

Decision No. _____

ORIGINAL

Decision No. 5072

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of :
EAST BAY WATER COMPANY : Application
a corporation, for an order author- : No. 3011
izing issue of bonds. :

W. E. Creed, Arthur G. Tasheira and Samuel
Spring, for East Bay Water Company.
B. D. Marx Greene, for City of Berkeley.
John S. Partridge, for City of Oakland.

EDGERTON, Commissioner

O P I N I O N

This is an application by East Bay Water Company for authority to issue its bonds not to exceed in the aggregate \$487,007.25 to reimburse its treasury for monies expended for capital purposes and to provide funds for the improvement and construction of its facilities.

Formal protests against granting this application in so far as it relates to the San Pablo project were made by the cities of Berkeley, Oakland, Alameda, Richmond and Piedmont.

At the hearing herein protestants appeared by counsel and agreed that the relevant evidence in Case 1008 (an investigation on the Commission's own initiative

into the rates, rules and regulations of East Bay Water Company) might be considered by the Commission in passing upon this application.

The company at the time of the hearings in the rate case had committed itself to, and made a very considerable expenditure in, developing the so-called San Pablo project. This included the selection of a site for a reservoir and dam, the preparation of the foundations of the dam and the adoption of plans prepared by engineers for the construction of the dam and appurtenances.

Most of the cities which now protest against the granting of this application made in the rate case a protest against the inclusion of any expenditure for the San Pablo project in the sum upon which rates should be based.

In the rate case much expert evidence was introduced as to the relative merits of the San Pablo project compared with other possible water developments on property now owned by the company and also in comparison with projects for bringing water from distant sources such as the San Joaquin and Sacramento Rivers, Calaveras supply of Spring Valley Water Company and the Hetch Hetchy project of the City of San Francisco.

Engineers who appeared for the company expressed strong conviction that the building of the San Pablo dam and the impounding of water thereby was a wise expenditure of money. On the other hand witnesses introduced on behalf of the protesting communities testified that the expenditure of money on this

dam was unwise in that while it was admitted that a satisfactory amount of water would be produced, that this impounded water would be more costly than water which could be obtained from other sources.

As to the comparative merits of the San Pablo development there is marked conflict of engineering opinion in the evidence. It is admitted, however, that if the company is permitted to proceed with the San Pablo development there will be produced for the East Bay communities a sufficient quantity of water adequately to supply the needs of present and future consumers up to about the year 1927 and it is admitted on all sides that immediate development of water must be had to safeguard the people in a water supply.

While there is very little agreement on the engineering problems involved between the engineers produced as witnesses for the company and the engineering opinion produced by protestants and the engineers of the Railroad Commission there are certain facts which to my mind have been established.

It appears clear that if no outside or distant sources of supply become available that all of the water producing possibilities of the company's system must be taken advantage of and that if they are there will be produced water sufficient to care for the communities involved up to 1938.

The matter of outside or additional or substitutional sources of water supply becoming

available to this company and the times of such availability are matters of speculation.

There is nothing in the evidence upon which a conclusion can be reached as to when Hetch Hetchy water will be available to the east side communities and this is true of all suggested possible available additional or substitutional sources. It may be that before such sources can be made available, either by this company or other agencies, that it will be necessary to develop all of this company's projects. If this proves true then the judgment as to sequence of development of the projects is solely one of expediency, all things considered.

Mr. Wm. Mulholland, Mr. J. B. Lippincott, Mr. F. C. Herman and Mr. G. H. Wilhelm, all engineers of experience expressed the conviction that the San Pablo project should immediately be developed regardless of any subsequent development of the company's other sources of supply, and also regardless of the possible coming in of outside or additional sources of supply.

Mr. Mulholland particularly urged the benefit of the San Pablo reservoir as a storage and balancing reservoir although he admitted that if used solely as a balancing reservoir it need not be built of as great capacity as now planned by the company.

Mr. Lippincott and Mr. Herman after making many computations arrived at the conclusion

that San Pablo water is the cheapest water available to the company. On the other hand, Mr. R. W. Hawley, Chief Hydraulic Engineer of the Railroad Commission, using the figures produced by the engineers of the company estimates that the San Pablo project involves the production of water at a much higher cost than the production of water on other parts of the company's system and he urges that the San Pablo project should be stopped and that development should occur at what is called the "Upper San Leandro Reservoir Site".

One of the points Mr. Hawley makes against the San Pablo development is that the company claims that it should retain all of the water-shed lands owned by it and that if this claim is sustained by the Commission the San Pablo project includes a large acreage of water-shed lands, the value of which would increase rates.

This point cannot be considered in this application because the question of the retention of water-shed lands has not been decided in the rate case and in my judgment must be decided irrespective of whether the San Pablo project goes forward or is stopped.

I believe that the conflict in the opinions of the engineers is in some degree at least due to the different assumptions or premises from which they start. Apparently the engineers produced by the company believe that in all probability all of the available water impounding sites now owned by the

company will have to be developed. On the other hand engineers in opposition apparently assume that there can be made available to the company an outside source long before the necessity arises for the developing of all of the water projects of the company. It is true that this accounts only in part for the conflict in opinions but I believe that it has an influence on the attitude taken by all the engineers.

If the Commission is seriously to consider and determine which of the water projects is the most sound from every standpoint, it must substitute its judgment for that of the managers of the property.

I believe that the determination of which, among several possible water developments, should go forward, rests primarily with the management of this company. I do not believe that the Commission should attempt to set aside the power and control of the management of this company in determining the development project which should now go forward. Neither do I believe that the Commission should relieve this management of responsibility for results by substituting its own judgment in this regard.

In this particular matter we are not dealing with a project the opposition to which

claims that it will not serve its purpose; or that the project considered alone and by itself is entirely unworthy, but we have their claim that it is not as good as some other project. We are asked to weigh with extreme nicety the conflicting opinions of engineers and to come to a conclusion against the position taken by the company upon the advice of its engineers, and to inhibit the carrying out of a very important water project.

If the Commission denies this application upon the ground that the San Pablo project should proceed no further, then the Commission logically must take the position that the dam site and the lands necessary to this project should be disposed of by the company or that none of it could be considered as forming a proper part of a rate base.

The company thereupon would be compelled to either stand by and wait this Commission's action determining definitely which project, if any, should be proceeded with, or it must apply to the Commission for such determination. The determination of the proper project would be surrounded with the same conflict

of engineering opinion as we are met with here, and the Commission would be put in the position that the management of the company now is, and finally be compelled to choose between the conflicting engineering opinions.

If this Commission were at this time to discourage or prevent the development of the San Pablo project it must face the inevitable result that it never will be available, because as has been stated we cannot compel the company to hold out of use the lands necessary to this project, and at the same time refuse recognition of the value of this land in a rate base; so that in all probability all of the lands involved in this project would be disposed of, and firmly fixed in other uses so as to be no longer available for water development.

Under all these circumstances, I believe that the Commission should grant this application and should in no wise interfere or impede the prosecution of the San Pablo project. On this project, the company reports that up to January 1, 1918 it has expended the sum of \$859,264.07.

Statements filed with the Commission subsequent to the hearing show that the company has expended for capital purposes from Dec. 1, 1916 to June 30, 1917, the sum of \$577,276.50. Applicant's deed

of trust securing the payment of \$15,000,000 of bonds provides that after the issue of \$9,128,000.00 of said bonds, the remaining bonds, amounting to \$5,872,000. may be issued from time to time to aid in acquiring and providing for 80 per cent of the cost of betterments, improvements or extensions to the works of the company or acquisitions of new property of the company. Applicant reports that under its deed of trust, it may at this time because of its capital expenditures up to June 30, 1917, issue \$461,821.20 of its bonds.

Applicant desires to use the proceeds obtained from the sale of its bonds to reimburse its treasury for moneys expended for capital purposes. From reports on file with the Commission, it appears that on January 1, 1917, East Bay Water Company had cash on hand in form of special deposits aggregating \$660,579.75. During the six months, ending June 30, 1917, the earnings available for investment, after providing for depreciation, are reported at \$88,685.78. From December 1, 1916 to June 30, 1917, the company has incurred no indebtedness for construction purposes. All of the expenditures, it is reported, have been made from funds turned over by the People's Water Company to East Bay Water Company or from surplus earnings. From the statements filed with the Commission, it appears that the company should be permitted to use the proceeds from the sale of bonds to reimburse its treasury for capital expenditures up to June 30, 1917.

East Bay Water Company for the year ending December 30, 1917, reports its net revenue as amounting to \$1,018,623.01. From this amount it deducts for

depreciation the sum of \$192,336.17 and for fixed charges and for other deductions the sum of \$546,470.68, leaving a surplus of \$279,816.16.

The financial statement of the company shows an ability to pay the interest on an issue of \$461,821.20 of bonds.

I herewith submit the following form of Order:

O R D E R

Application having been made by East Bay Water Company for an order authorizing the issuance by it of \$487,007.25 face value of its 5½% bonds and a hearing having been had and it appearing to this Commission that the purposes for which said bonds are proposed to be issued are not properly chargeable to operating expense or income,

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that applicant be and it is hereby authorized to issue \$462,000. face value of its 5½% bonds upon the following conditions and not otherwise:

(1) Applicant shall sell such bonds as as to net not less than 94% of face value, plus accrued interest.

(2) Applicant shall use all of the proceeds of said bonds for the purpose of reimbursing its treasury.

(3) Applicant shall keep a true and accurate account showing the receipt and application in detail

of the proceeds of the sale of the bonds herein authorized to be issued, and shall, on or before the twenty-fifth day of each month, make a verified report to this Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(4) This order shall not become effective until applicant has paid the fee specified in section 57 of the Public Utilities Act.

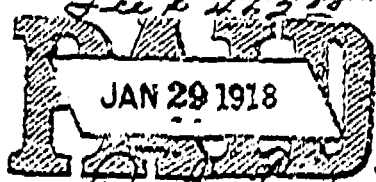
This order shall apply to bonds issued hereunder up to and including October 1, 1918.

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 28th day of January, 1918.

Railroad Commission State of California



BY R. A. Jones
Assistant Secretary.

Max Thelen
W. H. Boardman
W. H. Gordon
Edwin O. Edgerton
Francis R. Perkins

Commissioners.