

Decision No. 23367

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SANTA CLARA VALLEY PUBLIC SERVICE)
 COMPANY, a corporation, for (1) order)
 authorizing issue of stocks and bonds;)
 (2) order authorizing mortgage of cer-)
 tain public utility properties; and (3))
 jointly with Fred C. Ehman, R. C. Leib,)
 Frank A. Leib, Lida Leib Armstrong,)
 Elna Leib Wright, Water Works of Monte)
 Vista, Ltd., a corporation, Loyola)
 Water Company, a corporation, Rose L.)
 Simmonds, Joseph Bacciocco and R. H.)
 Brotherton, respectively, for order)
 authorizing sale and purchase of cer-)
 tain properties.)

ORIGINAL

Application No. 17005

McCutchen, Olney, Mannon and Greene,
 by James D. Adams, for Santa Clara
 Valley Public Service Company and
 Fred C. Ehman.

BY THE COMMISSION:

OPINION

In this proceeding the Railroad Commission is asked to enter its order authorizing applicants R. C. Leib, Frank A. Leib, Lida Leib Armstrong and Elna Leib Wright to sell and convey to Santa Clara Valley Public Service Company the properties, system and business referred to in paragraph three of this application, and authorizing applicants Water Works of Monte Vista, Ltd., Loyola Water Company, Rose L. Simmonds, Joseph Bacciocco and R. H. Brotherton to sell and convey the properties, systems and businesses referred to in paragraphs four, five, six, seven and eight of this application to Fred C. Ehman, and authorizing applicant Fred C. Ehman to purchase the afore-said properties and sell and convey the same to Santa Clara Valley

Public Service Company, which company also asks permission to purchase said properties and the aforesaid properties, system and business of R. C. Leib, Frank A. Leib, Lida Leib Armstrong and Elna Leib Wright and Fred C. Ehman.

The Commission is further asked to enter its order authorizing applicant Santa Clara Valley Public Service Company to execute and deliver a mortgage or trust indenture upon the aforesaid properties; to issue and sell 10,000 shares of no par value common capital stock and \$250,000.00 of six percent twenty year bonds, for the purposes hereinafter stated.

It is of record that applicants R. C. Leib, Frank A. Leib, Lida Leib Armstrong and Elna Leib Wright are the owners of approximately 149,380 feet of mains which are used to supply alleged surplus water produced by the Leib private irrigation system to about 400 consumers distributed throughout the larger portion of the territory described in this application. R. C. Leib, Frank A. Leib, Lida Leib Armstrong and Elna Leib Wright have at all times claimed and now claim that neither they nor their predecessors in interest, as owners and/or operators of the properties which they ask permission to sell have assumed or incurred any public service obligations. They join in this application without prejudice to such claim. It appears that the present service given through the Leib system is poor, due to inadequate pipe line capacity and to the irrigation requirements of the Leib lands. About 97 percent of the Leib system is metered.

Applicant R. H. Brotherton is the owner of certain water pipes and mains and other property constituting a water works system in the County of Santa Clara and used to serve about 45 consumers in the Kellogg Tract immediately south of the City of Mountain View. This water system comprises about 3917 feet of mains and is 100 percent metered. The water supply for the system is adequate and

the distribution system of sufficient size so that satisfactory service can be given. He, too, maintains that he has not assumed or incurred any public service obligations and joins in the application without prejudice to such claim.

Applicant Joseph Bacciocco is the owner of certain water pipes and mains and other property constituting a water works system serving about seven consumers in what is known as the Montebello Acres Tract adjoining the City of Mountain View across the main San Francisco-San Jose Highway. It appears that this system comprises about 9537 feet of three inch mains. The system is 100 percent metered. It has its own well, tank and pumping plant and is also connected with the system of R. E. Brotherton, to which reference has been made. He likewise claims he has not assumed or incurred any public service obligations and joins in the application without prejudice to such claim.

Applicant Rose L. Simmonds is the owner of certain water pipes and mains and other property constituting a water works system and comprising about 4586 feet of mains and supplying about nine water users in what is known as the Loyola Townsite. The system is entirely metered. It has no independent water supply. The distribution system, however, is adequate for the present service demand. She, too, maintains that she has not assumed or incurred any public service obligations and joins in the application without prejudice to such claim.

The Water Works of Monte Vista, Ltd. is a corporation duly organized and existing under and by virtue of the laws of the State of California and is engaged in the public utility water business in this state. The company owns a system comprising about 52,899 feet of mains and supplies about 160 consumers within several subdivisions known collectively as the Monte Vista Estates. The system is about 80 percent metered. The present water supply is inadequate

and the entire plant is poorly maintained and improperly operated.

Applicant Loyola Water Company is a corporation duly organized and existing under and by virtue of the laws of the State of California and is engaged in the public utility water business. The company has a public utility water system serving about 75 consumers in a group of subdivisions known collectively as the properties of Los Altos Golf and Country Club. The distribution system comprises about 42,592 feet of mains and is said to be well constructed and maintained, but due to an inadequate water supply has not been able to give satisfactory service. The system is 100 percent metered.

The owners of the water systems to which reference has been made have agreed to sell the same to either applicant Santa Clara Valley Public Service Company or to Fred C. Ehman, who in turn has asked permission to transfer such properties as he may acquire to applicant Santa Clara Valley Public Service Company. It is the intention of the Santa Clara Valley Public Service Company to engage in the business of a public utility water corporation, to acquire and consolidate the aforesaid properties, to inter-connect them, to coordinate and improve the existing water facilities and service, to provide an adequate and proper water supply to the territory which it now proposes to serve, and to extend service to areas now entirely without water, or, at best, dependent upon inadequate or otherwise unsuitable sources.

The service area covered by the different water systems which it is proposed to consolidate under the name of the Santa Clara Valley Public Service Company is situated within that portion of Santa Clara County lying generally between an east and west line somewhat south of and parallel to the Stevens Creek Road and a line somewhat north of and parallel with the main San Francisco-San Jose Highway and extending from about the city limits of Santa Clara on the east to Springer Road and Magdalena Avenue on the west. Within

this area are the cities of Sunnyvale and Mountain View and parts of Los Altos. The cities of Sunnyvale and Mountain View are being supplied at present by publicly owned water works, while Los Altos is being supplied by the Los Altos Water Company. It is not the intention of applicant Santa Clara Valley Public Service Company to compete with either the municipally owned systems or with any privately owned public utility water system.

F. Emerson Hoar, consulting engineer, in Exhibit No. 5, estimates the reproduction cost new of the physical properties of the several vendors as of October 1, 1930, at \$229,058.00 and the reproduction cost new less accrued depreciation at \$210,824.00. This estimate of reproduction cost, it appears, includes, in addition to the properties of the vendors mentioned herein, options on 32 different pipe lines which are now the properties of different consumers being served by one or the other of the existing water properties. The pipe lines covered by the options have been included because they are regarded as an integral part of the aforementioned water systems. In Exhibit No. 6 he estimates the probable historical cost of the physical properties as of October 1, 1930 at \$202,934.00. He did not submit an estimate of the historical cost less accrued depreciation. Such a figure, however, appears in Exhibit No. 14, prepared by L. E. Torrey, an assistant engineer for the Railroad Commission. Mr. Torrey reports the estimated historical cost of the properties at \$166,515.00, and the historical cost less accrued depreciation at \$130,498.00. The difference between the figures submitted by Mr. Hoar and by Mr. Torrey is due primarily to a difference in the percentages allowed for overhead expenses, to a difference in values assigned to lands and to a difference in unit costs. Neither has included any allowance for

organization expenses or development costs or for water rights. Mr. Hoar testified, however, that in his opinion the expenses incident to the acquisition of the properties and the preparation of the necessary data for presentation in support of this application, and to organize the Santa Clara Valley Public Service Company, will be in excess of \$15,000.00. The cost to applicant Santa Clara Valley Public Service Company of acquiring the existing properties and pay organization, legal and engineering expenses, is reported at about \$60,000.00. In addition, the new company proposes to expend about \$225,000.00 to inter-connect the several systems, enlarge and replace pipe lines, develop new sources of water supply and provide service to new consumers. The company's construction program is outlined in Exhibit No. 2. The testimony of Mr. Hoar shows that the program outlined in Exhibit No. 2 has been modified in that it is now the plan to lay a six inch instead of an eight inch line down Grant Road from the intersection of Fremont Avenue to the Permanente Creek source and to change the supply line from Stevens Creek to Fremont Avenue by way of Wright Avenue cross-country from an eight inch to a six inch line. The cost of the initial development is summarized in Exhibit No. 2 as follows:

A- Water supply system:	
1. Sources of water supply:	
(a) Stevens Creek(stream)....	\$12,270.
(b) Stevens Creek(Delta).....	38,810.
(c) Permanente Creek(Delta)..	27,960.
(d) Leib contract supply.....	<u>3,460.</u>
Total for sources.....	\$82,500.
2. Loyola District Storage & Booster	18,280.
3. Inter-connecting trunk feeder lines..	52,575.
(as modified by testimony of Mr. Hoar)	
4. Distribution system	
(a) Primary lines.....	15,090.
(b) General distribution lines	34,265.
(c) Services and meters	<u>22,910.</u>
Total	72,265.
Grand total.....	<u>\$ 225,620.</u>

There are at present about 700 consumers receiving water from the several independent systems which it is proposed to consolidate. The 1930 operating revenue from service rendered to 635 of such consumers is estimated at \$16,200.00. The number of present consumers, it is alleged, cannot be taken as an accurate index of the existing demand accessible to the present mains of the operating units. Shortage of water, inadequate facilities, improper operations and the restricted service are said to have held the number of consumers to a minimum. Mr. Hoar assumes that the new company will have 1413 consumers during the last twelve months of an assumed 18 month preliminary development period. In the meantime, if it is successful in obtaining the added water supply which it contemplates, its supply for the critical summer period will be 4,100,000 gallons per day and the demand, 1,250,000 gallons per day. At present the demand during the critical period is about 410,000 gallons per day and the average supply 690,000 gallons per day.

In Exhibit No. 13 attached to the petition, the operating revenues of Santa Clara Valley Public Service Company for the initial period are reported at \$57,570.00 per annum and the operating expenses, exclusive of depreciation and taxes, at \$25,970.00, leaving \$31,600.00 of net revenue before taxes and depreciation. From the \$31,600.00 there is deducted for interest \$15,000.00, for depreciation \$4,610.00, for taxes \$1,800.00; making a total of \$21,410.00, which leaves for surplus \$10,190.00. In a statement filed subsequent to the hearing, Mr. Hoar takes the position that, considering the character of available business, his estimated revenue of \$40.74 per consumer is amply warranted, and is fully justified, in comparison with the actual experience of other operating water utilities on the San Francisco peninsula. He then refers to Los Altos Water Company, which, in 1928, reported a revenue per consumer of

\$47.12; to Bear Gulch Water Company with a revenue of \$58.64 per consumer; to San Jose Water Works with a revenue of \$28.42 per consumer; and Spring Valley Water Company with a revenue of \$61.77 per consumer. There is nothing in his report to show that the service conditions of the four companies mentioned are the same as will be those of applicant, Santa Clara Valley Public Service Company. There is a large variation in the average revenue per consumer of different water companies. Referring to the properties before us; one shows for 1930 a revenue of \$27.75 per consumer, another \$21.87, and another \$29.33. The average for the three properties is \$26.45. Not only does he suggest that the revenue from the 635 consumers can be increased from \$16,800.00 to \$25,870.00, but the number of consumers can be increased from 700 to 1413 for the last twelve months of an initial development period of eighteen months. His conclusions in regard to earnings and number of consumers for the period mentioned do not appear reasonable to us.

There is no doubt but that there is necessity for the development of an added water supply to serve the territory mentioned herein. Likewise we believe that it is in the public interest that the several independent systems be consolidated and reconstructed. We do not believe, however, that it is in the public interest that all the cash which applicant Santa Clara Valley Public Service Company will invest in these properties should be obtained from the issue of bonds. We are not unmindful of the fact that the record shows 2600 shares of stock applied for would be issued for reconstruction purposes. The record, however, is uncertain when such stock would be sold. As we read the record in this proceeding, the company will have to raise \$285,000.00 to acquire the aforesaid properties, pay organization, legal and en-

gineering expense, and carry out its initial development program. It occurs to us that the Santa Clara Valley Public Service Company should obtain at least one third of such cash from the issue and sale of stock. This stock, we think, should be sold and the proceeds expended for the purposes herein stated, before any bonds are issued and sold. This would mean that the proposed bond issue be limited to \$216,000.00. If the company's revenues at the end of the initial development period approximate the estimates herein submitted, a larger proportion of the funds needed to finance its final development may be obtained through the sale of bonds.

Under the record in this proceeding we believe that Santa Clara Valley Public Service Company should be permitted to issue on a basis of \$25.00 per share, 7220 shares of stock. Of this stock 3420 shares may be issued and delivered ^{part} in payment for the ^{aforsaid} properties and 3800 shares shall be sold for cash at \$25.00 per share and not exceeding \$60,000.00 of the proceeds used to pay the cost of acquiring the aforsaid properties, pay organization, legal and engineering expenses and the remainder used to pay in ^{for} part/the improvements described in Exhibit No. 2, as modified by the testimony of Mr. Hoar.

The new company has not yet submitted a copy of its, proposed trust indenture. The authority herein granted to issue bonds will not become effective until the Commission has authorized the company to execute an indenture to secure the payment of the bonds, nor until the Commission has been furnished with a statement showing the purposes for which the aforsaid stock proceeds have been expended.

The Santa Clara Valley Public Service Company, if it acquires the aforsaid properties, intends to apply to the Board of Supervisors of Santa Clara County for a franchise. In the mean-

time, it requests that the Commission grant it a temporary certificate to construct, maintain and operate a public utility water system. This request was made at the hearing on this application. We believe that if the company desires a certificate of public convenience and necessity, it should file a formal application for such a certificate. The authority herein granted to sell and acquire properties and issue stock will become effective upon the granting of such a certificate.

ORDER

The Railroad Commission having been asked to enter its order authorizing the transfer of properties and the issue of stocks and bonds and the execution of a trust indenture, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by the issue of the stocks and bonds herein authorized, is reasonably required for the purposes herein stated, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income, and that this application should be granted to the extent indicated in this order, and dismissed without prejudice in other respects, therefore,

IT IS HEREBY ORDERED as follows:

1. R. C. Leib, Frank A. Leib, Lida Leib Armstrong and Elba Leib Wright be, and they are hereby authorized, after the effective date hereof and prior to September 30, 1931, to sell and transfer the properties described in Exhibit No. 2, attached to

the petition in this proceeding, to Santa Clara Valley Public Service Company, which is hereby authorized to acquire said properties.

2. Water Works of Monte Vista, Ltd. be, and it is hereby, authorized, after the effective date hereof and prior to September 30, 1931, to sell the properties described in Exhibit No. 4 attached to the petition in this proceeding, to Fred C. Ehman, who is hereby authorized to purchase such properties and sell and convey the same to Santa Clara Valley Public Service Company.

3. Loyola Water Company be, and it is hereby, authorized, after the effective date hereof and prior to September 30, 1931, to sell the properties described in Exhibit No. 6 attached to the petition in this proceeding, to Fred C. Ehman, who is hereby authorized to purchase such properties and sell and convey the same to Santa Clara Valley Public Service Company.

4. Rose L. Simmonds be, and she is hereby authorized, after the effective date hereof and prior to September 30, 1931, to sell the properties described in Exhibit No. 8 attached to the petition in this proceeding, to Fred C. Ehman, who is hereby authorized to purchase such properties and sell and convey the same to Santa Clara Valley Public Service Company.

5. Joseph Bacciocco be, and he is hereby authorized, after the effective date and prior to September 30, 1931, to sell the properties described in Exhibit No. 9 attached to the petition in this proceeding, to Fred C. Ehman, who is hereby authorized to purchase such properties and sell and convey the same to Santa Clara Valley Public Service Company.

6. R. H. Brotherton be, and he is hereby authorized, after the effective date hereof and prior to September 30, 1931, to sell

the properties described in Exhibit No. 10 attached to the petition in this proceeding, to Fred C. Ehaman, who is hereby authorized to purchase such properties and sell and convey the same to Santa Clara Valley Public Service Company.

7. Santa Clara Valley Public Service Company be, and it is hereby, after the effective date hereof and prior to September 30, 1931, authorized to acquire the aforesaid properties.

8. Santa Clara Valley Public Service Company is hereby authorized to issue and sell on or before September 30, 1931, 7,220 shares of its common capital stock and use 3,420 of said shares of stock to pay for the properties which it is herein authorized to acquire, and sell the remaining 3,800 shares of stock at not less than \$25.00 per share, and use of the proceeds not exceeding \$45,000.00 to pay in part the cost of acquiring the properties referred to in the foregoing opinion; to use not exceeding \$15,000.00 to pay organization, legal and engineering expenses, and to use the remainder plus such portions of said \$45,000.00 and \$15,000.00 not needed for said purposes, to pay in part for the additions and betterments outlined in Exhibit No. 2 filed in this proceeding, as such Exhibit No. 2 is modified by the testimony of Mr. Hoar.

9. Santa Clara Valley Public Service Company is hereby authorized to issue and sell on or before December 31, 1931 at not less than ninety percent of their face value and accrued interest, \$216,000. of six percent twenty year bonds and use the proceeds to pay, in part, for the additions and betterments described in Exhibit No. 2 as such exhibit is modified by the testimony of Mr. Hoar, provided that none of such bonds may be issued, sold or delivered until the Commission has authorized the company to execute a deed of trust to secure the payment of the bonds, nor until the Commission has been furnished with a statement showing the purposes for which the proceeds from the sale of 3,800 shares of stock have been expended.

10. The authority herein granted to transfer properties and issue stocks will not become effective until the Commission has granted to Santa Clara Valley Public Service Company a certificate of public convenience and necessity authorizing it to construct, maintain and operate a public utility water system in the territory outlined in this application.

11. Santa Clara Valley Public Service Company shall keep such record of the issue of the stock and bonds 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.

12. Santa Clara Valley Public Service Company shall pay the fee prescribed by Section 57 of the Public Utilities Act, which fee is Two Hundred and Sixteen (\$216.00) Dollars.

13. This application insofar as it involves the issue of 2780 shares of stock and \$34,000.00 of bonds be, and the same is hereby, dismissed without prejudice.

14. Upon acquiring the properties referred to in paragraphs (1), (2), (3), (4), (5) and (6) in this order, Santa Clara Valley Public Service Company may charge to fixed capital accounts not exceeding \$166,515.00 which shall be offset by accrued depreciation of \$36,017.00 and not exceeding 5220 shares of common stock on a basis of \$25.00 per share.

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

DATED at San Francisco, California, this 9th day of February, 1931.

C. L. Secord
W. H. Carr
M. B. Harris
Commissioners