

Decision No. 25722

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN BERNARDINO WATER UTILITIES CORPO-
RATION, for an order fixing the rates
which it may collect from consumers;
for an order authorizing it to issue
10,000 shares of Class "A" preferred,
10,000 shares of Class "B" preferred
and 30,000 shares of Class "C" common
stock; and for an order granting it
a certificate of public convenience
and necessity.

ORIGINAL

Application No. 18350

Walter F. Haas, for applicant.

Grant Holcomb, for Muscoy Mutual Water
Company No. 1, an interested party.

BY THE COMMISSION:

O P I N I O N

The Commission is asked to enter its order granting San Bernardino Water Utilities Corporation a certificate of public convenience and necessity to construct, acquire, operate and maintain a public utility water system to serve the area to which reference will hereafter be made; to fix the rates which applicant may charge for water and to authorize applicant to issue for the purposes hereafter stated, 10,000 shares of Class "A" preferred stock of the aggregate par value of \$100,000.00; 10,000 shares of Class "B" no par preferred stock and 30,000 shares of Class "C" no par common stock.

San Bernardino Water Utilities Corporation was organized under the laws of California.

At this time applicant asks permission to sell water as a public utility in an area of about 868 acres which is part of the Meyer ranch. In Exhibit A the area to be presently served is described as including block ll, L, K, J, I and M of the Meyer and Barclay Subdivision, and blocks 82, 83, 42, 43, 44, 45, 46, 52, 58, 62, 66, 71, 72, 77 and the southwesterly half of 65 of the Irvington Land & Water Company Subdivision, San Bernardino County, California. It is estimated that 700 of the 868 acres are irrigable. In describing the area to be served Richard C. Kaiser, president of San Bernardino Water Utilities Corporation, referred to Exhibit two (a map) and said the area lies easterly of the red and green lines on said exhibit and extends northeasterly to the broken line on the same exhibit. The northerly boundary is a line at right angles to the highway just beyond the well marked Meyer Well No. 1. The area is adjacent to the State Highway and Kendall Drive leading into San Bernardino. The center of the area is near Verdemont, a station on the Santa Fe approximately four miles northwest of the city limits of San Bernardino. It is the intention of the owners of the 868 acres to subdivide the same into one to five acre tracts. Other than a gas station and auto court at Verdemont, a residential building recently completed and one in process of construction, no improvements are on the tract now.

It is of record that the Cajon, Ltd. owns about two acres of land on which Meyer Well No. 1 is situated; owns a pipe line from the well parallel to Cajon State Highway and Kendall Drive to the

shut off valve marked on Exhibit 3; the right to develop water on the 868 acres and the right to prevent any one from protesting the transportation of water across the 868 acres. The well is 20 inches in diameter and drilled to a depth of 411 feet. It is equipped with a Layne and Bowler deep turbine pump. At the time it was tested it produced 225 miner's inches (2025 gallons per minute) with continuous pumping. It is drilled at the northwesterly limits of the 868 acres, between the state highway and the Santa Fe tracks. It is said to be fed from the underflow waters of Cajon Creek and Cable Creek which have a drainage area of 77.3 sq. mi. above the well. It appears that neither the owners of the 868 acres of land, nor Cajon, Ltd., nor applicant can prevent other wells being drilled above the 868 acres, unless they can show that the drilling of such wells interferes with their water. The pipe line was constructed during 1929 and consists of

1900 ft. of 6"- 14 gauge riveted steel pipe				
10974 " " 12"- 12	"	"	"	"
4663 " " 14"- 12	"	"	"	"
493 " " 16"- 12	"	"	"	"

The estimated historical cost of the physical properties is reported as follows:-

<u>ITEM</u>	<u>COST NEW</u>	<u>DEPRECIATED COST</u>
Two acres of land	\$1,000.	\$1,000.
Rights of way	1,000.	1,000.
Well and equipment	13,681.	11,486.
Pipe system and accessories	33,126.	29,151.
Total.....	<u>\$48,807.</u>	<u>\$42,637.</u>

The testimony shows that the owners of the 868 acres of land have no right to develop any water on such land. The right to develop water on the land is said to be in Cajon, Ltd. This company propose to transfer such right to applicant San Bernardino Water Utilities Corporation. It is claimed that the right to develop water on the 868 acres is worth \$100,000. It is also reported that the owners of lands intervening between the source of water supply, to wit, the upper end of the 868 acre area, and the

lower end thereof, have executed an agreement, waiving and relinquishing all right they might have to object to prevent or stop the transportation of water from the upper limitations of said lands, through the said lands, and to the lower extremity thereof, and the right to object to the exportation of the said waters so transported. It is urged that the owners of the 868 acres of land can not by injunction or otherwise interfere with the carrying of water across said 868 acres. This protection against the interference by the owners of the 868 acres of land is said to be worth to applicant \$43,300.00, which is at the rate of \$50.00 per acre.

In payment for the aforesaid properties applicant would issue 30,000 shares of Class "C" common stock and 10,000 of Class "B" preferred stock and assume the payment of \$9,000.00 of indebtedness.

It would also issue 10,000 shares of Class "A" preferred stock to obtain funds to pay power bills, maintain and repair the water system and perhaps make some extensions. It is not contemplated that the company will be called upon to expend any large amount for extensions. It is planned to have the subdivider install the necessary distributing system. We do not believe that the Commission has any authority under the Public Utilities Act to authorize the issue of stock to pay power bills or other operating expenses. Counsel for applicant in his letter of February 28th, agrees with this conclusion. There is nothing in the record which warrants a finding that the company needs funds for new construction or that stock should be issued for that purpose.

Under applicant's articles of incorporation its Class "A" preferred stock shall have priority in distribution of dividends and assets over all other stock. It shall be entitled to receive

a cumulative dividend of 60¢ per share per annum with the usual provisions that any portion not paid in one year may be paid in the next succeeding years and shall be paid before any other dividends are paid on any of the stock.

If and when said 60¢ per share shall have been paid on said Class "A" preferred stock the Class "B" preferred stock shall be entitled, out of the net earnings of the corporation after payment of the cumulative dividends on said Class "B" preferred stock, to an aggregate dividend of \$1.00 per share per annum, but non-cumulative. When the \$1.00 per share per annum has been paid on the Class "B" preferred stock, the holders of the Class "C" stock may receive a dividend of 50¢ per share and thereafter the remainder shall be distributed alike and in equal proportions to the holders of the Class "B" preferred stock and Class "C" common stock, or either the whole of said remainder may be used for the retirement of Class "A" or Class "B" preferred stock. The Class "A" preferred stock may be retired at any time by the corporation one year subsequent to its issue and prior to January 15, 1937 before the payment of \$11. per share plus accumulated dividends, and after January 15, 1937 at \$10.25 per share plus accrued dividends. The Class "B" preferred stock may be redeemed in whole or in part at any time subsequent to one year after its issue at \$10.00 per share and accrued current but not accumulated dividends.

Applicant's Articles of Incorporation provide that all of its stock, to wit: Class "A" preferred, Class "B" preferred and Class "C" common shall have equal voting power.

The company submitted at the hearing the following proposed schedule of rates.

Monthly minimum charge:

For 5/8 inch meter	-	-	-	\$1.50
3/4 " "	-	-	-	2.00
1 " "	-	-	-	3.00
1 1/2 " "	-	-	-	4.50
2 " "	-	-	-	8.00
3 " "	-	-	-	12.00
4 " "	-	-	-	20.00
6 " "	-	-	-	35.00

Monthly quantity charge:				Per 100 cu. ft.
From 0 to 500 cu. ft.	-	-	-	.25
500 -5000 "	-	-	-	.15
5000 -Up	-	-	-	.10

Irrigation Use

Monthly minimum charge same as for domestic use.

Monthly quantity charge:

From 0- 10,000 cu. ft.	-	-	-	.08
Over 10,000 cu. ft.	-	-	-	.06

Optional combination Domestic and Irrigation Rate.

Monthly minimum charge same as for domestic use.

Monthly quantity charge:

From 0- 500 cu. ft.	-	-	-	.25
500- 2000 "	-	-	-	.15
Over 2000 cu. ft.	-	-	-	.09

The above optional rate is only applicable to consumers inside the District who use water for irrigation of land for commercial purposes.

The foregoing rates seem reasonable except we believe that the last quantity charge on the optional combination of domestic and irrigation rate for all service over 2,000 cubic feet should be reduced to 7 cents per 100 cubic feet.

The order herein will grant applicant a certificate of public convenience and necessity to acquire, construct, maintain and operate a public utility water system in the 868 acres mentioned above. In so doing the Commission does not necessarily approve the alleged agreements whereby the owners of said 868 acres have relinquished the right to develop water on the land and the right to protest against the transportation of water across the land. Whether or not these agreements are in the public interest depends on the manner in which the proposed development will be carried out. At this time we will not recognize any value in them for the purpose of authorizing applicant to issue stock.

The Commission feels that the number of shares of stock applicant desires to issue are excessive and in part contrary to the provisions of the public utilities act. The act requires the Commission when authorizing the issue of stock to state "the amount thereof, and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income". From the record in this proceeding we are unable to make such a finding in support of the issue of the Class A preferred stock and will therefore not authorize the issue of such stock.

In a number of instances the Commission has held that it would not authorize the issue of no par stock for less than a value of \$25.00 per share. In this case applicant in its articles of

incorporation has provided for a Class "A" preferred stock having a par value of \$10.00 per share with the thought that perhaps in the future applicant may be permitted to issue some of its preferred stock, and with the thought of maintaining equality in voting in practise as well as in theory. The order will permit applicant to issue 4300 shares of common stock in full payment for the properties referred to in this order, subject to an indebtedness of not exceeding \$9,000.00.

ORDER

The Commission having been asked to enter its order as indicated in the foregoing opinion, a public hearing having been had before Examiner Fankhauser and the Commission having considered the evidence submitted at such hearing and being of the opinion that said application should be granted to the extent indicated in this order, therefore,

IT IS HEREBY DECLARED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that public convenience and necessity require and will require San Bernardino Water Utilities Corporation to acquire, construct, maintain and operate a public utility water system for the purpose of selling water in the 868 acres, referred to in the foregoing opinion,

IT IS HEREBY ORDERED, that San Bernardino Water Utilities Corporation be, and it is hereby, authorized and directed to file with the Railroad Commission, within twenty(20) days from the date of this order, the following schedule of rates for water delivered to consumers in the above mentioned territory, said rates to be charged for all service rendered subsequent to the effective date of this order:-

Monthly minimum charge:

For 5/8 inch meter	-	-	-	\$1.50
3/4 " "	-	-	-	2.00
1 " "	-	-	-	3.00
1 1/2 " "	-	-	-	4.50
2 " "	-	-	-	8.00
3 " "	-	-	-	12.00
4 " "	-	-	-	20.00
6 " "	-	-	-	35.00

Monthly quantity charge: Per 100 cu. ft.

From 0 to 500 cu. ft.	-	-	-	.25
500- 5,000 "	-	-	-	.15
5000- Up	-	-	-	.10

Irrigation Use

Monthly minimum charge same as for domestic use.

Monthly quantity charge:

From 0- 10,000 cu. ft.	-	-	-	.08
Over 10,000 cu. ft.	-	-	-	.06

Optional combination Domestic and Irrigation Rate.

Monthly minimum charge same as for domestic use.

Monthly quantity charge:

From 0- 500 cu. ft.	-	-	-	.25
500-2000 "	-	-	-	.15
Over 2000 cu. ft.	-	-	-	.07

The above optional rate is only applicable to consumers inside the District who use water for irrigation of land for commercial purposes.

IT IS HEREBY FURTHER ORDERED, that San Bernardino Water Utilities Corporation file with the Railroad Commission, within twenty(20) days from the date of this order, rules and regulations governing relations with its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

IT IS HEREBY FURTHER ORDERED, that San Bernardino Water Utilities Corporation be, and it is hereby, authorized to issue not exceeding 4300 shares of common stock in full payment, except for a \$9,000. indebtedness which applicant may assume, for all of the properties referred to in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED, that this application in so far as it involves the issue of 10,000 shares of Class "A" preferred stock, 10,000 shares of Class "B" preferred stock and 25,700 shares of Class "C" common stock be, and the same is hereby, dismissed without prejudice.

IT IS HEREBY FURTHER ORDERED, that within thirty (30) days after San Bernardino Water Utilities Corporation issues the stock herein authorized, it shall file with the Commission a certified copy of the deed under which it acquires and holds title to said properties, together with a certified copy of the two agreements referred to in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED, that San Bernardino Water Utilities Corporation shall file with the Commission, reports such as are required by the Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED, that this order shall become effective twenty(20) days after the date hereof, and that under the authority herein granted, no stock may be issued after April 30, 1953.

DATED at San Francisco, California, this 13th day of March, 1933.

C. L. Seaver
Leon A. Sullivan
M. A. L.
M. B. L.
W. H. L.
Commissioners.