

Decision No. 11334.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
PALERMO LAND AND WATER COMPANY,
a corporation, to sell its water sys-
tem, and F. F. FORD and OROVILLE-
WYANDOTTE IRRIGATION DISTRICT to pur-
chase same.

Application No. 8000.

In the Matter of the Application of
SOUTH FEATHER LAND AND WATER COMPANY,
a corporation, to sell its water sys-
tem, and F. F. FORD and OROVILLE-
WYANDOTTE IRRIGATION DISTRICT to pur-
chase the same.

Application No. 8018.

- Joseph G. De Forest, for Palermo Land and Water Company.
- Frank Tade, for South Feather Land and Water Company.
- Raymond A. Leonard, for Oroville-Wyandotte Irrigation District.
- F. F. Ford, in propria persona.
- Douglas Brookman, for protestants, 82 water users of Palermo Land and Water Company.
- Clay Slocum, for George E. Bates.

BY THE COMMISSION:

O P I N I O N

In these proceedings the Palermo Land and Water Company and the South Feather Land and Water Company, public utilities distributing and selling water for irrigation in Butte County, ask authority to sell their water systems; the Oroville-Wyandotte Irrigation District, a district duly organized under the laws of the State of California for the purpose of providing water for the irrigation of certain lands in Butte County, in-

cluding the area now served by the two public utility companies, joins in the applications as purchaser. Mr. F. F. Ford appears in these proceedings as an intermediary only, for the purpose of expediting the transfers sought. He has filed a waiver wherein he asks that any transfer authorized by the Commission be direct from the water companies to the irrigation district.

The applicants allege that the transfer will benefit the public in that it will result in an increased, more dependable and better regulated water supply for the area served, and will provide irrigation service to a larger area than is now served and probably at a lower cost.

The purchase price to be paid to each of the selling companies by the district is \$200,000, which sum has been mutually agreed to between the respective parties.

Hearings in these proceedings were held before Examiner Satterwhite at Oroville and San Francisco, of which all interested parties were notified and given an opportunity to appear and be heard.

It appears that the district followed the usual procedure in its organization, including the giving of due notice of intention and inviting the land owners within a certain area to join the proposed district. The district boundaries originally contemplated included the lands now being served by the two utilities, but as only a few of the owners of such lands expressed a desire to join the proposed district, the revised boundaries excluded the lands of those water users who did not join the district. The district was then formed and negotiations were begun by F. F. Ford to purchase the properties of the two utilities for the district. Mutually agreeable terms having been arranged, the above named applications were filed and these pro-

ceedings instituted.

At the first hearings in these proceedings eighty-two of the water users of the Palermo Land and Water Company who had not joined the district, protested against the transfer, alleging that if the authority to transfer was granted they would be without the jurisdiction of the Railroad Commission, and that they would be without adequate protection as to future rates and service. They requested that before the transfer be authorized the district be required to give guarantees as to future rates to be charged for water and the service to be rendered, and also that some provision be made for the water users to join the irrigation district.

Representatives of the district expressed a desire to protect the protestants' rights to the limit that is allowed by the law under which the district was organized. To show that consideration had been given the consumers' rights, reference was made to that portion of the proposed deed of transfer which provides that it is "understood that said property is so conveyed to said party of the second part subject to all existing obligations of the party of the first part to furnish water to the present water users and to such firms or corporations as are entitled to the use of water from said party of the first part." The matter was submitted without any definite proposal from the district.

After a number of conferences between representatives of the Commission, the companies, the district, and the protestants, the district and the protestants agreed on a form of proposal to be submitted, whereupon the Commission ordered the matters reopened and set a day for hearing, that the proposal could be submitted and made a part of the record in these proceedings.

This proposal, applying to the water users of the Palermo

system, is in the form of a resolution of the Board of Directors of the district, and is set out in full below:

"On motion duly made, seconded and unanimously carried, the following resolution was adopted:

"WHEREAS, on the 30th day of June, 1922, there was filed Application Number 8000 with the Railroad Commission of the State of California, which application is entitled: 'IN THE MATTER OF THE APPLICATION OF PALERMO LAND & WATER COMPANY, a Corporation, to sell its water system, and F. F. FORD and OROVILLE-WYANDOTTE IRRIGATION DISTRICT to purchase the same',

"AND WHEREAS, said application was filed for the purpose of said Palermo Land & Water Company receiving permission from the Railroad Commission of the State of California to sell its water system to the Oroville-Wyandotte Irrigation District, and

"WHEREAS, a public hearing on said application was held at Oroville, California, on the 22nd day of August, 1922, and

"WHEREAS, at the said hearing the present water users of the Palermo Land & Water Company did file a protest against the granting of the said application, and

"WHEREAS, in consideration of the said present water users withdrawing their said protest the said Oroville-Wyandotte Irrigation District does agree to enter into contracts with each of said water users accepting this offer as herein set forth within six months from date hereof,

"WHEREAS, the term 'present water users' is hereby declared to mean the owners, their heirs, successors, grantees and assigns of land supplied with water from the water system of the Palermo Land & Water Company and which lands are not now in the Oroville-Wyandotte Irrigation District,

"NOW THEREFORE, be, and it is hereby resolved that the President and Secretary of the Oroville-Wyandotte Irrigation District, be, and they are hereby directed and empowered to enter into the above mentioned contract or contracts, for and on behalf of the said Oroville-Wyandotte Irrigation District and in its name, and in accordance with the terms and conditions herein contained.

F I R S T

"That the said water users, and each of them shall be entitled to and shall receive one (1) inch of water, continuous flow, for every four (4) acres of land. The amount of water now supplied to said water users shall continue to be so supplied by said Irrigation District and shall be part of the said one (1) inch of water for every four (4) acres of land, and the additional water necessary to make one inch of water continuous flow for every four (4) acres of land shall be available to said water users from the first water developed by the said District.

S E C O N D

"That the present rate of Twenty-two Cents (22 cts.) per miner's inch continuous flow per day of twenty-four hours for water for irrigation purposes, with a minimum charge of Five Dollars (\$5.00) per acre per year, shall be the rate charged by the District and paid by the water users for the said water until January first, 1928. The District shall not charge any rate for said water in excess of the rates above specified.

T H I R D

"If at any time, five (5) years after the first construction work has been started by said Irrigation District, any of the present water users shall make a legal application to have their lands included in the said Oroville-Wyandotte Irrigation District, and said application shall be rejected by said Croville-Wyandotte Irrigation District, then and in that event the said water user shall pay the same charge for water on his land as is paid for water within the Oroville-Wyandotte Irrigation District. The said Irrigation District shall act upon said application within ninety (90) days from the date of the filing thereof.

F O U R T H

"That the above mentioned rates specified in Paragraph Two hereof shall not be raised after January first, 1928, provided however that should the charge paid for water within the said District exceed the said sum of Twenty-two Cents (22 cts.) per inch, then and in that event the present water users shall pay the same charge as is paid within said district.

F I F T H

"All the existing rights of the present water users shall continue and this agreement is an addition to all the rights and benefits they now possess.

S I X T H

"Should any of the present water users at any time have their lands included within the Oroville-Wyandotte Irrigation District, then and in that event this agreement shall be null and void, as to such water users.

"BE IT FURTHER RESOLVED, that the Secretary of the Oroville-Wyandotte Irrigation District be, and he is hereby directed to file a certified copy of this resolution with the Railroad Commission of the State of California, as part of the records of Application Number 8000, as a stipulation by the District in said proceedings, to the end that the said Commission may proceed to make its order in said matter.

(signed) J. A. Wisner, (attest)
Secretary.

Approved:
(signed) R. C. Tyler,
Chairman."

The proposal applying to the water users of the South Feather system is identical in terms with the above, with the exception of the rate, which has been made \$50 per miner's inch per season. This is a reduction of \$10 per miner's inch per year from the present rate established by this Commission. The reduction in rate on the South Feather system makes the charges for the quantity of water the same on both systems, as the Palermo Land and Water Company delivers and sells water on the basis of 50 miner's inches per second-foot, while the South Feather Land and Water Company uses 40 miner's inches per second-foot.

Upon the presentation of this proposal at the further hearing of the matter, the protestants formally withdrew their objections to the transfer.

The question was raised as to the status of the lands that were entitled to water because of contracts entered into at the time of their purchase from the Palermo Land and Water Company, but for various reasons have not as yet received water service. The district took the position that it assumed the obligations of the Palermo system as set out in the deed of transfer, but that it could not properly hold water for these lands indefinitely and would therefore limit the period of final development and delivery of water to these lands to ten years from the date of taking over the system. Only one land owner appeared to protest this limitation, and while he did not withdraw the protest, he admitted that the ten years' limitation appeared to be fair.

Inasmuch as the applications filed with the Commission did not specifically set out the status of the water users outside the district or indicate the rates to be charged and service to be rendered but only generally referred to same as set out in the deed of conveyance hereinbefore referred to, the Commission

believed that a transfer under such conditions would not have properly safeguarded the rights of the water users, and purpose-ly delayed authorization of the transfer until something more definite was offered the water users. Now that a method has been proposed whereby the water users outside the district are given reasonable protection as to service and rates, and because of which the protestants withdrew their protest to the transfer, the Commission now believes that public convenience will best be served by granting the authority sought, subject to the conditions contained in the applications and in the proposals submitted in connection therewith.

O R D E R

Palermo Land and Water Company and South Feather Land and Water Company, public utility water corporations, having filed applications with this Commission for authority to transfer their public utility properties to F. F. Ford and Oroville-Wyandotte Irrigation District, and F. F. Ford having indicated in writing his desire that the Commission authorize the transfer of these properties to the district direct, the Oroville-Wyandotte Irrigation District having joined in these applications, hearings having been held and the matters having been submitted,

IT IS HEREBY ORDERED that the applications designated above be and the same are hereby granted, subject to the following conditions:

1. The authority herein granted shall apply only to that particular public utility property of the Palermo Land and Water Company set forth and described in Exhibits six (6) and seven (7) attached to the Application (No. 8000), and only to that particular public utility property of the South Feather Land and Water Company set forth and described in the proposed instrument

of conveyance attached to Application No.8018.

2. That the present water users of the two water companies parties hereto, and those persons or firms desiring to become water users within ten (10) years from the date hereof, shall receive service from the Croville-Wyandotte Irrigation District at the rates and under the conditions recited in Application 8000 and Application 8018 and in the resolutions of the directors of the Croville-Wyandotte Irrigation District dated October 20, 1922, submitted and marked as Exhibit 4 in Application No.8000 and Exhibit 5 in Application No.8018.

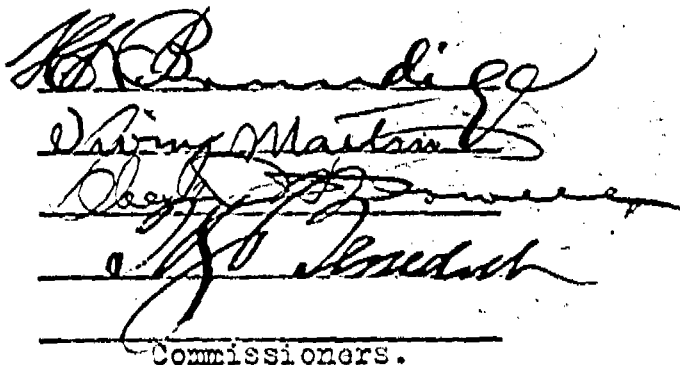
3. The consideration involved in these transfers, or either of them, shall not be urged before this Commission or any other public body as a measure of value for rate fixing purposes.

4. Within thirty (30) days after its execution the Croville-Wyandotte Irrigation District shall file with the Commission a verified copy of the deed under which it has secured and holds title to the properties authorized to be transferred.

5. Palermo Land and Water Company and the South Feather Land and Water Company shall notify the Commission of the date on which each relinquishes control and possession of the properties, such notification to be submitted to the Commission within ten (10) days after control and possession of the properties has been relinquished.

6. The authority herein granted shall apply only to such sale and transfer as shall have been effected on or before June 30,1923.

Dated at San Francisco, California, this 8th day of December, 1922.


Commissioners.