

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the Application
of RICHLAND REALTY COMPANY and
of Directors of Encanto Heights
Mutual Water Company, a defunct
corporation, as trustees of the
property thereof, for an order
authorizing the conveyance of
Water System at Encanto to
Harry R. Atwood.

ORIGINAL

Application No. 1396.

Decision No. 2387

H. E. Doolittle for Harry R. Atwood.
A. H. Sweet for Richland Realty Company.
J. F. Carey for consumers.

THOMAS, Commissioner.

O P I N I O N.

This is an application for an order authorizing the sale of a water system at Encanto, San Diego County, by the owners thereof to Harry R. Atwood for the sum of \$1325.00.

The history of this water system was quite fully set out by this Commission in its Decision No. 1386, rendered on March 28, 1914, in Case No. 547, In the Matter of the Rates Charged and Service Rendered by Harry R. Atwood, (Vol. 4, p. 570, Opinions and Orders of Railroad Commission of California) to the opinion wherein reference is hereby made.

It appears from the evidence in Case No. 547 and in the present proceeding that this water system was originally constructed by Richland Realty Company or by Encanto Heights Mutual Water Company or in part by both companies for the purpose of aiding the sale of the land at Encanto owned and subdivided by Richland Realty Company. The Encanto Heights Mutual Water Company was incorporated on January 27, 1908, by the incorporators of Richland Realty Company for the purpose of taking care of the water business of Richland Realty Company, and was to be as the name indicates, a mutual water company. To the first few purchasers of land from Richland

Realty Company shares of stock in Encanto Heights Mutual Water Company were issued, but the project was not successful, for the reason that the purchasers of land from Richland Realty Company did not desire to have imposed upon them the burden of maintaining the water system. The mutual water company failed to pay its taxes to the State of California, and has now become defunct.

It is evident that if this plan had been carried out, the purchasers of land from Richland Realty Company would have owned the water system, through stock ownership in Encanto Heights Mutual Water Company, without the expenditure of a dollar for the water system, in addition to the price paid for the land. The only expense in connection with the water system would have been the expense of operating and maintaining the system.

Thereafter, to induce intending customers to buy land at Encanto, Richland Realty Company caused Encanto Heights Mutual Water Company to issue agreements to deliver water to the purchaser of the land "at the usual rate fixed by said corporation for the delivery of water in said vicinity, which said rate shall in no event be in excess of the sum of ten cents per thousand gallons." or almost 10¢. As Richland Realty Company was paying 10¢ per thousand gallons of water to Southern California Mountain Water Company, it is clear that 10¢ per thousand gallons did not even pay the cost of operating and maintaining the system and that Richland Realty Company did not intend that the rate paid for water by the purchasers of its land should include any item whatsoever for a return on the investment in the water system.

A number of customers also bought land from Richland Realty Company without a written agreement, but under the distinct representation that they were to secure water at 10¢ per thousand gallons.

Later Richland Realty Company offered to turn over the water system to the people of Encanto without any payment whatever for the system, if the people would operate and maintain it, but

the offer was not accepted. At other times, Richland Realty Company offered to sell the system for \$1.00 to any one who would take it.

It is entirely clear that Richland Realty Company never expected that the purchasers of its land should pay any consideration for the water system in addition to the price paid by them for their land and that the Company never expected that the rate charged for water should include any item for a return on the investment in the water system.

Since October 25, 1912, Harry R. Atwood has been in the possession of this system, and has been operating it and receiving the revenues therefrom. It is now proposed by the owners of the system to convey the legal title to him under a contract providing for the payment of \$1325.00.

That the present condition is anomalous and embarrassing is evident. The ownership and the possession are divorced. The owner cares nothing about the system and the person in possession lacks the backing of the legal title. Atwood is putting money of his own into a system which does not belong to him and unless he secures the legal title he may lose what he has invested and he certainly would be free from censure if he refused to make further investment in property belonging to some one else. In order to protect the investment already made by him as well as to give him a firm ~~habit~~ foundation for further investments, as they become necessary, I am of the opinion that he should secure the legal title to this system, if this can be accomplished in such a way as not to do injustice to the people of Encanto.

If the legal title passes to Atwood unconditionally, he or his successors would be in a position to do a grave injustice to the people of Encanto in at least two respects. First, being the owner of the unincumbered legal title, he might be able through the courts, if not through the Railroad Commission, to compel the

payment by the consumers at Encanto, of rates high enough to yield the usual rate of return on the entire value of the property, though it cost him only an insignificant sum. As the cost of reproducing the system new as of March 28, 1914, was in the neighborhood of \$37,750.00, and as its depreciated reproduction value as of that date was in the neighborhood of \$30,000.00, it is evident that the gravest injustice to the consumers might follow. It was never intended that the consumers should pay in their water bills one dollar in the way of return on the investment made by Richland Realty Company, and this Commission will not consciously sanction any arrangement which would produce such a result.

Second, if the people of Encanto should hereafter incorporate and desire to operate this water system as a municipal system, or if the laws should be changed so that a water district can be formed here in unincorporated territory to take over this system or if the City of San Diego should desire to acquire and operate it, the public authorities may find themselves in the position of being compelled to pay again for a system which has already in effect been paid for by the purchasers of land at Encanto unless a condition taking care of this situation is attached to the transfer.

A decision in this application was deferred so as to give the citizens of Encanto an opportunity to incorporate a water district for the purpose of acquiring and operating this system. At the time of the hearing herein, an effort was being made to incorporate Encanto and it was thought that if incorporation were effected, the municipality might desire to take over and operate this system as a municipal water system. The proposed incorporation was defeated at the polls. A number of citizens then sought to incorporate a municipal water district out of the unincorporated territory of

Encanto, but after repeated efforts they have been advised by the district attorney of San Diego County that under present laws unincorporated territory containing a population of only 700 people can not form a water district. Hence this effort to obtain public ownership has also failed. In view of these facts, I am of the opinion that a decision on this application can not be longer deferred. The conditions in the order, however, will protect the rights of the people of Encanto.

I recommend that the transfer be authorized, but only on condition that Atwood file with this Commission and record in the office of the County Recorder of San Diego County duplicate agreements running to the State of California on the part of himself and his assigns, agreeing that he and they will never claim in any rate inquiry before any public authority or in any court, any return on any part of this water system other than the moneys which he or they may have invested therein, and that if any public authority shall hereafter undertake to acquire this system Atwood and his assigns will not, before any public authority or in any court claim a compensation in excess of the moneys which he or they may have actually invested in the system.

As the Richland Realty Company has heretofore in various forms offered to turn this system over to the people of Encanto without the payment of any additional consideration, and to sell it to any one for \$1.00, the Company should not now receive \$1325.00 for it. The Company should be glad, particularly in view of the agreements made by it, to part with this system and the responsibilities connected therewith for the nominal consideration of \$10.00.

Atwood's counsel suggested that if any restrictions are placed upon the passage of the legal title, his client would be unable to borrow money on the property for the purpose of making extensions thereto. However, as the Railroad Commission will in a rate fixing inquiry allow a return on the moneys which Atwood or his assigns may invest in the system and as the Commission will in a proceeding by any public authority to take over this property allow all such moneys in the price established, I believe that there is no ground for this fear.

A number of consumers under this system filed a protest against the granting of the application on the grounds (1) that the Richland Realty Company is not the owner of the property and (2) that the consumers have paid for the property and their title can not be divested by an order of this Commission. While it is undoubtedly true that the consumers have equities in this property, particularly in that portion thereof which was installed by or through the Richland Realty Company, it is equally true that the legal title to the property is in Richland Realty Company or in the directors of the defunct Encanto Heights Mutual Water Company, as trustees of its property, or both, and that none of the consumers have legal title thereto. This proceeding is merely one for the transfer of the legal title and no equitable rights will be interfered with. The consumers were unwilling to take over the legal title when it was offered to them several years ago and they have no organization now for that purpose. I am of the opinion that

their rights will be fully protected by the conditions in the order herein.

I submit the following form of order:

O R D E R

RICHLAND REALTY COMPANY and the directors of ENCANTO HEIGHTS MUTUAL WATER COMPANY, a defunct corporation, as trustees of its property, having filed their petition for an order authorizing the conveyance to HARRY R. ATWOOD of their public utility water system located at Encanto, San Diego County, California, and more particularly described in Schedule Four attached to the petition herein, and a public hearing having been held on said petition, and the matter having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that Richland Realty Company and the directors of Encanto Heights Mutual Water Company, a defunct corporation, as trustees of the property thereof, are hereby authorized to convey to Harry R. Atwood all that real and personal property, being located in Encanto and Encanto Heights, San Diego County, California, being dedicated to the public utility water business and more particularly described as follows:

Lot Two of the Rosemont Tract; part of Lots Forty-two and Sixty in the re-subdivision of the tract known as Rosemont Re-subdivision, and Lot Eight in Park Addition and Lot Eight in Block "J" of Park Addition and the West half of Lot Eighteen in Block Four of Encanto, all in Encanto Heights, and all tanks, buildings, structures and all improvements of every kind and nature standing or being upon said land, or any of the same, and all pipes and pipe lines laid in the streets of Encanto Heights and in the subdivisions thereof for the conducting or carrying of water and also all other property and property rights of the said party of the first part now used in connection with the furnishing

of water or with the system for the furnishing of water in the said village of Encanto and Encanto Heights and all franchises of said party of the first part for the operation of said system, except however the franchise of said party of the first part to be a corporation, which said franchise to be a corporation is expressly reserved and excepted from this conveyance and the effect and operation thereof. The streets and highways in said Encanto Heights in which said pipes and pipe lines are laid, include the following to-wit:

Shaules Avenue; Medigar Avenue; Klauber Avenue; Montana Street; Woodman Street; Boston Avenue; Pacific Drive; Madrone Avenue; Ritchey Street; Park Drive; Oneil Street; Jamacha Roads; Encanto Street; Fergus Street; Grant Street; Hunsaker Street; Indian Street; Judith Street; Akins Avenue; County Road; Brooklyn Avenue; Wonderlin Avenue; Norine Street; Spruce Street; Bach Avenue; Rosemont Drive; Falon Street; Kendall Avenue; Evelyn Street; Detroit Street; Sutter Street; First Avenue; Water Street; Third Avenue; Fourth Avenue; Empire Avenue; Tooley Street; Lemon Grove Avenue; Winnett Street; Olive Street; Lincoln Street; Tyler Street; Jefferson Street; Franklin Street; Robinson Street; Mariposa Avenue; Copeland Street; Front Street; Hilger Street; Williams Street; Zeller Street; Gibson Street; Tarbox Street.

The foregoing authorization is granted only on the following express conditions and not otherwise, to-wit:

1. Harry R. Atwood shall prepare, in duplicate, filing one copy with the Railroad Commission and recording one copy in the office of the County Recorder of San Diego County, California, an agreement running to the State of California, in which Atwood for himself and his assigns agrees that in consideration for the passage to Atwood of the legal title to the above described property and as a condition thereto, he and they will never in any rate inquiry before any public authority or in any

court claim any return on any part of said water system other than on the moneys which he or they may have invested therein, and that if any public authority shall hereafter undertake to acquire said water system Atwood and his assigns will not, before any public authority or in any court, claim a compensation in excess of the moneys which he or they may have actually invested in the system.

2. The authority hereby given shall not become effective until the Railroad Commission has made a supplemental order herein reciting that an agreement satisfactory in form has been filed with it and that it is satisfied that a duplicate thereof has been recorded in the office of the County Recorder of San Diego County, California.

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 12th day of May, 1915.

Max Fisher
H. P. Davidson
W. G. Gordon
Edw. O. Edgerton

Commissioners.