

Decision No. ....

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA

ORIGINAL

Decision No. 15,641

In the Matter of the Application of  
PEOPLES WATER COMPANY,  
a corporation, for an Order authorizing  
the Issue of Notes and the Issue and  
Pledge of Bonds as collateral security  
therefor.

Application No. 1110.

McKee and Tasheira and Arthur G. Tasheira for applicant.

THELEN, Commissioner.

O P I N I O N

This is an application for an order of this Commission authorizing Peoples Water Company to issue its promissory notes, from time to time, during the period of two years next succeeding the order in this proceeding, in amounts not exceeding in the aggregate the sum of \$3,329,883.86, for the purpose of discharging or refunding outstanding obligations in the same amount, and authorizing Peoples Water Company to issue and pledge as collateral security for the payment of such promissory notes its general mortgage 5-per cent 30-year gold bonds in such proportion to the amount of such promissory notes as this Commission may direct.

Schedule "F" attached to the petition herein gives applicant's floating debt on February 28, 1914, as follows:

FLOATING DEBT: February 28, 1914.

(a) Coupons of bonds due and accrued.....	\$ 115,041.32
(b) Notes Payable- unsecured .....	29,043.67
(c) Notes Payable- secured by pledge of Peoples Water Company General Mortgage Five Per Cent Thirty Year Gold Bonds ....	2,915,259.01
(d) Dividends Declared- Years 1907 and 1908 .....	6,321.00
(e) Accounts Payable .....	<u>385,581.19</u>
TOTAL .....	<u><u>\$3,451,246.19</u></u>

The items totalling the said sum of \$3,329,883.86 are as follows:

Notes payable - unsecured .....	\$ 29,043.67
Notes payable - secured .....	2,915,259.01
Accounts payable .....	<u>385,581.19</u>
TOTAL .....	3,329,883.87

At the hearing applicant also asked authority to issue its promissory notes during the next two years to refund indebtedness amounting to \$211,668.00, shown on Schedule "D" attached to the petition herein, which indebtedness was incurred by applicant in connection with the purchase of five (5) specific tracts of land, and is as follows:

Rowland Ranch .....	\$ 16,668.00
Pereira or King Ranch .....	7,000.00
Laura Brown property .....	35,000.00
San Leandro Creek property .....	115,000.00
Fish and Blum Ranch property .....	<u>38,000.00</u>
TOTAL .....	\$211,668.00

As has hereinbefore been stated, applicant asks authority to issue its promissory notes during the period of two years after the date of the order herein, for the purpose of refunding the foregoing indebtedness. Heretofore, on March 28, 1913, this Commission rendered its Decision No. 526 on Application No. 381, authorizing Peoples Water Company to issue its promissory notes for the aggregate sum of \$1,250,000, or so much thereof as might be necessary, for the purpose of paying off a list of obligations represented by promissory notes, which order was limited in effect to notes issued on or before March 30, 1914. It is largely because the time limit of this order has expired that applicant is again before this Commission asking authority to issue its promissory notes as hereinbefore indicated. As will be noted, the authority granted in the order of March 28, 1913, was limited to one year. In the

course of its opinion in this matter, this Commission, after referring to the difficulties in connection with the refunding of existing notes by means of other notes secured by bonds at ratios up to 2 1/2 to 1, said:

"This method of financing should not be allowed to continue indefinitely, and applicant should be called upon within a reasonable time to present to the Commission some comprehensive plan by which its present short-term obligations shall be converted into long-term obligations, or that such obligations be retired, keeping in view the possibility of a sale of the plant, or parts thereof, to the public."

No such plan has as yet been presented to this Commission. The evidence presented on behalf of applicant at the hearing shows that a refinancing committee has been appointed for the purpose of working out a plan of refinance for applicant, ~~and~~ that an appraisal of applicant's property is being made and that, on the completion thereof, applicant intends to work out some definite plan for refinancing. In the meantime, applicant's financial condition has not improved. Applicant's annual report filed with this Commission for the year ending December 31, 1913, shows that during this year the company incurred a deficit amounting to \$123,702.50. During the year interest amounting to \$616,152.85 was paid on funded debt, whereas applicant's total net operating revenue was only \$652,300.16. Furthermore, within the last few months, bonds of a face value in excess of \$500,000, which bonds had been put up as collateral to secure promissory notes of applicant, have been foreclosed upon and sold because of applicant's inability to pay said promissory notes. In view of these facts, I do not believe that this condition should be permitted to continue for another two years. I believe it reasonable to permit the issue of notes as requested by applicant for a period of one year, these notes to bear interest not in excess of the interest at present payable on the notes to be refunded and their term not to exceed in any case a period in excess of one year from the date of issue. At the same time, I desire to

draw attention again to the need of a permanent plan of refinancing and to draw attention particularly to the need of making an effort to secure an agreement from the note holders to the effect that they will extend the time of payment and will not foreclose on the bonds which they hold as security. An effort has already been made to secure an agreement of forbearance from the holders of the underlying bonds, amounting to \$5,600,000, which fall due on January 1, 1915, and at the date of the hearing such forbearance had been signed by the owners of almost two million dollars of these bonds, but no effort apparently had been made to secure similar agreements from note holders.

Applicant asks authority to pledge bonds up to the ratio of  $2\frac{1}{2}$  to 1 as security for the promissory notes which it desires to issue. At the ratio of  $2\frac{1}{2}$  to 1, \$8,324,709.67 face value of bonds will be outstanding to secure the promissory notes which applicant desires to issue, amounting to a total of \$3,329,883.86. The amount of bonds so outstanding would be over \$1,900,000 in excess of the bonds which applicant reports in its Schedule No. "E" as being pledged to secure obligations of the company on February 28, 1914. This request makes it necessary to give consideration to applicant's present bonded indebtedness.

Applicant's so-called underlying bonds consist of authorized issues by various predecessors of applicant amounting to a total of \$5,600,000, all of which bonds are now in the hands of the public and are due on January 1, 1915. On January 2, 1907, applicant authorized a further issue of 20,000 bonds of the face value of \$20,000,000.00, these bonds to bear interest at the rate of five (5) per cent per annum and to be payable on January 2, 1937. Applicant's annual report for the year ending December 31, 1913, shows the following disposition of the authorized issue, as reported to applicant by Klink, Bean and Company:

Unissued in hands of trustee .....	\$ 500,000.00
Pledged as collateral .....	6,480,000.00
Unissued in treasury of company .....	974,000.00
Total par value not held by Peoples Water Company .....	<u>6,446,000.00</u>
TOTAL .....	<u>\$14,400,000.00</u>

The remaining \$5,600,000.00 are to be reserved for the purpose of retiring underlying bonds.

In reliance on this statement, applicant stated, in Schedule "E" attached to the petition herein, that the bonds issued and in the hands of the public under the issue of January 2, 1907, amounted, on February 28, 1914, to \$6,446,000.00, and that the bonds pledged to secure the obligations of the company amounted on the same day to \$6,417,000.00. Applicant also reported that bonds of the face value of \$5,600,000.00 were in the hands of the trustee for the purpose of redeeming the underlying bonds and that the remaining bonds, amounting to \$1,537,000.00, were in the treasury of the company. Applicant was unable to satisfy the Commission with reference to the amount of the bonds which were still in its treasury and was directed to look into the matter further and to report to the Commission. This report has now been made and is as follows, as of May 21, 1914:

Uncertified.....	\$ 500,000.00
In hands of trustee to cover underlying issues .....	5,600,000.00
In hands of public as per entries on company's books .....	6,747,000.00
Deposited as collateral .....	6,097,000.00
In safe deposit boxes controlled by Peoples Water Company.....	221,000.00
For "safe keeping"-	
Oakland Bank of Savings .....	250,000.00
First National Bank of Oakland .....	305,000.00
F. C. Havens .....	<u>280,000.00</u>
TOTAL .....	\$20,000,000.00

Further investigation shows that the bonds amounting to \$250,000.00 which are reported as being held "for safe keeping" by Oakland Bank of Savings were left with the bank in connection with former loans, but that the bank at present claims no interest in the same and is willing to return them. Applicant should promptly get these bonds and replace them in its treasury. The bonds amounting to \$305,000.00 which were reported by Klink, Bean and Company as being in applicant's treasury, but which now are reported to be held by First National Bank of Oakland, are held by that bank as collateral for the repayment of moneys loaned, from time to time, to enable applicant to pay its bond interest as it falls due on January 1 and July 1 of each year. As the moneys so loaned are repaid from time to time, the bonds pledged as security should be returned to Peoples Water Company *pari passu*. In other words, if the bonds are pledged at the ratio of  $2\frac{1}{2}$  to 1, bonds of the face value of  $\$2\frac{1}{2}$  should be returned to applicant's treasury whenever it pays off \$1 of its indebtedness to the bank. Peoples Water Company should claim and place in its treasury such portion of these \$305,000.00 of bonds as should properly be released upon this basis. The bonds amounting to \$280,000.00 which were reported by Klink, Bean and Company as being in applicant's treasury, but which are now reported by applicant to belong to F. C. Havens, appear from applicant's statements to have been bought by Havens in the open market and to be his property. The number of bonds outstanding in the hands of the public must accordingly be increased to this extent.

A corrected statement of applicant's bonds of the issue of January 2, 1907, as of May 21, 1914, is accordingly as follows:

In hands of public as per entries on company's books (including bonds held by Havens) .....	\$7,027,000.00
Deposited as collateral (including bonds held by First National Bank) ....	6,402,000.00
Bonds formerly issued but now held by or for Peoples Water Company .....	471,000.00
Uncertified, in treasury of Peoples Water Company .....	500,000.00
In hands of trustee to cover underlying issues .....	<u>5,600,000.00</u>
TOTAL .....	<u><u>\$20,000,000.00</u></u>

It should be said, however, that Peoples Water Company does not know the exact number of its bonds which have been foreclosed and sold for failure to pay notes when due, although it believes that the face value of the bonds so foreclosed recently is in excess of \$500,000.00. The best that can be said is that the total of the first two items represents the total of the bonds in the hands of the public and of the bonds pledged as collateral on May 21, 1914.

In view of the situation herein outlined and particularly of the fact that so many of this company's bonds are being foreclosed because of this company's inability to meet certain of its obligations as they become due, so that the total number of its bonds outstanding is increasing, from time to time, without commensurate increase in the assets of this company, I am unwilling to recommend that applicant be authorized to issue any bonds in excess of those which were in the hands of the public or pledged as collateral on March 23, 1912, on which day this Commission's powers over public utility securities first became effective. For what happened before that time, this Commission is not responsible. The most that this Commission can be expected to do now is to see that by none of its acts does the condition of utilities become worse than it was before March 23, 1912. When

a utility which has been improvidently or recklessly financed prior to March 23, 1912, comes before this Commission, the Commission will seek to compel the utility to better its financial condition, instead of making it worse. And while the Commission must perforce permit for a while many conditions to continue which it would never have sanctioned initially, it will constantly strive to bring public utility financing more nearly to the level which it should have assumed from the start.

The present financial condition of Peoples Water Company grows out of transactions which took place before the Public Utilities Act was passed and before any public authority had been granted the right to regulate the issue of stocks, bonds and other evidences of indebtedness of public utilities. Applicant's present plight is not the result of regulation, but the result of the absence of regulation at the time these transactions had their inception. If this Commission had been vested with authority over applicant at the time these transactions were initiated, the Peoples Water Company would not find itself in its present condition.

On March 31, 1912, the face value of applicant's bonds in the hands of the public and pledged as collateral was as follows:

In hands of public .....	\$ 6,746,000.00
Pledged as collateral .....	<u>6,951,000.00</u>
TOTAL .....	<u>\$13,697,000.00</u>

I recommend that applicant's prayer for the issue of bonds at the ratio of  $2\frac{1}{2}$  to 1 as collateral for the entire floating indebtedness of \$3,329,883.85 be denied, but that applicant be authorized to issue and use as collateral such an amount of its bonds that the total of bonds in the hands of the public and pledged as collateral shall not exceed \$13,697,000.00,



the amount outstanding for these purposes on March 31, 1912. The \$250,000.00 bonds now in the custody of Oakland Bank of Savings and such other bonds as are available for that purpose, within the limits herein indicated, should be reserved for the purpose of securing the repayment of the moneys which must be borrowed on July 1 to pay the semi-annual interest on the bonds, and as these moneys are repaid, the proportionate amount of bonds should be reclaimed and replaced in applicant's treasury and not again issued without this Commission's <sup>prior</sup> authorization.

I recommend further that Peoples Water Company be directed forthwith to present to the Commission plans for reorganization and to report within 30 days as to what steps it has taken in the matter of securing forbearance agreements from its note holders as well as the holders of its bonds which are due on January 1, 1915. If Peoples Water Company had heeded this Commission's warning in its opinion of March 28, 1913, and had taken the steps therein indicated to replace its short-term obligations under a permanent plan of financing, the company would not now be in its present financial straits.

While the steps herein indicated are necessary to secure the existing creditors of Peoples Water Company, attention should be directed to the fact that the people of Oakland, Berkeley, Alameda, Piedmont, Richmond, Albany, Emeryville and San Leandro are dependent for water and for extensions of water service upon this utility, and that they have the right to expect that this utility will be refinanced in such a way as to place it in a position to live up fully to its obligations as a public utility.

I submit herewith the following form of order:

## O R D E R

PEOPLES WATER COMPANY having applied for an order authorizing the issue of its promissory notes of a face value not to exceed \$3,329,883.86 and authorizing said company to issue and pledge as collateral security for the payment of said promissory notes Peoples Water Company General Mortgage Five Per Cent Thirty-year Gold Bonds, dated January 2, 1907, and authorizing said company also to issue its promissory notes in a total amount not to exceed the sum of \$211,668.00 for the purpose of refunding certain outstanding obligations incurred in connection with the purchase of certain parcels of real property as indicated in Schedule "D" attached to the petition herein, and a public hearing having been held on said application,

IT IS HEREBY ORDERED that Peoples Water Company be and the same is hereby authorized to issue its promissory notes in an amount not to exceed \$3,329,883.86, and also its promissory notes in an amount not to exceed the sum of \$211,668.00, and also to issue its General Mortgage Five Per Cent Thirty-year Gold Bonds not to exceed the amount hereinafter indicated, upon the following conditions and not otherwise:

1. Peoples Water Company shall realize the full face value of the promissory notes hereby authorized and the proceeds thereof shall be used only for the purpose of paying its indebtedness as evidenced by the amounts shown to be due on unsecured notes payable, secured notes payable and accounts payable, shown on Schedule "F" attached to the petition herein, in a total amount not to exceed \$3,329,883.86, and also for the purpose of paying its indebtedness as evidenced by a list of obligations incurred in connection with the purchase of specific parcels of

real property, as shown on Schedule "D" annexed to the petition herein, in an amount not to exceed the sum of \$211,668.00.

2. Said promissory notes shall bear interest not to exceed the rates now payable on the respective notes to be refunded and not to exceed 7 per cent on notes given on account of accounts payable.

3. Peoples Water Company may issue its said Five Per Cent Thirty-year bonds of the issue of January 2, 1907, secured by deed of trust to Mercantile Trust Company of San Francisco, for the purpose of being used as collateral security for the promissory notes herein authorized, and for the notes which the company may have to execute to secure funds wherewith to pay the bond interest payable on July 1, 1914, but only at a ratio of not to exceed two and one half dollars in bonds to one dollar in notes, and only in such amount that the total of applicant's bonds of this issue outstanding shall not exceed the total amount outstanding in the hands of the public and pledged as collateral security for loans on March 31, 1912, which total amounts to \$13,697,000.00.

4. Such bonds as Peoples Water Company has now issued or may hereafter issue as security for the payment of moneys borrowed or to be borrowed to pay the semi-annual interest on the company's bonds shall be returned to the company's treasury pari passu as the moneys so borrowed are repaid and shall not be again issued until this Commission's authority so to do has first been secured.

5. Peoples Water Company shall proceed forthwith to formulate and present to this Commission a plan for reorganization and within thirty days from the date of this order, shall report to this Commission the steps which it is taking to secure forbearance agreements on the part of its note holders and of the holders of the bonds which become due on January 1, 1915.

6. Peoples Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds derived from the issue of the promissory notes and

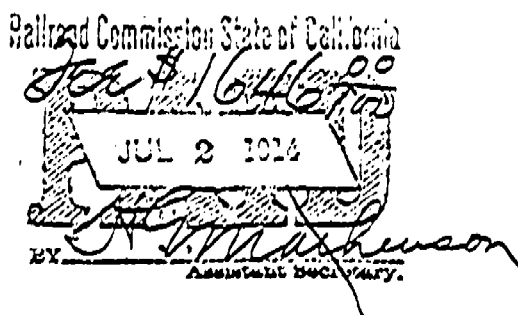
of the bonds hereby authorized to be issued, and on or before the 25th day of each month, the company shall make a verified report to the Commission, stating the disposition of such promissory notes and bonds during the preceding month, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as relevant, is made a part of this order.

7. The authority hereby given to issue notes and bonds shall apply only to notes and bonds issued by said company on or before the first day of June, 1915.

8. The authority hereby given shall become effective only when applicant has paid the fee specified in Section 57 as amended of the Public Utilities Act.

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 4th day of June, 1914.



H. J. Mathewson  
Chas. Gordon  
Max Thelen