

Decision No. 22604

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 SANTA CLARA VALLEY LAND COMPANY,
 CHESTER DAMICO and WATER WORKS OF
 MONTA VISTA, LTD. for an order
 authorizing the sale of the water
 system of the Santa Clara Valley
 Land Company to Chester Damico and
 thereafter to Water Works of Monta
 Vista, Ltd. and for an adjustment
 and change in rates.

Application No. 16301.

A.A. Tiscornia, for applicants.

R.C. Leib, interested party.

Orrick, Palmer & Dahlquist, by J.M. Jacobs,
for certain bondholders, interested parties.

Max Merriman, for certain consumers,
protestants.

BY THE COMMISSION:

O P I N I O N

In the above entitled matter the Railroad Commission is asked to make its orders as follows:

(1) Authorizing the sale and transfer of a small public utility water system located near Cupertino, Santa Clara County, from Santa Clara Valley Land Company to Chester Damico and thereafter from Chester Damico to Water Works of Monta Vista, Ltd., a new corporation.

(2) Authorizing an adjustment and increase in the rates now charged for the delivery of water by Santa Clara Valley Land Company; and

(3) Authorizing Water Works of Monta Vista, Ltd. to

sell, from time to time, not more than 2,000 shares of its capital stock at a price of \$10.00 a share, and to incur such obligations, notes or other evidences of indebtedness as it may deem advisable from time to time to properly maintain, improve and operate the water system.

Public hearings in this proceeding were held before Examiner Handford in Cupertino on May 6th and May 21st, 1930, the matter was duly submitted and now is ready for decision.

The water system of Santa Clara Valley Land Company serves about 130 consumers with domestic service, who reside in the unincorporated town of Monta Vista. Water is obtained from a shallow well and pumped directly into a distribution system consisting of 49,148 lineal feet of pipe, principally two inches in diameter. Storage is furnished by a 50,000-gallon wooden tank. The rates at present in effect were established by this Commission in Decision No. 21362 issued July 8, 1929, in Case No. 2637. Each consumer is allowed 1,100 cubic feet of water for the minimum monthly charge of \$2.00 and the quantities used above that amount are charged for at 15¢ per 100 cubic feet.

The record indicates that Santa Clara Valley Land Company is in financial difficulties and is faced with certain liabilities. A bond issue placed on certain of its properties was foreclosed, the properties passing into the hands of the Wm. R. Staats Company at a price less than the face value of the bonds, leaving a deficiency for which the company may become liable, although no deficiency judgment has been obtained. As the water system was not subject to the lien of the bond mortgage, it now is thought desirable, in the interest of service to the public, to transfer the ownership of the system from Santa Clara Valley Land Company to a separate owner. Counsel for the bond-

holders appearing at the hearing stated that there was no objection to such a transfer and urged that the Commission authorize it.

To effect the transfer, arrangements have been made to sell the water properties, free and clear of indebtedness, for the sum of \$100.00 to Chester Damico, who, in turn, has arranged to sell them for the same consideration to Water Works of Monta Vista, Ltd., a corporation he has caused to be organized for the purpose of acquiring and operating them. Some objection to this proposal was made by Max Merriman appearing for certain consumers, protestants herein, who took the position that the transfer of the properties to Water Works of Monta Vista, Ltd. will result in a lack of responsibility for the water service due to the limited feature in the corporation's organization. We do not consider this objection well-founded. The water properties here involved are impressed with the duties and obligation of a public utility which cannot be terminated, lightened or otherwise changed by a transfer to an individual, limited corporation or other agency. Every utility operator, whether a limited corporation or otherwise, is required to give reasonable and proper service to the consumers and to furnish an adequate supply of water, unless the abandonment of the service is authorized by the Commission. We feel that the rights of the consumers on this system will in no wise be abridged or changed because of the transfers as here proposed. The order accordingly will permit the transfers to be made.

The articles of incorporation of Water Works of Monta Vista, Ltd. show that the corporation was organized under the laws of the State of California on or about January 17, 1930, with an authorized capital stock of 2,500 shares of common stock without

nominal or par value. The application shows that on January 18, 1930, the corporation secured from the Commissioner of Corporations a permit to sell and issue 2,000 shares of its stock at and for the price of \$10.00 a share and that the corporation has to date sold 50 shares at that price to Chester Damico. The request is now made for similar authority from this Commission and, in addition, for authority for the corporation to incur such obligations, notes and other evidences of indebtedness as it may deem advisable to maintain, improve and operate the water system.

It is clear that this Commission has jurisdiction over the issues of stock to be made by Water Works of Monta Vista, Ltd. In our minds there is some question concerning the issue of the 50 shares of stock heretofore made to Chester Damico and, in order to remove any doubt as to the validity of such stock, we believe that we should in this proceeding authorize the issue of 50 shares of stock. The testimony in this connection shows that the \$500.00 received through the sale of the shares of stock will be used by the company to pay the \$100.00 purchase price for the water system and to pay, in part, organization and incorporation expenses.

As to the issue of the remainder of the 2,000 shares of stock, for which application is made in this proceeding, and the issue of notes, obligations and other evidences of indebtedness, it appears from the testimony to be the proposal of the corporation to use the moneys to be realized from such sources to pay for extensions and additions to the water system, to finance the cost of repairs, to provide operating expenses, if necessary, and for other corporate purposes. The company did not seem, however, to be in a position at the hearings to advise the Commission definitely of the exact purposes for which the proceeds will be used, the amounts of money necessary to be expended, the extent

of the repair work or new additions and extensions to be made, or the exact amount of securities to be issued. It appears to be the desire of the corporation in this connection to have a permit to issue its stock so that it can do so if at any time it finds it needs money for any purpose.

Under the provisions of Section 52-b of the Public Utilities Act, the Commission can authorize the issue of securities for certain purposes and no others; namely, for the acquisition of property; for the construction, completion, extension or improvement of facilities; for the improvement or maintenance of service; for the discharge of lawful refunding of obligations; or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the utility not secured by or obtained from the issue of securities for any of the aforesaid purposes except maintenance of service and replacements, in cases where the company shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended and the purposes for which such expenditures were made. The Act further requires the Commission in authorizing the issue of securities to make a finding, first, that in its opinion the money, property or labor to be procured or paid for by such issue is reasonably required for the purposes specified in the order authorizing the issue, and, second, that except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expense or to income.

Here, not being advised of the extent of the expenditures to be made, we are not in a position to make the finding as re-

quired by law that the money, property or labor to be procured or paid for is reasonably required. Further, it clearly appears that we are estopped from authorizing the issue of stock to pay operating expenses. For these reasons, we do not believe that we can at this time authorize the issue of stock in excess of the 50 shares sold to pay organization expenses, etc., referred to above.

Concerning the request to issue notes and other evidences of indebtedness, we wish to advise applicant that under the provisions of Section 52-b of the Act a public utility may issue notes payable at periods of not more than twelve months after the date of issuance of the same without the consent of the Commission, although any renewal or refunding of such notes must be authorized. The record here indicates that any issues of notes or other evidences of indebtedness to be made by applicant will be short term in their character and it therefore appears unnecessary for the Commission to pass upon this request of the company.

It seems that Chester Damico is willing to purchase such stock as Water Works of Monta Vista, Ltd. might offer for sale and to advance money to the corporation. We suggest therefore that the corporation finance its needs, temporarily at least, with moneys borrowed on open account or through the issue of notes payable in not exceeding twelve months after date of issue, which notes may be issued without securing the consent of this Commission, and that it keep such record of its expenditures as will enable it later to place before the Commission, should it so desire, a definite statement of property and equipment purchased, extensions and improvements made, and other purposes for which such moneys were used, upon which showing the Commission can then

make the findings required by the Public Utilities Act and can base an order authorizing the issue of securities.

There remains for consideration the request of applicant for an adjustment and increase in the rates for this utility. Chester Damico, for applicant, testified at the hearing that the revenue obtained from the present rates has not been sufficient to return the necessary annual operating expenses of the system and provide the interest return which applicant is entitled to receive on its investment in the properties.

R. E. Savage, one of the Commission's engineers, submitted a report on the operations of this utility and a detailed appraisal of the properties. The appraisal sets forth the estimated historical cost of the operative property as \$23,220 as of April 30, 1930, and the depreciation annuity as \$331, computed by the five per cent sinking fund method. The present management has operated the system only since June, 1929, and for the seven months (June to December) of 1929 the maintenance and operation expenses incurred, exclusive of depreciation, totalled \$2,478.30. Based on an analysis of the operating expenses for the above period, the Commission's engineer submitted an estimate of \$2,635 as a reasonable allowance for the annual maintenance and operation expenses for future operation of the system. It appears, after careful consideration and analysis of all the evidence submitted relating to the operating expenses of this utility, that the above total should be increased by about \$200 to cover incidental expenses which may be incurred in any year for miscellaneous and extraordinary repairs. Therefore, a fair allowance for annual maintenance and operation expenses including depreciation is

\$3,150. The annual revenues under the rates at present in effect total about \$3,500, which would provide a net revenue of only \$315 available for interest return or approximately one and one-half per cent on a rate base of \$23,220. It is therefore apparent that an adjustment of the present rate schedule should be made. However, applicant cannot at this time reasonably expect to have rates established to provide a full interest return on the investment in its properties since the evidence indicates that the system is at the present time in the development stage and is considerably overbuilt for the number of consumers now being served. The distribution pipe system has been installed to serve this entire subdivision of 440 acres. At present there are 130 consumers and the length of pipe main per consumer averages 373 lineal feet. The services are now about sixty per cent metered and it is the intention of applicant to completely meter the system as soon as finances will permit.

The evidence shows that one of the largest water users has installed a booster pump on his service connection to supply a reserve tank on the premises. This pump draws directly from the street main supplying this part of the service area and has resulted in so reducing the working pressure that other consumers supplied from the same main have been left practically without water whenever this auxiliary booster pump is in operation. This practice must be discontinued and the utility is directed to notify this consumer to disconnect the auxiliary pump from the service connection or main, provided he has not already done so. The company should file a rule with this Commission which, among other things, will forbid the use of private auxiliary booster equipment directly connected with the utility pipe system and

require all such equipment on consumers' premises to receive its intake supply through a sump.

The rate schedule set out in the accompanying order has been computed and designed to yield sufficient revenue to cover the above indicated reasonable annual operating expenses and allow for what is considered under the existing circumstances a fair return on the investment.

ORDER

Application having been made to the Railroad Commission for orders authorizing the transfer of property, the issue of stock and notes, and an adjustment in rates, public hearings having been held thereon, the matter having been submitted and the Commission now being fully advised in the premises, and being of the opinion that the application should be granted only as herein provided and that the money, property or labor to be procured or paid for through the issue of 50 shares of stock, as set forth in the opinion preceding this order, is reasonably required for the purposes specified herein which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Santa Clara Valley Land Company be and it is hereby authorized to transfer to Chester Damico for the sum of \$100.00 the public utility water system located in and about Monta Vista as referred to and described in this application, and Chester Damico be and he is hereby authorized thereafter to transfer said water system for the sum of \$100.00 to Water Works of Monta Vista, Ltd., a corporation.

IT IS HEREBY FURTHER ORDERED that Water Works of Monta

Vista, Ltd. be and it is hereby authorized to issue and sell fifty shares of its common capital stock at \$10.00 a share and to use the proceeds to pay for the water system herein authorized transferred and to meet in part organization and incorporation expenses.

The authority herein granted is subject to the following conditions:

1. Water Works of Monta Vista, Ltd. shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file reports as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.
2. Within sixty (60) days after the transfer of the properties herein authorized, Water Works of Monta Vista, Ltd. shall file with the Railroad Commission a statement showing the exact date upon which it acquired possession and control of the water system and a copy of the deed of conveyance.
3. The price at which the properties are herein authorized to be transferred shall not hereafter be urged before this Commission or other public body or court as a measure of value for the purpose of fixing rates or other purposes.

It is hereby found as a fact that the rates and charges of Water Works of Monta Vista, Ltd., a corporation, for water delivered to consumers in and in the vicinity of Monta Vista, Santa Clara County, in so far as they differ from the rates herein established, are unjust and unreasonable and that the rates and charges herein established are just and reasonable rates to be charged for the service rendered; therefore

IT IS HEREBY FURTHER ORDERED that Water Works of Monta Vista, Ltd., a corporation, be and it is hereby authorized and

directed to file with this Commission, within twenty (20) days from the date of this order, the following schedule of rates to be charged for all water service rendered subsequent to the 30th day of June, 1930:

RATE SCHEDULE

(1) METER RATES:

Monthly Minimum Payments for Metered Service:

5/8 x 3/4-inch meter-----	\$ 2.00
3/4-inch meter-----	2.50
1-inch meter-----	3.50
1 1/2-inch meter-----	5.00
2-inch meter-----	7.00
3-inch meter-----	14.00

Each of the foregoing "Monthly Minimum Payments" will entitle the consumer to the quantity of water which that monthly minimum payment will purchase at the following "Monthly Quantity Rates."

Monthly Quantity Rates:

For the first 650 cubic feet, or less-----	\$ 2.00
Next 1,350 cubic feet, per 100 cubic feet----	0.20
Next 2,500 cubic feet, per 100 cubic feet----	0.18
All over 4,500 cubic feet, per 100 cubic feet----	0.15

(2) WATER FOR PUBLIC USE:

To be charged for at regular quantity rates given above.

(3) SUMMER HOME RATES:

Applicable to consumers using water for summer homes.

Annual charge payable in advance entitling consumer to 650 cubic feet of water each month for any period of six consecutive months (5/8x3/4-inch meter)----\$12.00

Where water is used in excess of above allowance of 650 cubic feet per month, the above monthly quantity rates shall be applied.

Where water is used for additional months over six in the calendar year, the regular monthly minimum charges and quantity rates shall apply.

(4) FLAT RATES:

\$2.00 per month for domestic use.

IT IS HEREBY FURTHER ORDERED that Water Works of Monta Vista, Ltd. be and it is hereby directed to file with the Railroad Commission, within thirty (30) days from the date of this order, rules and regulations governing the distribution of water to its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 30th day of August, 1930.

Cl. Jones
Wm. H. ...
Wm. H. ...
Wm. H. ...
Commissioners.