

LEM

Decision No. 23341 .

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SANTA ROSA WATER WORKS, )  
a corporation, for an order author- )  
izing it to issue and sell stock for ) Application No. 17038  
the acquisition of property. )

Albert J. Dibblee and Arthur H. Redington,  
for applicant.

BY THE COMMISSION:

O P I N I O N

The Railroad Commission has been asked to make its order authorizing Santa Rosa Water Works to purchase the property and assets formerly owned by The Santa Rosa Water Works, a defunct corporation, now owned by the stockholders thereof, for the sum of \$250,000.00, subject to the lien of a deed of trust in the amount of \$32,000.00, and to issue and sell such number of shares of its capital stock as shall enable it to realize a sum sufficient to pay the purchase price of said property and assets, not to exceed said sum of \$250,000.00.

It appears that The Santa Rosa Water Works was organized on or about February 27, 1873 and under the terms of its Articles of Incorporation its corporate existence expired on or about February 27, 1923. Prior to that date, proceedings were had and taken for the extension of the corporate existence for an additional term of fifty years from February 27, 1923, which proceedings, however, were void because of the provision of the constitution of the State of California,

then in effect, prohibiting the extension of the charter of a quasi-public corporation. The application shows that since February 27, 1923 the present stockholders of the defunct corporation or their predecessors in interest, have been, and now are carrying on the business of said defunct corporation under its corporate name, as a public utility water company supplying water in and about the City of Santa Rosa, acting upon the belief that said corporation was still in existence by reason of the attempted extension of its corporate existence.

Some time after the expiration of the charter of the company, its officers were advised by the Commission of the provisions of the constitution, as they then read, relating to the extension of corporate charters. Thereafter negotiations were entered into for the sale of the properties which were not, however, concluded, and accordingly, arrangements were made for the organization of a new corporation, Santa Rosa Water Works, applicant herein, and for the transfer to it of the water properties. In order to establish record title to the property and assets of the defunct corporation, so that a valid title might be transferred, the stockholders of the old company instituted a partition suit in the Superior Court of the State of California in and for the County of Sonoma, entitled Mark L. McDonald, et al, plaintiffs, vs. American Trust Company, a corporation, et al, defendants, No. 18092, which was joined in by all the known stockholders representing 2,487.50 shares out of a total of 2500 shares of stock outstanding.

On or about June 27, 1930, an interlocutory decree in partition in the action was entered, wherein and whereby it was adjudged and decreed that the fee simple title to all the real and personal property and assets of every character and description of the defunct

corporation was vested in the stockholders, subject to the lien of a certain deed of trust securing an indebtedness of \$32,000.00, with interest thereon, and E. D. Jones was appointed as referee in partition with orders and directions to sell such properties.

Santa Rosa Water Works was organized on or about October 13, 1930, under the laws of the State of California with an authorized capital stock of \$250,000.00, divided into 2500 shares of the par value of \$100.00 each, all common. It desires at this time to issue and sell to the stockholders of said defunct corporation its entire authorized issue of 2500 shares of stock at par, or at such other price as the Commission will permit, and use the proceeds to purchase the properties and assets formerly owned by said defunct corporation. The amount of stock proposed to be issued is equal in the aggregate amount to the stock formerly issued by the now defunct corporation, so that apparently in effect the transaction as here proposed will result in the issue of shares of the new corporation in lieu of those issued by the old corporation.

Regardless of the fact that the proposed issue of stock by the new corporation will not increase the total capitalization of the properties, we believe that in the determination of the issue presented here, the same consideration should be given to the various elements entering into the proceedings, as in other matters of other applicants, heretofore presented to the Commission involving the issue of securities for the purpose of acquiring properties, and that the same general policies should be followed by the Commission in making its decision. It therefore became necessary, in our opinion, to inquire into the assets and liabilities, and earnings of the water system and property values.

There has been filed, as Exhibit No. 4, a financial statement, as of January 1, 1931. Considering the \$250,000.00 of stock of the

defunct corporation as still outstanding, the statement of assets and liabilities, set forth therein, appears as follows:

<u>A S S E T S</u>	
<u>FIXED CAPITAL:</u>	
Real estate . . . . .	\$120,183.76
Construction account . . . . .	101,153.31
Peters spring-land and equipment . . . . .	16,436.93
Reservoir telephone line . . . . .	580.54
Garage equipment . . . . .	400.00
Meters and equipment . . . . .	12,584.24
	<u>\$251,338.78</u>
Cash . . . . .	13,520.96
Bonds owned . . . . .	1,000.00
Accounts receivable . . . . .	4,046.29
Office equipment . . . . .	685.17
Other assets . . . . .	126.68
Unamortized stock discount . . . . .	67,000.00
TOTAL ASSETS . . . . .	<u>\$337,777.88</u>
<u>L I A B I L I T I E S</u>	
Capital stock . . . . .	\$250,000.00
Notes payable . . . . .	32,000.00
Consumers' advances . . . . .	695.50
Consumers' deposits . . . . .	171.16
Other items (Option deposit) . . . . .	250.00
Depreciation reserve . . . . .	47,753.11
Surplus . . . . .	6,908.11
TOTAL LIABILITIES . . . . .	<u>\$337,777.88</u>

It will be observed that the defunct corporation had issued \$250,000.00 of stock, against which there was set up discount in the amount of \$67,000.00, indicating net proceeds realized by the corporation through its stock issue of \$183,000.00, an amount equivalent to 73.2 percent of the par value of the stock. Such stock was issued prior to the effective date of the Public Utilities Act.

For the calendar years 1928, 1929 and 1930 the revenues and expenses of the water system have been reported as follows:

ITEM	1928	1929	1930
Operating revenue . . . . .	\$24,933.57	\$24,642.72	\$23,850.12
Operating expenses . . . . .	20,192.73	20,125.92	21,442.19
Net operating revenues . . . . .	\$ 4,740.84	\$ 4,516.80	\$ 2,407.93
Nonoperating revenues . . . . .	343.95	295.95	332.50
Gross corporate income . . . . .	\$ 5,084.79	4,812.75	\$ 2,740.43
<u>DEDUCT:</u>			
Uncollectible bills . . . . .	\$ 110.29	\$ 164.89	\$ 197.62
Interest . . . . .	2,240.85	2,240.00	1,701.23
Total deductions . . . . .	\$ 2,351.14	\$ 2,404.89	\$ 1,898.85
Profit for year . . . . .	\$ 2,733.65	\$ 2,407.86	\$ 841.58

As to the cost or value of the properties there was introduced into the record as Exhibit No. 3 an inventory and appraisal prepared by The American Appraisal Company, showing estimated values, as of April 1, 1926, as follows:

Cost of reproduction new . . . . .	\$414,237.63
Utility or service value as a going concern (based upon market prices as of April 1, 1926, with consideration given to accrued deferred maintenance) . . . . .	357,307.29
Historical, or normal cost, at date of installation undepreciated . . . . .	229,286.83

In addition, Mr. J. P. Overton, secretary for the water system, testified that in his opinion the value of the properties, including current and other assets and additions and betterments since the date of the above mentioned appraisals, amounted to \$284,400.00; exclusive of any allowance for going concern, water rights and similar intangible items. His conclusions, it appears, are based upon the several elements of value found by The American Appraisal Company and his general knowledge of the properties.

Mr. L. E. Torrey, an assistant engineer employed by the Commission, in presenting Exhibit No. 5, an appraisal of the properties as of December 31, 1930, estimates the historical reproduction cost of the properties at \$234,964.00 and the historical reproduction cost less depreciation at \$171,934.00. He includes land at present market value. He submitted no figures showing the reproduction cost new or the utility or service values of the properties.

We do not believe that the cost figures submitted or the earnings of the properties support an issue of \$250,000.00 of stock, as here proposed. It has been the policy of the Commission in authorizing the issue of securities to acquire properties, to consider the earnings of the properties and the original or historical costs, including present values of land, and making allowance for depreciation where the properties are not new. Here we have in the record, so far as original or historical costs are concerned, balance sheet

figures of \$251,338.78, an estimate as of April 1, 1926 of The American Appraisal Company of \$229,286.83 and an estimate submitted by the Commission's Engineering Department as of December 31, 1930 of \$234,964.00. The latter figure, we believe, should be slightly increased in the item of organization and other intangible capital.

We believe that if Santa Rosa Water Works acquires the properties to which reference is made herein, that it should not issue more than \$179,500.00 of common stock and assume an indebtedness of not exceeding \$32,866.66 in payment for such properties. These amounts were arrived at as follows:

<u>Estimated historical cost less depreciation</u>		
of fixed capital . . . . .		\$175,000.00
<u>ADD</u> other assets as follows:		
Cash . . . . .	\$13,580.96	
Bonds owned . . . . .	1,000.00	
Accounts receivable . . . . .	4,046.29	
Office equipment . . . . .	685.17	
Other assets . . . . .	126.68	19,439.10
Total . . . . .		<u>\$194,439.10</u>
Liabilities to be assumed:		
Notes payable . . . . .	\$32,000.00	
Consumers' advances and deposits	866.66	32,866.66
Balance . . . . .		<u>\$161,572.44</u>

Allowing the issue of stock at approximately ninety per cent of par value, a total amount of \$179,500.00 will be necessary to produce the above balance.

Among the properties to be acquired by the new corporation, assuming the transaction is consummated, is a franchise granted by the City of Santa Rosa during 1924. The Commission has never authorized the exercise of the rights and privileges granted by the franchise nor has it been furnished with a copy thereof. We refer the new corporation to the terms and provisions of Section 50 (b) of the Public Utilities Act and suggest that if it acquires the aforesaid properties, an application for a certificate to exercise

franchise rights be filed forthwith.

ORDER

Application having been made to the Railroad Commission for authority, as set forth in the preceding opinion, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for by Santa Rosa Water Works through the issue of \$179,500.00 of stock 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, and that this application insofar as it involves the issue of \$70,500.00 of stock, be dismissed without prejudice.

IT IS HEREBY ORDERED, that Santa Rosa Water Works be, and it is hereby, authorized to purchase the properties and assets formerly owned by The Santa Rosa Water Works, a defunct corporation, and now owned by the stockholders thereof, and that if said Santa Rosa Water Works acquires said properties and assets, said Santa Rosa Water Works may assume approximately \$32,866.66 of liabilities and issue and sell at not less than ninety percent of par value, \$179,500.00 par value of its common capital stock for the purpose of paying for such properties and assets.

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

- (1) If applicant acquires the properties and assets referred to herein, it may charge to fixed capital accounts not more than \$238,030.00, as of January 1, 1931, which shall be offset in part, by a credit entry of \$63,030.00 in its reserve for accrued depreciation account.

- (2) The authority herein granted is not to be construed as determining the value of the aforesaid properties for the purpose of fixing rates or any purpose other than this transfer.
- (3) Applicant shall file with the Commission within sixty days after the acquisition of the properties referred to herein, a copy of the book entries by which it records on its books of account the purchase of said properties and the distribution to primary accounts.
- (4) Applicant 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, on or before the 25th day of each month 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.
- (5) The authority herein granted will become effective ten (10) days from the date hereof. Under such authority no stock may be issued subsequent to June 30, 1931.

IT IS HEREBY FURTHER ORDERED, that this application insofar as it involves the issue of \$70,500.00 of stock be, and the same is hereby, dismissed without prejudice.

DATED at San Francisco, California, this 27<sup>th</sup> day of January, 1931.

C. S. Kerner  
John W. Dwyer  
Chf. of Com.  
M. B. Harris  
James G. Stewart