

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

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ORIGINAL

Decision No. 383

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 In the Matter of the Application  
 of MILLER AND LUX INCORPORATED,  
 and WEST SAN JOAQUIN VALLEY WATER  
 COMPANY for order authorizing  
 transfer of property and issue of  
 capital stock therefor.  
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Application No. 247.

Edward F. Treadwell and L. J. Kennedy, Esqs., for  
 Applicants.

BSELEMAN, Commissioner.

O P I N I O N

Miller and Lux, one of the applicants herein, is a corporation empowered to transact business of a varied nature including which it may construct and maintain dams and other water facilities and distribute water for irrigation and other purposes.

This Company laid out the town sites of Firebaugh, Dos Palos, Los Banos and Gustine, and in connection therewith has installed certain systems for the distribution and sale of water for household and domestic purposes. It is urged that this water business is only incidental to the main business of the Company, and for convenience in operation as well as bookkeeping it may be allowed to transfer all of the property to the second petitioner, West San Joaquin Valley Water Company, which is a corporation organized and existing under and by virtue of the laws of the State of California, and fully empowered under its Articles to go into this business. The second company is admittedly a creature of Miller and Lux and will be entirely controlled by that Company if this application is granted.

In pursuance of the plan the petitioners on the 28th day of September, 1912, entered into an agreement wherein it was agreed that Miller and Lux should transfer to the West San Joaquin

Valley Water Company the Firebaugh water system, Dos Palos water system, South Dos Palos water system, Los Banos water system, and Gustine Water system at an agreed value of \$55,000, and the West San Joaquin Valley Water Company agreed to issue and turn over to Miller and Lux in return for said property 5000 shares of its stock, which is the entire stock of said company.

The applicants herein desire authority first, for the transfer, and second for the issue of the 5000 shares of stock.

Apparently the two main questions involved of importance to the public are, first, whether or not the purchasing company shall be in as good a position to deliver the water as the seller, and, second, whether or not this may be done by the purchaser at as little cost as the same service may be performed by the seller.

Miller and Lux secures its present supply of water from the San Joaquin and Kings River Canal and Irrigation Company, and that Company addresses the following communication to this Commission, and the same is filed in the records of the case:

"To the Honorable the Railroad Commission of the State of California:-

"The San Joaquin & Kings River Canal & Irrigation Company Incorporated is a corporation engaged in the sale, rental and distribution of water in the counties of Fresno, Merced and Stanislaus, in the State of California, and has heretofore sold certain water to Miller & Lux Incorporated, which has been heretofore sold and distributed by Miller & Lux Incorporated to the inhabitants of certain towns in those counties for domestic purposes. The rates at which this company is entitled to sell water for domestic purposes has never been fixed by any authority and the price at which the said water has been sold to Miller & Lux Incorporated has been fixed by this company.

"It is now proposed by Miller & Lux Incorporated to sell and transfer its distribution plants in the towns mentioned to a corporation known as the West San Joaquin Valley Water Company, and in case of such transfer The San Joaquin & Kings River Canal & Irrigation Company Incorporated will continue to furnish water to the West San Joaquin Valley Water Company at the same prices and on the same terms upon which it has heretofore been sold to Miller & Lux Incorporated; or in case the rates should hereafter be fixed by some competent authority at which

this company may sell such water, then the same will be furnished to such company at the rate so established.

"Respectfully submitted,

THE SAN JOAQUIN & KINGS RIVER CANAL & IRRIGATION  
COMPANY INCORPORATED

By J. Leroy Nickel,  
Vice-president.

By C. Z. Merritt,  
Secretary.

Dated: December 4th, 1912\*.

I think the compliance with this stipulation will be all that is necessary to insure that the purchasing company stands in as good a position with reference to ability to secure water as does the seller.

It is admitted that the employees of Miller and Lux who devote their time to this water business are also engaged in other work of the Company, and this brings about an economical management of these small plants which could not be brought about under an independent ownership. I think this same arrangement should be carried on under the new ownership if this application is granted, and the fact that Miller and Lux is to own all of the stock of the purchasing company makes it possible for it to see that such economical arrangement is continued.

The value of the property is agreed to be \$55,000. Inasmuch as this is in practical effect a pro forma transfer without any actual change of ownership the agreed value becomes immaterial; instead of owning the property as Miller and Lux now does, it will own all of the stock of a corporation which will own the property. The Commission should not accept for rate fixing or for any other purposes the value here agreed upon, but a finding as to value is unnecessary under the circumstances of this case.

The real reason which actuates Miller and Lux to desire to make this arrangement is that it does not desire to have its merchandise accounts kept in the form that it is required to keep

its water accounts under the accounting order of this Commission, and believing that we should always have regard to the convenience of the utility provided that by so doing we do no injustice to the public, I believe that this utility should be allowed to divide this purely water business from its other business on the ground of convenience alone if such division does not bring about poorer or more expensive service to the consumers. Under the restrictions which should be imposed in the order, I believe this can be brought about, and I recommend the following form of order:

O R D E R -

Miller and Lux Incorporated having applied to sell and the West San Joaquin Valley Water Company having applied to purchase certain described property set out in said application and designated Firebaugh water system, Dos Palos water system, South Dos Palos water system, Los Banos water system, and Gustine water system, the several items of which systems are set out in the application and referred to for particulars, the agreed price for which property to be all of the 5000 shares of stock of the West San Joaquin Valley Water Company, and the West San Joaquin Valley Water Company having asked to issue 4997 shares of its capital stock now unissued; and notice having been regularly published, proof of which publication is on file with this Commission, and a hearing having been held and no one appearing in opposition to the granting of said application, and the Commission being fully advised in the premises

The COMMISSION HEREBY FINDS AS A FACT that public convenience and necessity will be served by

1. The granting of the application of Miller and Lux Incorporated to sell all the above referred to property to the West San Joaquin Valley Water Company;

2. The granting of the application of the West San Joaquin Valley Water Company to buy all of said property;

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3. The granting of the application of the West San Joaquin Valley Water Company to issue 4997 shares of its capital stock and turn over the same to the said Miller and Lux Incorporated in payment for said property.

AND IT IS HEREBY ORDERED that permission to sell such property by Miller and Lux and permission to buy the same by the West San Joaquin Valley Water Company, and permission to issue 4997 shares of the capital stock of said West San Joaquin Valley Water Company is granted; such permission being granted, however, under the express understanding on the part of this Commission that the said Miller and Lux, so long as it shall own or control, directly or indirectly, a majority in amount of the shares of the said West San Joaquin Valley Water Company, will endeavor to further and bring about as economical a management of the property hereby authorized to be transferred to the West San Joaquin Valley Water Company as is possible by the joint use of the employees of said Miller and Lux and said West San Joaquin Valley Water Company. And on the further understanding on the part of this Commission that said Miller and Lux Incorporated so long as it shall directly or indirectly control a majority in number of the shares of the stock of the San Joaquin and Kings River Canal and Irrigation Company will require compliance by the said San Joaquin and Kings River Canal and Irrigation Company with the stipulation filed herein and incorporated in the Opinion in this case.

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 30<sup>th</sup> day of December, 1912.

John M. Eastman  
H. D. Donaldson  
Alvin S. Lou  
Edwin D. Edgerton  
Commissioners.