

IM

Decision No. 8780.

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of )	
CLEMENS A. FEIDMEYER for order ap- )	
proving the sale and purchase of pub- )	Application Number 6432.
lic water works of Geyserville and )	
sanctioning mortgage indebtedness )	
thereof. )	

C. A. FEIDMEYER, In Propria Persona.

BY THE COMMISSION:

O P I N I O N.

CLEMENS A. FEIDMEYER asks the Railroad Commission to make an order approving the transfer made on September 25, 1916 of the public utility water system of the Town of Geyserville, from Orlando and Emilio Frediani to himself, and approving the issuance of the six percent promissory note for \$3,500.00 in favor of Wilhelmena Feldmeyer made by him on December 2, 1920. Orlando and Emilio Frediani join in the application so far as it relates to the sale and purchase of property.

A public hearing was held before Examiner Satterwhite on March 12, 1921 at San Francisco.

The testimony herein shows that applicant on September 25, 1916, purchased for \$3,500.00 the water works system in the Town of Geyserville, Sonoma County, from Orlando and Emilio Frediani, and that to secure funds for the purchase and development of such property, he executed a mortgage to Wilhelmena Feldmeyer, to secure a total

indebtedness of \$3,800.00. Subsequently Mr. Feldmeyer paid \$300.00 of this amount and on December 2, 1920, renewed the balance of the indebtedness by executing a renewal mortgage in favor of Wilhelmena Feldmeyer, securing the payment of a ten year six percent promissory note in the principal amount of \$3,500.00, a copy of such mortgage being attached to the petition and marked Exhibit "C".

The Commission's Engineering Department, in connection with Application Number 5602, in which Mr. Feldmeyer asked and received permission to increase rates, investigated the properties involved herein, and estimated the original cost as of September 11, 1920 as \$5,277.00.

Neither the transfer of property nor the execution of the mortgage and notes was authorized by the Railroad Commission and both, therefore, are void under the terms of the Public Utilities Act. It appears that the transfers, execution of mortgage and issue of notes were all made through inadvertence and with no intent to evade the provisions of the Public Utilities Act. As the Commission cannot validate or approve unauthorized transfers of property or executions of mortgages and notes after they have been made, it will be necessary that a new instrument of conveyance and a new mortgage and note be executed, as provided in the order herein.

#### O R D E R

Application having been made to the Railroad Commission for approval of the purchase of property and the issuance of notes by C. A. Feldmeyer, owner of the water works system in Geyserville, California, a public hearing having been held and it appearing to the Railroad Commission that the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose specified herein, and that the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expense or to income;

IT IS HEREBY ORDERED, that Clemens A. Feldmeyer be, and he is hereby authorized, to purchase, and Orlando and Emilio Frediani be, and they are hereby, authorized to sell, the public utility water system and properties in the Town of Geyserville described in Exhibit "A" attached hereto;

IT IS HEREBY FURTHER ORDERED that Clemens A. Feldmeyer be, and he is hereby, authorized to execute a mortgage substantially in the same form as that attached to the petition herein as Exhibit "C", and to issue to Wilhelmena Feldmeyer his ten year 6 per cent promissory note in the principal amount of \$3,500.00

The authority herein granted is upon the following conditions:-

(1) Clemens A. Feldmeyer, within 60 days after the date hereof, shall file with the Railroad Commission a verified copy of the instrument conveying the property herein authorized to be transferred.

(2) The mortgage and note dated December 2, 1920, in favor of Wilhelmena Feldmeyer, which Clemens A. Feldmeyer executed without an order from the Railroad Commission, shall be returned to him and cancelled, and the mortgage and note herein authorized shall be issued in lieu thereof.

(3) The approval herein given of said mortgage is for the purpose of this proceeding only and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

(4) The consideration for which applicants are herein authorized to transfer the properties referred to in this decision shall not be urged before the Railroad Commission as a measure of the value of said property for the purpose of fixing rates, or for any purpose other than the transfer herein permitted.

(5) Clemens A. Feldmeyer shall file with the Railroad Commission within 30 days after its execution a certified copy of the mortgage which he is herein authorized to execute.

(6) Within 30 days after its issue, Clemens A. Feldmeyer shall file with the Railroad Commission a copy of the note which he is herein authorized to issue. The filing of a copy of the note will relieve applicant from filing reports under the Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(7) The authority herein granted will not become effective until Clemens A. Feldmeyer has paid the fee prescribed by the Public Utilities Act.

(8) The authority herein granted will apply only to such transfer as may be made and to such note as may be issued and to such mortgage as may be executed on or before August 1, 1921.

Dated at San Francisco, California, this 21<sup>st</sup> day of March, 1921.

Gray C. Brown  
H. S. ...  
Wm. ...  
\_\_\_\_\_  
\_\_\_\_\_

Commissioners.

EXHIBIT "A".

The property authorized to be sold and transferred by the order preceding this exhibit, is described by applicants in Exhibit "B", filed in this proceeding, as follows:-

1st: The public water works system in the Town of Geyserville, County of Sonoma, State of California, consisting of reservoir, pipe lines, rights of way, pumping machinery, and all tools and equipment of every kind and nature used in and about said water works system, and

2nd: All the rights and easements and privileges, incident to, or arising out of a certain agreement dated March 18th, 1911, made between B. W. Feldmeyer and A.J. Bailly, which said agreement was recorded on the 21st day of March, 1911, in the office of the County Recorder of the County of Sonoma, State of California, in Book O of Agreements at page 150, and

3rd: All the rights and easements and privileges, arising out of or incident to a certain agreement dated June 9th, 1904, and made and entered into by Ruby Nerz and John Nerz and Clemens Feldmeyer, which said agreement was on the 5th day of January, 1907, recorded in the office of the County Recorder of the County of Sonoma, State of California, in Book "L" of Bonds and Agreements at page 52, and

4th: All the rights and easements and privileges arising out of or incident to a certain agreement dated September 18, 1907, and made and entered into between Spruce Vaughn and Laura Vaughn and Clemens Feldmeyer, giving to said Feldmeyer the right to lay and maintain water pipes, and

5th: All the rights and easements and privileges arising out of, or incident to a certain agreement dated December 22nd, 1904, and made and entered into between C.P. Moore and Naomi J. Moore, and C.A. Feldmeyer, to lay and maintain water pipes and to dig and maintain wells, etc., and

6th: All of the rights and easements and privileges arising out of, or incident to a certain resolution duly passed and adopted by the Board of Supervisors of the County of Sonoma, State of California, on the 11th day of March, 1911, authorizing C.A. Feldmeyer, his heirs, executors, administrators and assigns, to lay and maintain in the streets, lanes and alleys, and public ways in the Town of Geyserville, in the County of Sonoma, State of California, water pipes for the distribution of water in the said Town of Geyserville and thereabouts, and

7th: All other rights, privileges and easements owned or used by any of the parties of the first part in connection with the conservation and distribution of water in the said Town of Geyserville, or incident thereto.

It is understood and agreed that no land is hereby conveyed to said party of the second part and that no easements, rights or privileges in land are hereby conveyed to him except such as are hereinabove expressly mentioned.

All said easements, rights, privileges and personal property were acquired by said parties of the first part by deed to them from Edward S. Bailly et al, dated November 27, 1914, and recorded on December 4, 1914, in the office of the County Recorder of Sonoma County, State of California, in Liber 328 of Deeds, at Page 224.