BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 1692.

ORIGINAL

In the matter of the application of James A. Murray and Ed Fletcher, for an order authorizing them to sell, and of the Cuyamaca Water Company, a corporation, authorizing it to buy a certain water system in San Diego County, and of said company to issue stocks and bonds in payment therefor.

Application No. 1130.

A. H. Sweet for applicant.
Haines & Haines for Fairmount Water Company.
D. G. Gordon for certain protestants.
L. L. Boone for La Mesa Development Company.
T. B. Cosgrove for City of San Diego.

ESHLEMAN AND THELEN, Commissioners.

O P I N I O N.

The applicants, Murray and Fletcher, own a water system in the County of San Diego and conduct it under the name of the Cuyamaca Water Company. On the 15th day of August, 1913, a company was organized by Murray and Fletcher known as the Cuyamaca Water Company. It is now desired by these individual owners to sell all of their property to this corporation and to take in exchange therefor the capital stock of the Cuyamaca Water Company of $600,000 and six per cent twenty-year bonds in the sum of $900,000, the stock and bonds prayed for to be issued five-sixths to James A. Murray and one-sixth to Ed Fletcher, in proportion to their respective ownerships.

Judge Haines, appearing for Fairmount Water Company, desires that the order contain a clause to the effect that the amount of securities authorized shall not be taken before this Commission or any other public authority as representing for rate fixing purposes the actual value of the property.

He also desires the insertion of a clause to the effect that the corporation takes the property subject to all existing valid burdens and obligations.

Judge Haines protests against the issue of any bonds, first, because of possible conflict with the rights of present contract holders, and, second, because in his opinion, the bonding capacity of the system should be reserved for subsequent extensions and improvements.

Mr. L. L. Boone, representing La Mesa Development Company, desires the insertion of a clause in the order to the effect that the corporation takes the property subject to all outstanding obligations, particularly the obligations which James A. Murray assumed when he accepted the deed from the San Diego Flume Company.

Mr. Gordon, representing protestants, objects to any transfer whatsoever, on the ground that Murray and Fletcher have not complied with this Commission's order in Application No. 118. He insists that no steps have been taken to increase the available supply of water, as ordered by the Commission, to which claim Fletcher answers that the available supply has been increased by the digging of wells. Mr. Gordon also insists that the Commission's order is being violated in that additional consumers are being taken on. These consumers are in part domestic consumers west of La Mesa and in part consumers for domestic and irrigation purposes in two tracts known as El Cajon Acres and Murray Hill, which tracts are owned by Murray and Fletcher and are now being placed upon the market. Fletcher replies that under the order, he and Murray were authorized to take on additional consumers for domestic purposes and that Murray owns four or five inches of water attached to the tract known as El Cajon Acres, and that Murray and Fletcher have the right to sell water to people who may purchase lots in this tract.

Mr. Gordon also particularly objects to the transfer on the ground that the proposed deed does not contain the so-called El Monte pumping plant, which pumping plant was the main source of water for this system at dry periods during at least six or seven years. Gordon and Haines object to the segregation of this pumping plant from the general water system.

The evidence clearly shows that this plant was originally owned by the San Diego Flume Company and that for quite a number of years it has been a part of this system, although it was not decded to Murray until after he bought the remaining portions of the system.

There is no question in our minds that the transfer to the corporation should be permitted. Only one of the protesting parties objects to this, but we do not believe the grounds stated are good. We do not, however, believe that the terms of the transfer are proper. These two applicants, Murray and Fletcher, own the entire property, and if the property is transferred to a corporation and these same men held all the stock of this corporation they would have the same substantial ownership, regardless of the amount of stock. It is desired, however, to issue the maximum that could be issued under any circumstances, both of stocks and bonds, and to impose upon this system immediately an annual interest charge of $54,000. To be sure as long as these bonds are in the hands of the owners to whom it is desired to have them issued the interest payment might be deferred. But the fact remains that if the Commission should grant the prayer of the applicants we would have a utility corporation starting out with a legal obligation beyond its ability successfully to carry.

In any event, these applicants so long as they are owners can only secure the surplus earnings of this company. This is true whether they are owners in their individual right or as stockholders of a corporation. Therefore, it can do these individuals no good to have an excessive amount of stocks and bonds issued unless they desire to sell such stocks and bonds to the public and this alone is a very good reason for preventing such issue.

Mr. P. E. Harroun, for the applicants, finds the reproduction cost of this property to be $1,252,130 and the present value to be $809,022. This Commission, of course, does not go into the question of value in applications for the issue of stocks and bonds with as much care as when rates are involved, but we do satisfy ourselves that there are property values sufficient to justify and make safe the securities.

Assuming Mr. Harroun's present value to be correct, the par value of the outstanding stocks and bonds applied to be issued will be much in excess of the value of the property. Intangibles however are urged to bring the value of the property up to $1,500,000.

It is impossible for us to see why any one owning a piece of property outright should desire to give himself a note and secure it by a mortgage on his property, yet this is exactly what the applicants here desire to do. They desire to go out and borrow money on this property, and put the money or the evidence of it into their pockets. There is nothing wrong with such procedure but it certainly is a foolish transaction, unless they expect to take the evidence of indebtedness and sell it to third parties at more than it is worth. In only one situation do we see where such a procedure could be of advantage to the applicants, and that is in a case where money was needed for other enterprises and it was desired to borrow from this particular enterprise, and take the money realized therefrom and invest it

in some other business. This reason has not been urged by the applicants, but they merely state in justification of the application that they desire to have issued an amount equal to a fair value of the property in stocks and bonds.

Considerable money has been expended by the applicants since they acquired this system for purposes that might properly be called capital expenditures, and for which they would have been permitted to borrow money had they so desired. Some of these expenditures which may properly be credited to capital account might be funded in bonds, thereby releasing the money invested therein if the earning power of the company were better.

The applicants state that they propose to apply to the Commission for an increase in rates and thereby increase their earnings. At the time of the hearing of Application No. 118, this Commission suggested that the extension of the facilities and the increasing of the supply of water under the control of the applicant would largely augment its revenue. We still believe that this can be done. The question of higher rates can be determined when an application is presented, and if found justified, of course, the higher rates will be imposed, but if not, they will not be permitted.

Any time within five years from the time expenditures are made by a public utility properly chargeable to capital account these charges may be refunded by the issuance of bonds therefor, and hence the denial of the application to issue bonds at the present time need not necessarily be considered as final as far as the capital expenditures within the five years are concerned, but at the present time we do not believe any bonds should be issued thereby imposing an added fixed charge. We believe that the bonding capacity of this company should be kept largely for extensions that must inevitably be made, looking to the increase of the supply and the extension of the facilities of the company.

It seems to us that the suggestions made by Judge Haines and by Mr. Boone may be incorporated in the order, although Mr. Boone's suggestion probably is a mere statement of what would result by operation of law in any event.

It seems to us that some of Mr. Gordon's protests are too critical. The question of the inclusion of the El Monte pumping plant has given us considerable trouble. If, as a matter of fact, this pumping plant is necessary to the safe and successful operation of the system it should not have been segregated from the property of the system, and had the Commission had jurisdiction at the time of the alienation of this property it would not have been permitted if it were then found to be necessary to the successful operation of the property. A determination of this question may be left to a subsequent proceeding, and if it be found in such subsequent proceeding, after investigation, that this plant is necessary to this system, a condition may be imposed requiring it to be transferred to the company. We do not believe at the present time this one matter should stand in the way of the disposal of the application.

We submit the following order:

O R D E R

James A. Murray and Ed Fletcher having applied to this Commission to sell and the Cuyamaca Water Company, a corporation, having applied to this Commission to purchase all of the property owned by the said Murray and Fletcher and operated as the Cuyamaca Water Company, and a hearing having been held, and being fully apprised in the premises,

THE COMMISSION HEREBY FINDS AS A FACT that public convenience and necessity will be served by the transfer of the property herein described to the Cuyamaca Water Company upon the terms and conditions hereinafter set forth, and basing its order on the foregoing finding of fact,

IT IS HEREBY ORDERED,

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1. Permission is granted to James A. Murray and Ed Fletcher, doing business under the name of the Cuyamaca Water Company, a co-partnership, to sell, and permission is given to the Cuyamaca Water Company, a corporation, to purchase all of the property owned by said Murray and Fletcher and used in the operation of the water system owned by the applicants, being all of the property acquired by said Murray and Fletcher on the 1st day of June, 1910, theretofore owned by the San Diego Flume Company, together with all additions and betterments made thereto to the present date, which said property is more particularly described in Exhibit "B" of the application herein.

2. Cuyamaca Water Company is hereby authorized to issue and deliver to James A. Murray $500,000 par value of stock, and to Ed Fletcher $100,000 par value of stock in return for said property herein authorized to be purchased.

All of this order subject to the following conditions:

1. The stock herein authorized to be issued shall not be taken before this Commission or any other public authority as representing for rate fixing purposes the actual value of the property.

2. Said property to be transferred and to be taken by said corporation subject to all existing valid burdens and obligations.

3. Cuyamaca Water Company shall report to this Commission the date of the issue of the stock herein authorized and shall file a certified copy of the deed of conveyance from Murray and Fletcher.

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 24th day of June, 1914.

John M. Eshleman

Alex Gordon

Mark Thelen

Commissioners.