

# ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 4034

In the matter of the application )  
of PEOPLES WATER COMPANY for re- ) Application No. 1531.  
organization. )

E. S. Heller, W. E. Creed and  
A. G. Tasheira, for applicant, the  
Reorganization Committee of Peoples  
Water Company.  
Isaac Strassburger, for protestants.

EDGERTON, Commissioner.

## SUPPLEMENTAL OPINION

This Commission has heretofore in this matter, by original order and supplements thereto, fixed the value of the plant of Peoples Water Company for capitalization purposes, has reviewed the income and operations of applicant and has authorized the issuance of stocks and bonds by a new corporation in exchange for all of the property of Peoples Water Company, as follows:

First Mortgage 5½% 30-year gold bonds	\$9,128,000.00
6% Cumulative preferred stock .....	4,440,000.00
Common Stock .....	3,460,000.00.

Since the above authorization by the Commission, changes have been made in the reorganization plan and we are now asked to authorize the following:

First Mortgage 5½% 30-year gold bonds..	\$9,861,672.43
6% Cumulative preferred stock, Class A..	4,437,600.00
6% Non-cumulative preferred stock, Class B .....	2,958,400.00
Common Stock .....	500,000.00

It will be noted that, as now presented, the amount of bonds to be issued has been increased by \$733,672.43. However, it is claimed that since the Commission valued the plant at \$14,100,000.00, there has been expended out of income for betterments and additions to plant \$685,000.00.

While it cannot be definitely determined at this time that this entire expenditure is properly included in capital account, I am satisfied that the larger portion of such expenditures has resulted in additions and betterments to plant and that the issue of \$9,861,672.43, face value of bonds, at this time is reasonable.

It will also be noted that \$500,000.00 par value of stock has been removed from <sup>what was</sup> common stock and an equal amount of par created as common stock. But applicant states that while it desires that some common stock be authorized, it will leave to the judgment of the Commission the amount thereof. I am satisfied that this common stock is desired for the purpose of distribution among stockholders of Peoples Water Company, to represent whatever equities may be left after the bonds and preferred stock have been cared for.

I believe that there is no necessity for the issuance of \$500,000.00 par value of this common stock, and recommend that authority be given to issue \$100,000.00 par value.

We are asked to approve certain expenses of reorganization, which include fees to attorneys, reorganization committeemen and trust companies. I do not believe that the Commission is called upon to either approve or disapprove these expenses.

Something over two years ago Peoples Water Company, being in financial straits and unable to meet its obligations, was informally placed in the control of a set of men representing the various bondholders, other creditors and stockholders of the Company. Almost continuously this and other committees sought to bring about agreement whereby Peoples Water Company could be reorganized upon a basis of reasonable capitalization. During the protracted negotiations among the various interested parties, expenses were incurred and paid out of the treasury of Peoples Water Company. These expenses aggregate the sum of \$398,036.70 and include the cost of foreclosure sale, settlement of litigation, expenses of reorganization committee and costs of a valuation hearing before the Commission.

The members of the reorganization committee have not been paid for their services and we are asked to make an order, approving the payment to them of \$71,000.00; for their attorneys we are asked to approve the payment of \$30,000.00, their secretary \$13,000.00, and the depositaries of the various securities, Savings Union Bank and Trust Company and Oakland Bank of Savings \$25,000.00 and \$4,000.00, respectively. This totals \$143,000.00 claimed to be due but unpaid expenses of reorganization.

The Commission is not in a position at this time, intelligently to pass upon the question of whether the expenses of reorganization are proper or excessive. A large part of these expenses have already been paid and it is impossible adequately

to consider the remainder without giving consideration to those already disposed of. Furthermore, all of these expenses, in effect, have been agreed to by all of the parties owning this property in what is called the reorganization agreement. On the other hand, I do not believe that these reorganization expenses should be charged against the public. Obviously the public was not at fault and can not be held responsible for the financial difficulties of this Company; in fact, it must be conceded that reorganization became necessary because of the acts of the owners of the property.

I recommend, therefore, that instead of analyzing the reorganization expenses with a view to approving or disapproving of them in whole or in part, we place the responsibility for their payment where it belongs, to-wit, with the owners of the property, but at the same time that we insist that these expenses shall not become a charge against the public.

This may be brought about by authorizing the sale of this property to a new corporation for a total issue of stocks and bonds in return for which the new company should receive the plant and certain cash for its treasury, and imposing as a condition of this order that the new company file a stipulation with the Commission agreeing that it will at such times, in such amounts and in such manner as the Commission may hereafter order, provide for the amortization of these reorganization expenses in whole or in part out of the income of the company.

The entire plant and all of the bonds of Peoples Water Company have been sold in foreclosure to Mr. E. S. Heller, who purchased the same on behalf of the owners of bonds, securities and stock of the Peoples Water Company. Mr. Heller now holds a

certificate of sale for this property and is prepared to deliver the same to the new corporation, East Bay Water Company.

Herewith form of order:

O R D E R

Application having been made in the above entitled proceeding for an order authorizing the transfer of certain property, formerly belonging to Peoples Water Company, to a new corporation, East Bay Water Company, and authorizing East Bay Water Company to execute trust deed of its property as security for the issuance of bonds and for authority to immediately issue certain bonds and stock, and a public hearing having been had and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California, that Mr. E. S. Heller is hereby authorized to sell, transfer and convey unto East Bay Water Company all of the property, whether real, personal or mixed, heretofore owned by Peoples Water Company, which said property is fully and particularly described in that certain judgment of foreclosure and sale rendered by the Superior Court of the County of Alameda, in that certain proceeding entitled Merchants Trust Company of San Francisco, a corporation, plaintiff, vs. Peoples Water Company, a corporation, et al., defendants, numbered 46,978, Department No. 2, to which judgment reference is made for a particular description of said property; in addition to which, said E. S. Heller shall cause to be delivered to said East Bay Water Company in addition to the cash contained in the treasury of what was once Peoples Water Company ~~amounting to~~ cash ~~amounting to~~ \$478,867.88, said sum being the difference between the total face value of bonds which Mr. Heller receives and the bonds he must disburse in accordance with the reorganization plan.

East Bay Water Company is hereby authorized to issue and deliver to said E. S. Heller, or his nominees, in consideration of the transfer of the property above described by said E. S. Heller to said company, first mortgage 5½% 30-year gold bonds of a par face value of \$9,861,672.43; 6% cumulative preferred stock, Class A, of a par value of \$4,437,600.00; 6% non-cumulative preferred stock, Class B, of a par value of \$2,958,400.00 and common stock of the par value of \$100,000.00.

East Bay Water Company is further authorized to execute a mortgage or deed of trust of all of its property as security for the payment of \$15,000,000.00 face value of 5½% 30-year gold bonds; said mortgage or deed of trust to be in substantial conformity with the draft of mortgage or deed of trust, a copy of which is on file in these proceedings.

Provided that before this order shall become effective East Bay Water Company shall file a stipulation <sup>duly authorized by the Board of Directors</sup> to be approved by the Commission, to the effect, that it, said Company, will at such times, in such amounts, and in such manner as the Commission may order amortize out of income the reorganization expenses referred to in the opinion preceding this order.

Provided, further, that E. S. Heller shall distribute the bonds, stocks and cash which come into his hands under the authorization of this order in conformity with the reorganization agreement, as evidenced by a copy of said agreement, and also in conformity with a written statement filed in these proceedings entitled Peoples Water Reorganization Statement of Bonds and Other Securities to be issued in carrying out the reorganization plan, and said E. S. Heller shall report such disbursement to this Commission within a period of ninety (90) days from the date of this order.

