

ES

Decision No. 11064.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of  
FRED MEYERS,  
sole owner of the PULLMAN WATER COMPANY,  
for an order to hypothecate all the pro-  
perty of said PULLMAN WATER COMPANY for  
certain purposes.

Application No. 7154.

C.A. Odell, for applicant.  
M.S. Roberson, for Alois J. Meindersee and  
Grace Meindersee.

BENEDICT, Commissioner.

O P I N I O N

In this application FRED MEYERS, operating under the name of PULLMAN WATER COMPANY a public utility water system located in Richmond, asks permission to execute a mortgage of his property to secure the payment of a judgment entered against him.

The record shows that on the eleventh day of October, 1920, a judgment for the sum of \$5,000.00 and costs, was entered against applicant in the Superior Court of the State of California, in and for the County of Contra Costa in an action brought by Alois J. Meindersee and Grace Meindersee, his wife, plaintiffs, to recover damages for personal injuries alleged to have been sustained by Grace Meindersee, by reason of negligence on the part of applicant in leaving unguarded and exposed an open excavation in a public street in Richmond.

Thereafter, in the month of January, 1921, a writ of execution was caused to be issued in said action and delivered to the sheriff of Contra Costa County, who, by virtue of such writ of execu-

tion, levied upon the property and gave notice of sale at public auction. Applicant, thereupon, commenced an action in the Superior Court in and for the County of Contra Costa to enjoin and restrain the sheriff and Alois J. and Grace Meindersee from proceeding with such sale upon the ground that the properties so levied upon were necessary in the performance of his public utility duties.

It appears, however, that on July 18, 1921, before any judgment was entered in this injunction suit, applicant entered into an agreement with Alois J. Meindersee and Grace Meindersee, by the terms of which he agreed, within ninety days from the date of the filing of the remittitur on appeal with the clerk of said Superior Court in said damage suit, should said judgment be affirmed, to pay the amount of the judgment, interest and costs, and in the event such payments were not made within such ninety day period, to cause a mortgage of his properties to be delivered to Alois J. Meindersee and Grace Meindersee, securing the payment of said judgment, interest and costs for a period of six months from the date of the expiration of said period of ninety days.

It appears that the judgment entered by the Superior Court subsequently was affirmed, the remittitur on appeal being filed on or about April 16, 1922. Applicant therefore now asks permission to execute the mortgage referred to in the agreement and in this opinion.

Copies of the agreement between the two parties and of the proposed mortgage have been filed in this proceeding, being marked Exhibit "A" and Exhibit "B" respectively.

The proposed mortgage, by and between Fred Meyers on the one hand, and Alois J. Meindersee and Grace Meindersee on the other, covers all of applicant's utility properties and, as aforesaid, is intended to secure the payment of the judgment, interest and costs for a period of six months from the expiration of the ninety day period

referred to hereinabove. Should applicant be successful in obtaining the money and paying the judgment within the time specified the mortgage will be released from record. If not so paid, suit may be brought and a decree obtained to sell the properties mortgaged.

At the hearing, applicant testified that in all probability he would be compelled to borrow the moneys necessary to make payment under the mortgage he proposes to execute, upon a long term note. However, the matter of applicant's issuing such a note is not before the Commission at this time, nor is it necessarily a part of this proceeding.

In this application, we are called upon to authorize the execution only of a mortgage evidencing and securing the payment of a judgment, plus, of course, interest and costs, and the authority herein granted will be confined to matters covered by this application. In the event that Mr. Meyers finds it necessary to execute a promissory note or other evidence of indebtedness payable later than one year after date, in order to obtain the money needed to make such payment, he must again make application to this Commission requesting such authority.

I herewith submit the following form of Order:

O R D E R

FRED MEYERS, operating a water system under the name of PULLMAN WATER COMPANY, having applied to the Railroad Commission for permission to execute a mortgage, a public hearing having been held, and the Railroad Commission being of the opinion that the application should be granted as herein provided;

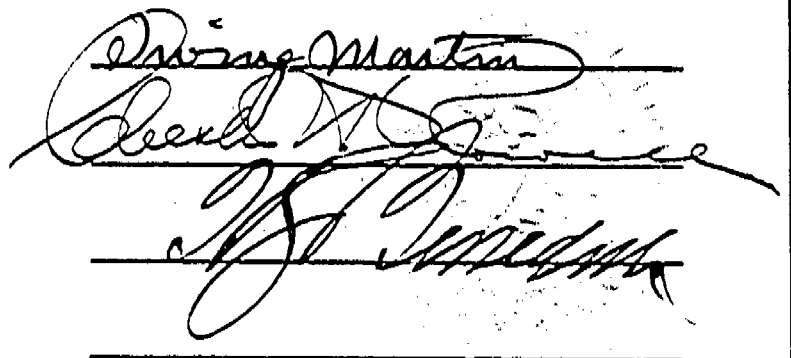
IT IS HEREBY ORDERED, that FRED MEYERS, operating a water system under the name of PULLMAN WATER COMPANY be, and he is hereby, authorized to execute a mortgage upon his public utility

properties to secure the payment of the judgment, interest and costs referred to in the foregoing opinion, such mortgage to be substantially in the same form as that filed in this proceeding and marked Exhibit "B"; provided -

THAT the authority herein given to execute a mortgage is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24  
day of October, 1922.



Commissioners.