

ORIGINAL

Decision No. 4005

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BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

In the Matter of the Application)
of SONOMA VALLEY WATER, LIGHT)
AND POWER COMPANY for an order) Application No. 2313
permitting it to mortgage its)
properties.)

D. McClure, of Lilienthal, McKinstry &
Raymond, for Applicant.

Theodore Breslauer, for Neptune Meter
Company.

Thomas B. Dozier, Jr., for Thomas B.
Dozier, Sr. and W. F. Cowan.

Alexander D. Keyes, for George L. Payne.

BY THE COMMISSION.

O P I N I O N

This is an application by Sonoma Valley Water, Light & Power Company, a corporation, engaged in the business of supplying water to the people of El Verano and vicinity, Sonoma County, and also to a portion of the population of the City of Sonoma and its vicinity, for authority to mortgage all of its property to George L. Payne.

Public hearings in this proceeding were held at Sonoma on August 19th, ^{and} at San Francisco on October 3rd, 1916, the testimony being taken before Examiner Bancroft.

From the evidence it appears that applicant's capital stock consists of 100,000 shares of the par value of \$1.00 each, all of which are issued and outstanding. Applicant also has an authorized bonded indebtedness of the face value of \$30,000 evidenced by 30 bonds of the face value of \$1000.00 each, bearing interest at the rate of 6% per annum, and maturing July 2nd, 1944 which bonds are secured by a first mortgage of all of applicant's property.

On October 21st, 1914, applicant issued a six month's note in favor of Alexander D. Keyes for \$15,000, bearing interest at the rate of 8% per annum. Applicant alleges that this note was subsequently transferred by said Alexander D. Keyes to George L. Payne, and that thereafter the principal of said note was reduced by \$5000. leaving a balance of \$10,000 still due and owing; that this note was originally secured by pledging the \$30,000 face value of applicant's bonds, authority having been granted therefor by order of this Commission (Decision No. 1891, reported in Volume 5, Opinions and Orders of the Railroad Commission of California, Page 636); that upon the reduction of said note to \$10,000, ten of said bonds were returned to applicant, leaving twenty of said bonds pledged as security for the remaining \$10,000 still due. Applicant has never paid any dividends upon its capital stock, and it is now unable to pay its note, which is more than a year and a half overdue.

In its application, as originally filed, Sonoma Valley Water, Light and Power Company asked for authority to mortgage its property to George L. Payne in exchange for said Payne's returning to applicant the 20 first mortgage bonds now held by him; applicant would then have had in its possession the entire authorized bond issue, and it was its intention to have all of the bond issue and the mortgage or deed of trust securing the same cancelled. Three of applicant's unsecured creditors, however, protested against the new mortgage upon the ground that they had claims against applicant which ought to share equally with that of Mr. Payne. One of these claims is that of the Neptune Meter Company of \$1000 for meters furnished applicant, while the other two are those of Mr. T. B. Dozier, Sr. and Mr. W. F. Cowan for services rendered applicant and expenses incurred as attorneys' fees prior to the issuance of the note to Mr. Payne. These attorneys' fees and costs amounted altogether to \$2033.75, the charges having, according to the testimony, been assented to by applicant.

Before the second hearing, Mr. Payne had consented to allow the claim of Neptune Meter Company (which, together with interest amounts to approximately \$1000.00) to be placed on a parity with his own, and to be secured by the new mortgage asked for in this application. Accordingly applicant, at the second hearing, asked for, and received, permission to amend its application. Mr. Payne would not consent, however, to waive his apparent priority in favor of the claimants for attorney's fees. Mr. Dozier accordingly protested most earnestly against the substitution of the new mortgage for the present mortgage securing the bond issue, on the ground that it might in some manner prejudice his rights. Mr. Dozier introduced testimony as to the value of the services he had rendered applicant, and if it were within our province to pass upon the justness of his claims, we should have no hesitancy in finding that he is entitled to very substantial compensation for the services he has rendered. We do not, however, feel that we have a right to insist upon a secured creditor waiving his priority in favor of unsecured creditors, no matter how just the latter's claims may be, and we do not see how Mr. Dozier or Mr. Cowan can be injured by our permitting applicant to cancel outstanding pledged bonds of the face value of \$20,000 for a straight mortgage securing a note for \$10,000 and interest. Accordingly, if the application had remained in its original form we should have unhesitatingly felt that in granting it, we could, in no possible manner, be prejudicing any of Mr. Dozier's rights.

The question then resolves itself into whether, by allowing the Neptune Meter Company to participate in the benefits of this mortgage, we are giving the claim of the Neptune Meter Company an improper priority over the claims of Messrs. Dozier and Cowan. Without passing upon the question of whether or not

the claim of Neptune Meter Company is entitled to any priority over these other claims, we are of the opinion that the application, as amended, should be granted.

There is no question in our minds but that it will be of advantage to applicant to have a mortgage securing the amount of the Neptune Meter Company's claim and the \$10,000 note and interest substituted for the \$20,000 face value of bonds now held by George L. Payne and the unsecured claim of Neptune Meter Company, and we believe that the determination of whether or not the execution of such a mortgage would give Neptune Meter Company a priority over the claims of Messrs. Dozier and Cowan, to which the Neptune Meter Company is not entitled, is a matter exclusively within the jurisdiction of the courts and it is not our intention to pass upon this matter or in any way to prejudice the rights of any of the unsecured creditors by this decision.

We have before us in this proceeding a request from this applicant for authority to execute a mortgage of its properties to secure two of its creditors. This Commission cannot determine the priority of these creditors. We would be willing to authorize applicant to execute a mortgage to secure any or all of its creditors under such reasonable arrangements as they might mutually agree upon. If the parties in interest could reach some understanding for securing all the claims against applicant under a mortgage, and if the company should then file a new application according to such understanding, this would, in our opinion, be the best possible solution^{of the problem}. In this particular matter, however, we have a definite application which we are prepared to grant.

O R D E R

SONOMA VALLEY WATER, LIGHT & POWER COMPANY having, by its amended application, requested authority to mortgage all of its properties, hereinafter more particularly described, to

George L. Payne in consideration of the return to applicant of the 20 first mortgage bonds of applicant now in the possession of George L. Payne, as security for the promissory note referred to in the foregoing opinion and the claim of Neptune Meter Company for \$1000, and a public hearing having been held, and it appearing to this Commission for the reasons set forth in the foregoing opinion that the application, as amended, should be granted;

IT IS HEREBY ORDERED that Sonoma Valley Water, Light & Power Company be, and the same is hereby, authorized to execute a mortgage to George L. Payne for the purpose of securing the balance due, including interest, upon the note of Sonoma Valley Water, Light & Power Company, originally issued to Alexander D. Keyes, upon the principal of which \$10,000 is due, and the claim of Neptune Meter Company for \$1000, and the authority herein granted is granted upon the following conditions, and not otherwise:

1. Sonoma Valley Water, Light & Power Company shall submit to this Commission a copy of the proposed mortgage and shall not execute any such instrument until it shall have obtained a supplemental order of this Commission approving the same.

2. The authority herein granted to execute such mortgage shall apply only to such mortgage as shall have been executed on or before June 30th, 1917.

3. Said mortgage shall not be executed until said George L. Payne shall have returned to applicant all of applicant's outstanding bonds and until applicant shall have cancelled all of its bonds (whether issued or unissued) and the mortgage or deed of trust securing the same.

4. The property which applicant is hereby authorized to mortgage is described in the "Appendix A", attached hereto

and hereby incorporated into and made a part of this Opinion and Order.

5. Nothing in this Order or in the Opinion which precedes it is intended or shall be construed as a direction that the claims of either Neptune Meter Company or of said George L. Payne shall be given any priority over the claims of any other creditor or creditors of Sonoma Valley Water, Light & Power Company.

Dated at San Francisco, California, January 11th 1917.

Edwin O. Edgerton
Frank R. Berlin

Commissioners.

APPENDIX A.

Description of Property to be Mortgaged

COMMENCING at the westerly intersection of Lots 49 and 72 of "Subdivision of the Lewis Ranch" as the same is laid down and so designated upon that certain map entitled "Subdivision of the Lewis Ranch", recorded March 8, 1912, in the office of the Recorder of the County of Sonoma, State of California, and filed in Book 27 of Maps, at page 21, running thence due West 1042.8 feet to a stake driven at the intersection of said line with the westerly line of the original 640 acre tract deeded by M. G. Vallejo and wife, to Nicholas Carriger; thence North 45 degrees West 3000 feet to a stake; thence northerly to a stake driven at the bend in the northerly line of the original 235 acre tract deeded by M. G. Vallejo and wife, to Nicholas Carriger, said stake being 2313.7 feet westerly from the northwest corner of the original 640 acre tract above referred to; thence South 84 degrees 15' West 1008.5 feet; thence South 17 degrees 15' West 50 feet; thence South 54 degrees 30' East 188.8 feet; thence due South 130.7 feet; thence South 5 degrees East 120.8 feet; thence South 42 degrees 45' East 100 feet; thence South 26 degrees 15' East 142 feet; thence South 7 degrees West 118.8 feet; thence South 39 degrees 45' East 108.2 feet; thence South 17 degrees 30' West 175 feet; thence South 22 degrees East 240.2 feet; thence South 42 degrees 15' East, 161.7 feet; thence South 3 degrees 30' West, 180.8 feet; thence South 12 degrees East, 184.8 feet; thence South 20 degrees East 169 feet; thence South 39 degrees 30' West, 257.4 feet; thence South 30 degrees East, 154.4 feet; thence South 4 degrees East, 295 feet; thence South 45 degrees 15' East, 184.8 feet; thence South 60 degrees 15' East, 277.9 feet; thence South 41

degrees 45' East 140.6 feet; thence South 46 degrees 45' East 130 feet; thence South 18 degrees 15' East 171 feet; thence South 75 degrees 15' East 179.5 feet; thence South 54 degrees 45' East 160.5 feet; thence South 46 degrees 15' East 266.6 feet; thence North 74 degrees 15' East 185.5 feet; thence South 24 degrees 15' East 238.3 feet; thence South 44 degrees 15' East 175.6 feet; thence South 60 degrees 45' East 292.4 feet; thence South 70 degrees 15' East 145.2 feet; thence South 34 degrees East 696.3 feet; thence South 34 degrees 45' East 971.5 feet to the southwest corner of the original 640 acre tract above referred to; thence easterly along the southern boundary of the said 640 acre tract to the southwest corner of lot 48 of the aforesaid "Subdivision of the Lewis Ranch"; thence northerly along the westerly line of Lot 48 to the northwest corner of said Lot 48; thence in an easterly direction along the northern boundaries of Lots 48, 47 and 46 of said "Subdivision of the Lewis Ranch" to the Northeast corner of Lot 46 of said subdivision; thence Northerly in a direct line to the Southwest corner of Lot 49 of said subdivision; thence northerly along the westerly line of said Lot 49 to the point of beginning.

Also Lots 49 to 55 inclusive, of said "Subdivision of said Lewis Ranch";

Also Lot 17, containing 8.70 acres; Lot 19, containing 5.43 acres, and Lot 20, containing 3.88 acres, of the Lewis Tract, Subdivision A, as the same is laid down and delineated upon that certain map of the Lewis Tract as recorded in the office of the Recorder of the County of Sonoma, State of California, on December 21, 1910, in Liber 21 of Maps at Page 19;

Also all the water and water rights and streams and courses that in any wise or manner heretofore, now or hereafter may or do attach in any manner to the property or property rights

of the Yulupa Land and Water Company, and are in any manner or degree connected with, attached to, or related to the water system now upon the demised premises, which said water and water rights, streams and courses and system are for the purpose of storing, collecting and distributing water to the inhabitants of Sonoma Valley;

Also all of the reservoir, pipe lines, rights of way, distributing system, and all personal property used, or intended to be used in said water system;

And all the right, title, interest, estate, homestead, and other claim, legal or equitable, which the said Mortgagor may now have or hereafter acquire in or to said premises, together with the appurtenances, and all the buildings and improvements that have been or shall be put thereon, and all the rents, issues and profits thereof.