

Decision No. 24328.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 THE SAN JOSE WATER WORKS,
 a corporation, for:
 (1) Order authorizing sale of certain
 public utility properties; and
 (2) Order authorizing said corporation
 to discontinue public utility opera-
 tions; and the application of
 SAN JOSE WATER WORKS,
 a corporation, for:
 (1) Order authorizing purchase of
 capital stock of a public utility
 corporation;
 (2) Order authorizing purchase of
 certain public utility properties;
 (3) Order authorizing mortgage of public
 utility properties;
 (4) Order authorizing issue and sale of
 bonds and stocks.

Application No. 17740

McCutchen, Olney, Mannon and Greene,
 by A. Crawford, Greene and Henry D. Costigan,
 for applicants.

BY THE COMMISSION:

O P I N I O N

In this proceeding, as amended at the hearing had
 November 10th, applicants, The San Jose Water Works, and San Jose
 Water Works, ask the Commission to enter its order;

- (1) Authorizing San Jose Water Works, a new corporation,
 to acquire all of the outstanding stock of The San Jose Water
 Works, presently engaged in operating a public utility water
 system;

(2) Authorizing The San Jose Water Works to sell and transfer its business, properties, assets, rights and franchises, to San Jose Water Works, and authorizing said San Jose Water Works to acquire said business, properties, assets, rights and franchises of The San Jose Water Works.

(3) Authorizing The San Jose Water Works to discontinue its public utility operations upon the transfer of its business and properties to San Jose Water Works.

(4) Authorizing San Jose Water Works to execute and deliver a mortgage or trust indenture, for the purpose of securing the payment of its first mortgage bonds.

(5) Authorizing San Jose Water Works to issue and sell and/or deliver \$3,000,000.00 of five and one half percent 25-year first mortgage bonds, \$1,000,000.00 par value of six and one half percent cumulative preferred stock and \$1,000,000.00 par value of common stock for the purpose of paying for the business, properties, assets, rights and franchises of The San Jose Water Works.

Applicant San Jose Water Works is a corporation duly organized and existing under the laws of the State of California. It was incorporated on October 24, 1931. It has an authorized stock issue of \$5,000,000.00 divided into 200,000 shares, of which 100,000 shares are cumulative preferred stock and 100,000 shares are common stock. The shares have a par value of \$25.00 per share. The company's present Articles of Incorporation, among other things, provide that the holders of the preferred shares shall be entitled to receive, when and as declared by the board of directors, out of the surplus or net profits of the corporation, dividends at the rate per share per annum of, but not exceeding, six percent (6%) of the par value

thereof, payable in cash quarterly on the first days of March, June, September and December in each year. The dividends shall be cumulative so that in case dividends at the rate aforesaid shall not have been fully paid or declared and set aside for payment, the amount of the deficiency (without interest) shall be fully paid, or dividends in such amount declared and set apart for payment, before any moneys are used for the redemption of preferred shares and before any distribution, by way of dividends or otherwise, upon the common shares.

The company reserves the right to redeem the preferred stock. If it elects to redeem its preferred stock, the holders thereof will receive 110 percent of the par value of the preferred shares and the accrued and unpaid dividends accumulated thereon, whether or not earned or declared.

In case of any voluntary dissolution, liquidation or winding up of the corporation or distribution of its assets, the holders of the preferred shares shall be entitled to receive, whether from earnings, surplus or capital of the corporation, before any payment or distribution is made to the holders of common shares, an amount equal to 110 percent of the par value of said preferred shares and the accrued and unpaid dividends accumulated thereon, whether or not earned or declared. In the case of any involuntary dissolution, liquidation or winding up of the corporation or distribution of the assets, the holders of the preferred shares are entitled to receive an amount equal to the par value of shares of said preferred stock, and the accrued and unpaid dividends thereon, whether or not earned or declared, before any payments are made to the holders of common stock.

The articles of incorporation further provide that all shares of the corporation, whether preferred or common, shall forever be

non-assessable and that the directors shall have no power to levy assessments upon said shares or any of the same. Each share of the corporation, whether preferred or common, shall entitle the holder thereof to the same voting power in all respects as the holder of any other share of any class of stock of the corporation, and no distinction shall exist between the classes of stock as to voting power. No holder of shares of any class of stock shall have any preemptive or preferential rights of subscription or purchase with respect to any shares of any class of stock. Reference is here made to said articles of incorporation for other terms and conditions under which the company's stock is issued.

The San Jose Water Works is a corporation organized and existing under the laws of the State of California. It was incorporated on or about February 17, 1916 under the name of San Jose Water Works. Subsequently its name was changed to The San Jose Water Works by an amendment of its Articles of Incorporation effective on the same date as the incorporation of San Jose Water Works. The San Jose Water Works is sometimes hereinafter referred to as the old company, and the San Jose Water Works as the new company.

The old company is engaged in the public utility water business in and in the vicinity of the City of San Jose and the towns of Los Gatos and Saratoga.

The assets and liabilities of the old company as of September 30, 1931 are reported in Exhibit "C" as follows:

A S S E T S

Fixed capital	\$ 5,091,498.23
Due from affiliated companies	101,845.78
Cash on hand and in banks	26,047.44
Special deposits	811.55
Accounts receivable	62,987.67
Notes receivable	3,200.00
Inventories	41,724.99
Interest receivable	158.55
Prepaid taxes and insurance	4,414.20
Unamortized debt discount and expense	5,585.98
Miscellaneous suspense	<u>1,840.80</u>
TOTAL.....	\$ <u>5,340,015.19</u>

L I A B I L I T I E S

30,000 shares common stock	\$ 3,000,000.00
First mortgage 5% gold bonds	1,000,000.00
Due to affiliated companies	1,896.06
Accounts payable	10,376.11
Accrued bond interest	12,500.00
Accrued interest on consumers deposits	722.39
Accrued taxes	9,861.00
Miscellaneous accrued liabilities	2,564.26
Consumers deposits	9,457.02
Consumers extension deposits	68,728.74
Unamortized premium on bonds	4,577.67
Reserve for renewals and replacements	700,494.70
Reserve for uncollectible accounts	6,756.77
Contributions for extensions	1,327.59
Miscellaneous unadjusted credits	3.00
Earned surplus since acquisition	228,576.57
Earned surplus prior to acquisition	194,201.12
Capital surplus	<u>87,972.19</u>
TOTAL.....	\$ <u>5,340,015.19</u>

For the twelve months ending December 31, 1929 and 1930 and for the twelve months ending September 30, 1931 the old company reports its operating revenue, operating expenses, nonoperating revenue and gross corporate income, that is, the amount available for the payment of bond interest, amortization of debt discount

and expense, dividends and for the accumulation of surplus, as follows:

	Twelve months ending		
	Dec. 31, 1929	Dec. 31, 1930	Sept. 30, 1931
Operating revenue.....	\$687,878.50	\$702,055.68	\$741,197.53
Operating expenses includ- ing taxes and depreciation:	372,608.53	331,543.16	334,293.98
	\$315,269.97	\$370,512.52	\$406,903.55
Nonoperating revenue.....	7,745.69	2,547.69	1,560.70
Gross corporate income.....	\$323,015.66	\$373,060.21	\$408,464.25

During the years 1927, 1928, 1929 and 1930 the old company has paid dividends on its outstanding common capital stock at the average annual rate of 6.96 percent.

The rates now charged by San Jose Water Works were fixed by Decision No. 14213 dated October 28, 1924 in Application No. 9579 (Vol. 25 C.R.C. 507). In testing the rates of the company then in effect the Commission recognized a tentative rate of \$3,134,395.00 made up as follows:

Approximate actual cost of lands, rights of way and water rights as of December 31, 1913.....	\$ 200,000.00(1)
Net additions, actual cost, December 31, 1913 to December 31, 1923	119,404.00
Physical properties as of December 31, 1923.....	2,814,991.00
Tentative rate base December 31, 1923	<u>\$3,134,395.00</u>

(1) Decision No. 1534 dated May 22, 1914 in Case No. 476, Vol. 4, Opinions and Orders of the Railroad Commission of California, page 1101.

In Case No. 476 the Commission thought that \$200,000.00 represented a liberal allowance for the original cost to the company of all lands and water rights and by a substitutional method found their value to be \$307,329.00 as of December 31, 1913. The cost of the physical properties, as shown above, is based on an appraisal by the engineering department of the Commission. Referring

to the above rate base, the Commission in Decision No. 14213 says "The rate base used above (\$3,134,395.00) has been predicated throughout upon the original cost to the company and represents, therefore, the extreme minimum value for rate making purposes under present price conditions of the property of this company devoted to public use. The substitution of any of the other appraisements submitted in this case, which have been and must be given their proper consideration will result in reducing the rate of return below 2.94 percent. " The Commission concluded in its decision that the company was entitled to a rate increase. In the rate case the Commission had before it two appraisements of the company's lands and rights of way. One was prepared by Messrs. Atkinson and Angel, employed by the company, the other by Messrs. McAuliffe and Robbins, assistant engineers for the Commission. The former appraised the company's lands and rights of way as of December 31, 1923 at \$651,389.00; the latter at \$533,836.00, a difference of \$117,553.00. The Commission in the decision did not make a definite finding as to the value of the company's lands and rights of way. The Commission in the rate case also had before it the testimony of F. C. Hermann, a consulting engineer, employed by the company, whose testimony was to the effect that the present market value of the company's water rights and riparian rights, exclusive of rights to underground waters, was at least \$240,000.00. No definite finding of a value for the company's water rights and riparian rights was made by the Commission.

In the proceeding now before us, F. C. Hermann reaffirmed his former testimony. W. L. Atkinson testified that in his opinion the lands and rights of way of the company could at present be sold for \$792,166.44. This exceeds by \$140,787.00 the value submitted

by him in the rate case. Of the increase \$72,541.00 is due to the purchase of lands since December 31, 1923 and \$68,246.00 to the increase in the value of lands owned in 1923.

In Exhibit No. 3 the company shows the following:

Tentative rate base December 31, 1923.....	\$3,134,395.00
Net cost of additions	
1924.....	397,558.78
1925.....	310,894.29
1926.....	366,559.62
1927.....	252,409.46
1928.....	250,428.43
1929.....	175,423.28
1930.....	101,284.61
1931-9 mos.	108,403.08
TOTAL.....	<u>\$5,097,356.55</u>
LESS depreciation reserve.....	700,494.70
NET.....	<u>\$4,396,861.85</u>
PLUS net current assets.....	120,570.40
TOTAL.....	<u>\$4,517,432.25</u>

In the above figures land and water rights are included at original cost. It has been the practise of the Commission for a number of years past to consider, in proceedings involving the transfer of properties and the issue of securities, land at its present value. If the above tentative rate base were adjusted by excluding therefrom the original cost of land and rights of way, and adding thereto Messrs. McAuliffe's and Robbins' appraisal of \$533,836.00, the \$4,517,432.25 would become \$4,845,524.25. We believe that the lands of the company, owned by it on December 31, 1923 have a present value at least equal to that on December 31, 1923. A determination of the issues of this proceeding does not require us to make a definite finding of the value of the old company's lands, rights of way, water rights and riparian rights. We are not hereby finding a value of \$4,845,524.25 for the properties of The San Jose Water Works. We are referring to that figure only to show that the amount of securities which the new company desires to issue, is not excessive.

In this application as originally filed the new company asked permission to issue \$3,000,000.00 of five percent 25-year of first mortgage bonds, \$1,000,000.00 par value of six percent cumulative preferred stock and \$1,000,000.00 par value of common stock. Because of changes in market conditions the new company at the hearing asked that it be permitted to issue five and one half percent bonds instead of five percent bonds, and six and one half percent cumulative preferred stock instead of six percent cumulative preferred stock. We have considered the request of the new company and believe that it should be authorized to issue and sell at not less than ninety-five percent of their face value and accrued interest, \$3,000,000.00 of five and one half percent first mortgage bonds, to issue and sell at not less than \$23.25 per share, 40,000 shares (\$1,000,000.00 par value) of six percent cumulative preferred stock and to issue and sell at par 40,000 shares (\$1,000,000.00 par value) of common stock.

The refinancing of the San Jose Water Works properties on the basis indicated will, assuming no change is made in the dividend rate on the common stock, result in a small decrease in the cost of money.

While the new company filed a copy of its proposed trust indenture or mortgage to secure the payment of its bonds, it is of record that a revised copy will be filed. If it files a copy which we find to be in satisfactory form, we will by a supplemental order, authorize it to execute the same.

O R D E R

A public hearing having been held on this application before Examiner Fankhauser, the Commission having considered the evidence submitted at such hearing and being of the opinion that

this application should be granted to the extent indicated in this order, that the money, property or labor to be procured or paid for by the issue of \$3,000,000.00 of bonds, \$1,000,000.00 of preferred and \$1,000,000.00 of common stock by San Jose Water Works, is reasonably required by said company for the purposes herein stated, and that the expenditures for said purposes are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. San Jose Water Works may acquire on or before February 1, 1932 all of the outstanding stock of The San Jose Water Works.
2. The San Jose Water Works may sell and transfer on or before February 1, 1932, its business, properties, assets, rights and franchises, more particularly described in Exhibit "D" filed in this proceeding, to San Jose Water Works, which business, properties, assets, rights and franchises, said San Jose Water Works is hereby authorized to acquire.
3. Upon the acquisition of the business, properties, assets, rights and franchises of The San Jose Water Works by San Jose Water Works, said The San Jose Water Works may discontinue its public utility operations.
4. San Jose Water Works may issue and sell at not less than ninety-five percent of their face value and accrued interest, on or before February 1, 1932, \$3,000,000.00 of five and one half percent 25-year first mortgage bonds, provided that none of said bonds may be issued and sold until the Commission has authorized said San

San Jose Water Works to execute a trust indenture or mortgage to secure the payment of said bonds, nor until said San Jose Water Works has paid the fee prescribed by Section 57 of the Public Utilities Act.

5. San Jose Water Works may issue and sell on or before February 1, 1932, at not less than \$23.25 per share, 40,000 shares (\$1,000,000.00 par value) of six percent cumulative preferred stock and at not less than \$25.00 per share, 40,000 shares (\$1,000,000.00 par value) of common stock.
6. San Jose Water Works shall use the aforesaid bonds and stock or the proceeds realized from the sale thereof, to pay for the stock and/or the business, properties, assets, rights and franchises of The San Jose Water Works, described in Exhibit "D" filed in this proceeding, it being understood that said business, properties, assets, rights and franchises will be acquired subject to all existing liabilities, excepting the \$1,000,000.00 of outstanding bonds of The San Jose Water Works.
7. San Jose Water Works shall keep such record of the issue, sale and delivery of the stocks 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.
8. That the authority herein granted is subject to the condition that the consideration which San Jose Water Works will pay for the stock and/or business, properties, assets, rights and franchises

of The San Jose Water Works shall not be urged before this Commission or any other public body, as determining the value of said business, property, assets, rights and franchises, for any purpose other than the transfer and issue of securities herein authorized.

9. Within thirty(30) days after acquiring the aforesaid business, properties, assets, rights and franchises by San Jose Water Works, said San Jose Water Works shall file with the Commission a certified copy of the deed or other instrument under which it holds title to said business, properties, assets, rights and franchises.
10. Unless otherwise herein provided, the authority herein granted will become effective twenty(20) days after the date hereof.

DATED at San Francisco, California, this 16th day of November, 1931.

Chas. Deane
Leon Whitney
W. J. Lane

Fred G. Stewart
Commissioners.

This decision was never accepted by applicant and was superseded by Dec ~~24288~~ (185m) 27267 same app. 17740, dated Aug 9, 1934

H. M. Matheson
Sec