b "Donations in Aid of Construction".

28b. DONATIONS IN AID OF CONSTRUCTION.

To this account shall be credited cash or other property donated by municipalities, individuals or others where there is no agreement for refund in whole or in part.

If the donation is made in any form other than cash the amount to be credited to this account and concurrently debited to appropriate fixed capital account, shall be its money value, estimated if not known, at date acquired.

Separate sub-accounts shall be maintained for each donation which shall give particulars as follows:

- (a) Name of donor and amount received;
- (b) Purpose or purposes for which donations were made.

Note. Property donated and the cost of extensions made with funds received as donations shall be charged to appropriate fixed capital accounts in the same manner as property acquired by purchase or extensions constructed with the utility's own funds.

It seems to us that in view of the Commission's order it is not proper to transfer donations in aid of construction to corporate surplus unappropriated. Neither do we believe that there should be included in such account credits arising from a revaluation of a company's properties, or assessments on stock.

The \$997,797.25 reported as capital surplus includes \$260,894.07, donations in aid of construction; \$461,518.30 arising from a revaluation of assets; and \$275,384.88 from cancellation of indebtedness and miscellaneous sources. The \$260,894.07 should, by the consolidated company, be reported under donations in aid of construction and the \$736,903.18 under an account styled "capital surplus". Neither of the amounts shall at any time be merged with earned or corporate surplus unappropriated. It may be that a detailed examination of the accounts of the several companies will indicate that all or a part of the capital surplus should be charged off. It includes, for instance, \$277,500.00 which the Commission, in Decision No. 16651, dated May 4, 1926, in Application No. 12587, found was unsupported by the record in that proceeding.

It appears from the testimony of A.B.Muller, treasurer of the constituent companies, that it has been the practice of those in charge of the operation of the properties of such companies, and is the practice now, to deposit the cash from the operation of the properties to the credit of the American States Public Service Company, a Delaware corporation; that the bills of the various companies are paid by checks drawn upon a bank account of the American States Public Service Company; that the American States Public Service Company purchases the materials and supplies for the constituent companies and carries on their construction work. He testified that these practices were resorted to in order to simplify accounting work, to reduce operating expenses and to secure a better control over the operations of the various properties. He further testified that upon the organization of the new corporation, all of these practices would cease; that the cash receipts would be deposited to the credit of the American States Water Service Company of California; and that that company would pay all the bills and do the construction work, so far as its properties are concerned.

Mr. Muller further testified that though the original entries, relative to the construction and operation of these properties, since their control has been acquired by the American States Public Service Company, appear in many instances upon the records of the American States Public Service Company maintained at the Los Angeles office, that such records would be preserved and would be at all times available to the Commission. In this connection we desire to call to the attention of the officers of the constituent companies

and of the consolidated corporation, when organized, the Commission's General Order No. 28. We expect the companies involved in this proceeding to preserve the records covered by that general order. The order in this proceeding will provide that all the records of the American States Water Service Company of California and its predecessor companies, shall at all times be kept in the State of California.

The Commission is requested to authorize the constituent companies to enter into the aforementioned consolidation agreement and to further make its order authorizing the issuance of capital stock of the American States Water Service Company of California in the amount of \$3,001,400.00 and the delivery of same in exchange for the aggregate capital stock of the constituent companies. As stated, the American States Water Service Company of California will not come into existence until the filing of the agreement of consolidation with the Secretary of State. The company is not a party to this proceeding and we doubt that the Commission can appropriately enter its order authorizing a corporation not yet formed and not a party to a proceeding to issue capital stock. The issue of the stock will be authorized by a supplemental order upon the receipt of a verified copy of the agreement of consolidation, as filed with the Secretary of State.

We believe that the consolidation of these properties is in the public interest and that the agreement of consolidation should be approved, subject to the provisions of the order following. It should be understood, however, that though the order will authorize the execution of the agreement of consolidation, the Commission reserves the right, in the event any question arises in connection with any of the items in

the consolidated balance sheet to consider the same de novo, and in the same manner and to the same extent as though the constituent companies had not been consolidated.

ORDER

Los Angeles and Suburban Water Company, Orange County Water Company, Gardena Valley Water Company, Peoples Water Company of Palms, Highland Domestic Water Company, Ojai Domestic Water Company, Placentia Water Company, Harbor City Water Company, Huntington Beach Water Company, Oak Park Water Company, Ocean Park Heights Water Company, Venice Consumers Water Company, Southern California Utilities, Inc., Imperial Utilities Corporation, Los Angeles Water Service Company, Claremont Domestic Water Company, Hollydale Water Company, La Habra Domestic Water Company, Bell Water Company and Haines Canyon Water Company having asked permission to enter into an agreement of consolidation into a new corporation to be formed under the name of American States Water Service Company of California, and for an order authorizing said new corporation to issue \$3,001,400.00 par value of its capital stock in exchange for a like amount of outstanding stock of said constituent companies, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the consolidation of the constituent companies into a new corporation to be formed under the name of American States Water Service Company of California is in the public interest; that upon the filing of a verified copy of the agreement of consolidation with the Commission, it should authorize said American States Water Service Company of California to issue \$3,001,400.00 par value of its common capi-

tal stock; that the money, property or labor to be procured or paid for by the issue of such stock, when authorized by the Commission, is reasonably required by said American States Water Service Company of California for the purpose specified in said order; and that such purpose is not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:-

1. Los Angeles and Suburban Water Company, Orange County Water Company, Gardena Valley Water Company, Peoples Water Company of Palms, Highland Domestic Water Company, Ojai Domestic Water Company, Placentia Water Company, Harbor City Water Company, Huntington Beach Water Company, Oak Park Water Company, Ocean Park Heights Water Company, Venice Consumers Water Company, Southern California Utilities, Inc., Imperial Utilities Corporation, Los Angeles Water Service Company, Claremont Domestic Water Company, Hollydale Water Company, Bell Water Company, Haines Canyon Water Company and La Habra Domestic Water Company may, on or before March 1, 1930, enter into the agreement filed in this proceeding as Exhibit No. 2 and thereby organize American States Water Service Company of California, which agreement is hereby approved, subject to the provisions of this order.

2. If said American States Water Service Company of California is organized, the Railroad Commission will hereafter, upon the filing of a copy of the said agreement of consolidation, verified by the Secretary of State of the State of California, make its supplemental order herein, authorizing American States Water Service Company of California to issue \$3,001,400.00 par value of its common capital stock.

3. If said American States Water Service Company of California is organized, the Railroad Commission will make such

further supplemental orders as, in its opinion, are necessary, with reference to the filing of a general order No. 24 report; and with reference to accounting matters and the maintenance and preservation of the records by said American States Water Service Company of California and the aforesaid constituent companies, including the records of American States Public Service Company, referred to in the foregoing opinion.

4. The authority herein granted will become effective on the date hereof.

DATED at San Francisco, California, this 29th day of December 1929.

Thos. D. Lott

C. J. Lamy

Edmund C. ...

Leon ...

W. J. ...

Commissioners.