

Decision No. 2552

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application)
of THE APPLETON LAND, WATER AND)
POWER COMPANY, a corporation to)
sell parts of its water rights)
and system to the HESPERIA WATER)
COMPANY, a public service company)

Application No. 1693.

In the Matter of the Application)
of HESPERIA WATER COMPANY for a)
certificate of public convenience)
and necessity for the exercise of)
the right to furnish water to the)
inhabitants and land owners in)
and about Hesperia, San Bernar-)
dino County, California, and for)
the right to purchase certain wa-)
ter rights and plant and to pay)
therefor by the issuance of paid-)
up stock, notes and mortgages of)
the company.)

Application No. 1694.

Anderson and Anderson, by W. H. Anderson
for applicants.

LOVELAND, Commissioner.

O P I N I O N

In this Opinion are combined for decision
the amended applications of The Appleton Land, Water
and Power Company for authority to lease certain wa-
ter utility properties in San Bernardino County to

Hesperia Water Company, and of the latter company to acquire said property and operate the same under certificate of public convenience and necessity issued by this Commission.

These applications originally involved the transfer of the properties and the issue of securities in payment therefor, but owing to objections made by the owner of a mortgage upon the properties of The Appleton Land, Water and Power Company, these matters have been withdrawn from consideration.

The proposed schedule of rates, rules and regulations filed by Hesperia Water Company with the original application has also been withdrawn.

The Appleton Land, Water and Power Company was incorporated October 31, 1911, under the laws of the State of California. It is the owner of approximately 50,000 acres of land in San Bernardino County, including the greater part of the Townsite of Hesperia, on which is located the unincorporated Town of Hesperia, having a population of approximately fifty inhabitants.

It is the Appleton Company's intention to so reorganize its affairs that the public utility water systems which it owns may be separated from its other business. To this end it has caused to be incorporated the Hesperia Water Company, having an authorized stock issue of 400 shares of stock of the par value of \$100. each. None of this stock is outstanding at the present time.

The water system now serving the Town of Hesperia is a part of the larger system of The Appleton Land, Water and Power Company, which has its origin at certain diversion works located on the east fork of the Mojave River, known as Deep Creek. From these diversion works the water is piped to a reservoir located near the Town of Hesperia, from whence it is piped to the Town and adjoining lands.

In this proceeding the Commission is asked to approve a five year lease from The Appleton Land, Water and Power Company to Hesperia Water Company of the pipe lines, distributing system and rights-of-way necessary to serve Hesperia townsite. The proposed lease also contains an agreement on the part of the Appleton Company to furnish the Hesperia Company with sufficient water to serve its consumers.

The lessor reserves the right to use this distributing system for the purpose of conducting water to lands other than those included within the townsite, provided that such use does not interfere with the operations of Hesperia Water Company.

As consideration for the lease, Hesperia Water Company agrees to pay The Appleton Land, Water and Power Company an amount equal to the net income of the properties. The lease is terminable upon ninety days' notice, this provision having been inserted in order to expedite the transfer of the properties in case the

consent of the mortgagee to a sale can be secured.

The pipe lines now serving the Hesperia Townsite have been in existence for nearly thirty years and are badly depreciated. A valuation of the system made by the Commission's engineers and introduced at the hearing was as follows:

Estimated cost new	\$6,108.00
Annual depreciation	177.00
Present value	910.00

Hesperia Water Company is the possessor of a franchise granted by the County of San Bernardino for the distribution of water in the Hesperia Townsite. This franchise is for a period of fifty years and is dated May 17, 1915.

At the hearing it developed that The Appleton Land, Water and Power Company had been serving certain consumers lying outside the limits described in the Hesperia Water Company's franchise and Articles of Incorporation. It was therefore stipulated that either the Appleton Company would continue to serve these consumers with water or else that Hesperia Water Company would secure a new franchise and amend its Articles of Incorporation accordingly.

After a consideration of the evidence, I am of the opinion that this application should be granted, and I accordingly submit the following form of order:

O R D E R

The Appleton Land, Water and Power Company having applied to this Commission for authority to

lease certain rights and property to Hesperia Water Company, and Hesperia Water Company having applied for a certificate of public convenience and necessity and the right to issue certain shares of stock, as hereinbefore set forth,

And it appearing to this Commission that applicants' requests are reasonable and should be granted,

IT IS HEREBY ORDERED that The Appleton Land, Water and Power Company be, and it is hereby, authorized to execute a lease to Hesperia Water Company substantially of the form set forth in Exhibit "A", attached to this decision;

IT IS FURTHER ORDERED that Hesperia Water Company be, and it is hereby, granted a certificate of public convenience and necessity to operate a water utility system in San Bernardino County, according to the terms of a franchise granted by said County on May 17, 1915.

This certificate of public convenience and necessity shall not become effective until Hesperia Water Company shall have filed a stipulation with this Commission and shall have received the approval of the Commission thereto by supplemental order, said stipulation to recite that Hesperia Water Company does not, and never shall, claim in any proceeding before this Commission, or any other public body, a value for the franchise granted to Hesperia Water Company, by ordinance No. 154 of the County of San Bernardino, in excess of the actual cost to Hesperia Water Company of acquiring said franchise.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Before the lease herein authorized shall be finally executed, applicants shall present to this Commission satisfactory evidence that all of the consumers now served by The Appleton Land, Water and Power Company will continue to be served in the future either by Hesperia Water Company or The Appleton Land, Water and Power Company, and applicants shall secure from this Commission a supplemental order approving the same.

2. The terms of the lease herein authorized to be executed shall not hereafter be binding upon this Commission or any other public body as representing for rate fixing or other purposes the real value of the leased property.

5. The authority herein granted shall apply only to such lease of property and such issue of stock as shall have taken place on or before June 1, 1916.

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 30th day of June, 1915.

Mary Thelma
H. S. Ireland
Edwin Q. Edgerton

Commissioners.

EXHIBIT "A"

THIS INDENTURE, Made and entered into this _____ day of May, 1915, by and between the APPLETON LAND, WATER & POWER COMPANY, a Corporation, Lessor, and the HESPERIA WATER COMPANY, a Corporation, lessee;

W I T N E S S E T H -

That in consideration of the sum of \$1.00 and other valuable considerations to the Lessor paid by the Lessee, the Lessor, in pursuance of resolution duly adopted by its Board of Directors on the 6th day of May, 1915, does hereby lease, demise and let unto the Lessee for and during the term of five years, commencing May 1st, 1915, and ending April 30th, 1920, the following described real and personal property, to wit:

The right to receive and furnish for use for domestic and irrigation purposes sufficient water to supply the users in the territory known as Hesperia, in which the lessee is incorporated to serve, to be received from the reservoir of the lessor located south of the Town of Hesperia in San Bernardino County, State of California, and to be furnished and distributed to the water users and land owners with in the district particularly described in the Articles of Incorporation of the Lessee in San Bernardino County, State of California, including the Town of Hesperia; also all pipe lines and rights-of-way for pipe lines owned by the Lessor within the said

boundaries of the said district, and right-of-way for conduct of such water from the Hesperia reservoir through the pipe line of the Lessor leading from said reservoir to said distributing system, for the purpose of distributing said water, or so much thereof as may be required, to the said inhabitants and land owners of the said Town of Hesperia within the boundaries of said district, reserving to the Lessor the right to also use the said water distributing system for purposes of conducting water through the same to lands other than those included within such district, but not so as to interfere with the distribution of water within said district.

And as consideration and rental for such lease the said Lessee agrees to pay the Lessor each year an amount equal to the net income derived from the distribution of said water and the use of said leased properties, such rental to be paid in quarterly installments upon adjustments and settlements to be made on the first of each quarter of said term; provided, however, the Lessor reserves hereby the right at any time upon ninety days' notice to cancel this lease; and the Lessee agrees that it will not assign this lease nor make a sub-lease of the said properties without the consent in writing of the Lessor, and that on the expiration of this lease, or the sooner determination of said term, it will peacefully quit and surrender all the property above leased and described to the Lessor, its successors or assigns.

in as good condition as when received by it, ordinary wear and tear and injury by the elements excepted.

It is agreed that costs of repair of said system shall be incurred by the Lessee, but the cost thereof shall be deducted from the income derived from the distribution of such water, provided, however, that any extensions of mains or pipe lines shall be at the cost of the Lessor, and the same when made within such district shall be considered covered by this lease.

This lease is subject to approval by the Railroad Commission of the State of California.