

Decision No. ✓.

ORIGINAL

Decision No. 2073

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of)
DEATH VALLEY RAILROAD COMPANY for an) Application No. 2073.
order authorizing the issue and sale)
of certain stock.)

F. M. Jenifer for applicant.

BY THE COMMISSION.

O P I N I O N.

This is an application on behalf of Death Valley Railroad Company, a corporation, for an order authorizing the issue and sale of 239 shares of its capital stock of the par value of \$100.00 per share for the purposes of retiring certain bonds as hereinafter set forth.

Applicant owns and operates a narrow gauge railway 16.95 miles in length in Inyo County, connecting the Biddy McCarthy borax mine with the Ryan Branch of the Tonopah and Tidewater Railway. Applicant is controlled and its bonds are guaranteed by the Borax Consolidated Limited of London, England.

On March 10, 1914, by Decision No. 1330 (Vol. 4, Opinions and Orders of the Railroad Commission of California, p. 389) this Commission authorized applicant to issue and sell, in order to obtain funds for the construction of its railway, 473 bonds of the face value of 100 pounds Sterling each, or a total face value of 47,300 pounds Sterling, so as to net applicant not less than 90% of their face value, and \$75,000.00 par value of its capital stock, at par. On September 1, 1914, this Commission by Decision No. 1771

~~the~~ (Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 352) authorized applicant to issue and sell, so as to net applicant not less than 90% of their face value, 204 additional bonds of the face value of 100 pounds Sterling, or a total face value of 20,400 pounds Sterling, for the purpose of completing applicant's line of railway and for other capital expenditures.

In pursuance of such authorizations, applicant duly issued and sold said \$75,000.00 par value of stock and said 677 bonds of the face value of 100 pounds Sterling (or the equivalent of approximately \$487.00) each, making a total bond issue then outstanding of the face value of 67,700 pounds Sterling, or approximately \$329,699.00.

The deed of trust securing said bonds provides for a total bond issue of 822 bonds of a total face value of 82,200 pounds Sterling, and contains the following provision for the retirement of said bonds:

"The Railroad Company covenants, promises and agrees to pay, on or before the several dates hereinafter mentioned, to the Trustee, (to be held by the Trustee as a Sinking Fund for the retirement and payment of bonds) sums of money sufficient for said Trustee to retire and pay issued and outstanding bonds as the same are herein provided to be paid and retired, and the said Trustee shall apply the money so paid into the Sinking Fund to retire and pay bonds issued and outstanding upon the surrender of such bonds and the unpaid interest coupons, as follows, to-wit:

On March 1, 1915 40 in number of said bonds.

On March 1, 1916 50 in number of said bonds.

On March 1, 1917 60 in number of said bonds.

On March 1, 1918 70 in number of said bonds.
On March 1, 1919 80 in number of said bonds.
On March 1, 1920 85 in number of said bonds.
On March 1, 1921 90 in number of said bonds.
On March 1, 1922 100 in number of said bonds.
On March 1, 1923 110 in number of said bonds.
On March 1, 1924, all of said bonds upon said
date remaining issued, outstanding and unpaid."

In order to fulfill the provisions of the deed of trust for retiring the 40 bonds on March 1, 1915, applicant, on February 8th, 1915, filed a petition with this Commission requesting an order authorizing it to issue and sell at par to Borax Consolidated Limited of London, England, 200 shares of its capital stock of the par value of \$100.00 per share, which authority was duly granted by Decision No. 2201 ~~(Reported)~~ ~~in~~ (Vol. 6, Opinions and Orders of the Railroad Commission of California, p.327).

Applicant now asks permission to sell 239 additional shares of its capital stock at par to Borax Consolidated Limited of London, England, and to use the proceeds from such sale in conjunction with money now in its sinking fund, amounting to approximately \$500.00, for the purpose of retiring the 50 bonds to be retired on March 1, 1916, as provided in said aforementioned deed of trust. As stated by Commissioner Devlin in Decision No. 2201 (supra): "It is the intention of applicant from time to time to refund its bonds by issues of stock, the stock to be taken by the Borax Consolidated Limited. I believe this is a desirable method of financing this matter, as this railroad depends entirely upon the borax mine, and the method proposed contemplates the gradual retirement of all the bonds". In

granting this application we shall simply be carrying out the policy of this Commission as above set forth.

Applicant has asked for an order giving it authority to issue and sell in the future additional shares of its capital stock to take care of the sinking fund payments as above set forth, as such payments become due. We can not at this time grant such an order; but supplemental orders may be issued hereunder, granting applicant permission, from time to time, to sell its stock for the above mentioned purpose, without necessitating the filing of a new formal application or the holding of a formal hearing every year.

O R D E R.

DEATH VALLEY RAILROAD COMPANY having applied to this Commission for authority to issue 239 shares of its capital stock of the par value of \$100.00 per share, and to use the proceeds thereof in conjunction with money now in its sinking fund, for the purpose of retiring on March 1, 1916, fifty of its outstanding bonds of the face value of 100 pounds Sterling each, as provided for in its trust deed, and a public hearing having been held, and it appearing that the purposes for which it is proposed to issue said stock are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Death Valley Railroad Company be and the same is hereby granted authority to issue and sell 239 shares of its capital stock of the par value of \$100.00 per share.

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

1. The stock herein authorized to be issued shall be sold at par to Borax Consolidated Limited of London, England.

2. The proceeds derived from the sale of said stock shall be used to retire 50 of applicant's outstanding bonds, of the par value of 100 pounds Sterling each, as provided in the deed of trust securing said bonds.

3. The authority herein granted shall apply to such stock as shall have been issued on or before December 31, 1916.

4. Within 30 days after the stock herein authorized to be issued shall have been issued, applicant shall report the issue to this Commission, with a statement of the application of the proceeds derived from the sale of said stock.

Dated at San Francisco, California, this 14th day of February, 1916.

Max Thelen
Attest
Edwin C. Edgerton
Frazer R. Decker
Commissioners.