

ORIGINAL

Decision No. 922

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

.....
 In the matter of the application)
 of ARTHUR W. SLOAN and FRANK)
 ROSEBROUGH to sell the system of)
 the NOEDHOFF WATER COMPANY to the)
 OJAI POWER COMPANY; and of OJAI)
 POWER COMPANY for a certificate)
 declaring that public convenience)
 and necessity require the exercise)
 of certain franchise rights; and)
 of OJAI POWER COMPANY to issue stock)
 of the par value of \$10,000; and of)
 OJAI IMPROVEMENT COMPANY to lease a)
 certain water system to OJAI POWER)
 COMPANY.)

Application No. 577.

Merle J. Rogers for complainants.

GORDON, Commissioner.

O P I N I O N

In this application the Commission is requested:-

1. To authorize Arthur W. Sloan and Frank Rosebrough to sell to Ojai Power Company a water system owned by these two individuals and operated under the name of the Noedhoff Water Company. As consideration for this transfer, Ojai Power Company has agreed to pay \$500. cash and to give a note at face value of \$2500, secured by a mortgage on the real property transferred.
2. To declare that public convenience and necessity require the exercise by Ojai Power Company of the rights and privileges granted to said company by the Board of Supervisors of Ventura County, in its Ordinance No. 185, adopted April 5, 1913.

By this ordinance Ojai Power Company is granted the right to construct, maintain and operate a water system upon certain public highways in the county of Ventura.

3. To authorize Ojai Power Company to issue its capital stock of the par value, \$10,000, in order to obtain the money necessary to purchase the system of the Nordhoff Water Company, and also to make certain extensions and betterments in said system.

4. To authorize Ojai Improvement Company to lease to Ojai Power Company a certain water system.

Nordhoff is an unincorporated town with approximately 300 inhabitants and situated about 15 miles north of the city of Ventura, in Ventura County, California.

Ojai Power Company was incorporated in July, 1912, with an authorized capital stock of \$50,000, divided into 500 shares of the par value of \$100 each. This company has already been authorized by this Commission to issue its capital stock of the par value of \$25,000 for the purpose of constructing an electric light system to supply the residents of Nordhoff and the Ojai Valley. (See Volume 1. California Railroad Commission's Decisions, Page 690.)

This Company now desires to undertake the business of serving water to the town of Nordhoff and vicinity. It appears that there is already a small water system in this territory and it is the desire of the Ojai Power Company to purchase this system. This system is owned by two individuals, Arthur W. Sloan and Frank Rosebrough.

In January of this year these two individuals executed a deed purporting to convey their water system to the Ventura Abstract Company. This deed was executed with innocent

disregard for the provisions of Section 51 of the Public Utilities Act, which provides that the consent of this Commission must be obtained to the sale of the property of a public utility, necessary or useful in the performance of its duties to the public, and that every sale made other than in accordance with the order of the Commission authorizing the same shall be void. It is clear, therefore, that the deed purporting to convey this property to the Ventura Abstract Company is of no legal effect, and that the title to this system still rests with the individual owners.

The property comprising the system to be transferred to Ojai Power Company is described at length in exhibit "D" attached to the application, this exhibit being a copy of the deed purporting to convey this property to the Ventura Abstract Company. The property to be transferred may be summarized as follows:

1 acre water bearing land
 1 - 500 barrel tank and tower
 2 - 12 H.P. gas engines
 5280' - 3" wire wrapped redwood pipe
 3390' - 2" wire pipe
 2145' - 1 1/2" " "
 2500' - 1" " "

In consideration of the transfer of this water system by the present individual owners to Ojai Power Company, the latter company has agreed to pay \$500 in cash and to give a note of the face value of \$2500, this note to mature November 24, 1915, and to bear interest at the rate of 8 per cent per annum, and to be secured by the mortgage upon all the real property which is included in the property transferred.

I believe that public convenience will be subserved by permitting this transfer to be made under the conditions herein specified, and I accordingly recommend that an order be made granting this portion of the application.

Ojai Power Company has been granted a franchise by the Board of Supervisors of Ventura County, in Ordinance, No. 175, adopted April 5, 1913. By this franchise Ojai Power Company is given the right to construct and maintain a water system upon the highways in and about Nordhoff. I recommend that this Commission issue a certificate declaring that public convenience and necessity require the exercise of rights and privileges granted to Ojai Power Company under this franchise.

Ojai Power Company has requested the authority of the Commission to issue its capital stock of the par value of \$10,000. Ojai Power Company has an authorized capital of \$50,000, of which stock of the par value of \$25,000 has been issued. This company was formed and its stock purchased by residents of Nordhoff and vicinity. The stock already sold, was sold at par, and the company expects to get the par value of the additional stock which it desires to issue. The proceeds derived from the sale of the additional \$10,000, par value of stock, if authorized to be issued, are to be expended:

1.	Purchase of water system of the Nordhoff Water Company including the refunding of the note given in exchange therefor	\$ 3,000.00
2.	Reimbursement of the treasury of Ojai Power Company for moneys expended for improvements:	
	7000 feet 4" pipe	\$2450.00
	1- 1000 barrel iron tank	550.00
	1- settling tank	325.00
	1- Deano Pump	900.00
	1- 12 H.P. motor and installation.	375.00
	Buildings, extra fitting, tools, etc.	500.00
		<u>\$ 5,100.00</u>
3.	Meters and service connections as needed	1,900.00
		<u>1,900.00</u>
	Total	<u>\$10,000.00</u>

Ojai Improvement Company has requested permission to execute a certain lease to Ojai Power Company. A copy of this lease is attached to the opinion and order in this proceeding and marked exhibit "A".

Ojai Improvement Company has been in the business of improving and selling real estate in the neighborhood of Nordhoff and is the owner of a tourist resort, known as the Foot Hills Hotel. This company installed a water system receiving water from Stewart's Canyon and piping the same into the village of Nordhoff.

In the proposed lease the Ojai Power Company, for a monthly rental of \$50.00, assumes control of that portion of the water system of the Ojai Improvement Company, supplying about 62 consumers in Nordhoff. Ojai Power Company is, also, given the right to use surplus waters flowing in Stewart's Canyon after the Foot Hills Hotel and certain customers of the Ojai Improvement Company in Foot Hills Park and Ojai Park are supplied. The lease is to extend for a period of five years. While the form of this lease is not entirely satisfactory and must not be taken as a precedent in any other case, I believe that considering all the circumstances surrounding the present application this lease should be approved.

I submit herewith the following form of order:

O R D E R

The above entitled application having been filed with the Commission and a public hearing having been held thereon and the Commission being duly advised in the premises, and being of the opinion that the purposes for which the Ojai Power Company desires to issue stock and a promissory note are not in whole or

in part reasonably chargeable to operating expenses, or to income:

IT IS HEREBY ORDERED that Arthur W. Sloan and Frank Rosebrough be and they hereby are authorized to sell to Ojai Power Company that certain water system owned by said individuals and operated under the name of the Nordhoff Water Company, the property to be transferred being described in that deed of transfer attached to the application in this proceeding and marked exhibit "D";

AND IT IS FURTHER ORDERED that Ojai Power Company be and it hereby is authorized to issue a promissory note of the face value of \$2500, payable not later than November 24, 1915, at a rate of interest not to exceed 8 per cent, said note to be given in part payment for the water system of the Nordhoff Water Company herein authorized to be transferred, said note to be secured by a deed of mortgage, executed by Ojai Power Company, and covering all of the real property included in the water system of the Nordhoff Water Company herein authorized to be transferred, provided, however, that said mortgage shall not be executed until a form thereof has been filed with and approved by this Commission.

IT IS FURTHER ORDERED that Ojai Power Company be and it hereby is authorized to issue 100 shares of its capital stock of the aggregate par value of \$10,000, upon the following conditions, and not otherwise, to wit:-

1. The stock herein authorized to be issued shall be issued so as to net Ojai Power Company the par value thereof.

2. Proceeds derived from the sale of the stock herein authorized to be issued shall be expended for the following purposes:

(a) Purchase of water system of the Nordhoff Water Company including the refunding of the note of the face value of \$2,500 given in part payment therefor \$3,000.00

(b) Reimbursement of the treasury of Ojai Power Company for moneys expended for improvements:

7000 feet 4" pipe	\$2450.00	
1- 1000 barrel iron tank	550.00	
1- settling tank	325.00	
1- Deane Pump	900.00	
1- 12 H.P. motor and installation	375.00	
Buildings extra fitting tools, etc.....	<u>500.00</u>	\$5,100.00

(c) Meters and service connections
as needed 1,900.00

Total \$10,000.00

IT IS FURTHER ORDERED, that Ojai Improvement Company be and it hereby is authorized to execute to Ojai Power Company that certain lease, a copy of which is attached to the order herein and marked exhibit "A".

Neither the price paid for the property of the Nordhoff Water Company herein authorized to be transferred, nor the rental of the property of the Ojai Improvement Company herein authorized to be leased, shall be taken before this Commission, or any other public body, as representing for rate fixing or other purposes the value of the property transferred or leased.

The authority herein given Ojai Power Company, to issue stock and to issue a promissory note, shall apply only to such stock or to such note, issued by Ojai Power Company, on or before July 1, 1914.

Ojai Power Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds derived from the sale of the stock and note herein authorized to be issued, and on or before the twenty-fifth day of

each month, shall make verified reports to the Commission stating the amount of stock and all notes issued during the previous months, the terms and conditions of such issue, 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, insofar as applicable, is made a part of this order.

This order shall not become effective until the fee prescribed by Section 57 of the Public Utilities Act has been paid.

The foregoing opinion and order are hereby ordered approved and filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of August, 1913.

H. D. Loveland
Alex Gordon
Man Thelen

Commissioners.

Railroad Commission State of California

W. C. Maxmason
SEP 5 1913
BY *W. C. Maxmason*
Assistant Secretary

EXHIBIT "A".

THIS LEASE AND AGREEMENT made this 15th day of April, 1913, by and between OJAI IMPROVEMENT COMPANY, a corporation, first party, and OJAI POWER COMPANY, corporation, second party, (each of said corporations being organized under the laws of the State of California and doing business at Nordhoff, California, WITNESSETH: -

That said first party, in consideration of the covenants and agreements herein contained, hereby leases to the said second party for a term of five (5) years from January 1st, 1913, the following property, to wit:-

1st. That certain reservoir known as the "TOWN RESERVOIR" having a capacity of about one thousand barrels together with the parcel of land one hundred (100) feet square situate at the Northwest portion of Lot 5 of the Wolfe Tract at Nordhoff, California, (as said Lot 5 is designated and delineated upon the map recorded in Book 3 of Miscellaneous Records at page 10 in the office of the County Recorder of Ventura County), upon which said reservoir is situate.

2nd. All of the pipe and pipe lines running South, West and East from said reservoir and all of the distributing system from said reservoir extending South, West and East therefrom and in the Town of Nordhoff.

3rd. All of the water and water rights and rights to water of said first party, in or arising from, what is known as Stewart Canyon, subject however, to the limitation on the use of said water hereinafter stated, it being expressly understood that the rights of second party to the water from said Stewart Canyon is limited to the surplus water thereof after the Foot Hills Hotel and grounds and customers present and future of first party, in Foot Hills Park, and Ojai Park North of the South line of Virginia Lopez parcel (and said line extended Westerly) as said parcel is described in Deed recorded in Book 39 of Deeds at page 423 in the office of the County Recorder of said Ventura County, are supplied.

IT IS ALSO EXPRESSLY UNDERSTOOD that first party shall at all times have the right to do any work it may desire for the development of water in said Stewart Canyon and that any water so developed shall inure to the benefit of said parties hereto under the terms of this lease.

And the parties hereto mutually agree to and with each other as follows:-

That said first party shall furnish and lay a water conduit having a capacity of a two inch pipe line and extending from the wood pipe of first party about fifty feet north of the Foot Hills Hotel to junction with present 1½ inch line (provided that in the event said 1½ inch line shall prove of insufficient capacity to carry and deliver all of said surplus water to said Town Reservoir, first party shall extend said 2-inch line on to the said Town reservoir) and shall furnish a continuous flow of water from said Stewart Canyon to the capacity of said reservoir as depleted by distribution hereunder; or to the extent of said water, provided, however, that first party shall at all times have the right to retain and use of

said water from Stewart Canyon sufficient thereof to supply the said Foot Hills Hotel and grounds and the present and future customers of first party in Foot Hills Park and said portion of Ojai Park; IT BEING EXPRESSLY UNDERSTOOD that said first party shall be under no obligation to supply any of said water to said town reservoir during any season when the water in said Stewart Canyon is not more than sufficient to supply said Foot Hills Hotel and grounds and said customers of first party, and it being also UNDERSTOOD that first party shall have the right at all times to retain not less than eight (8) feet in depth of water in the Foot Hills Reservoir.

Second party agrees that it will furnish and lay a four inch pipe line extending from the wells of what was formerly known as the Berry water plant at Nordhoff to said town reservoir and will also furnish and erect at or near said reservoir a water tank having a capacity of a thousand barrels; that it will pump water to said town reservoir and tank for the purpose of supplying the present customers of first party situate South, East and West of said town reservoir (other than those in said portion of Oak Park North of said Lopez parcel), whenever said supply from Stewart Canyon is insufficient therefor.

IT IS ALSO UNDERSTOOD AND AGREED that second party shall assume and have full control and management of said town reservoir and said distributing system South, East and West therefrom and that second party shall pay to first party during said term as rental hereunder the sum of Fifty Dollars (\$50.00) per month said rental to be paid within the first fifteen days of each calendar month for the next proceeding calendar month, and in the event second party shall fail to pay said rental, first party may re-enter into possession of the property and rights hereby leased and may terminate this lease.

At the expiration or sooner termination of said term second party shall have the right to remove said four inch pipe line and said thousand barrel tank and any and all other tanks, structures, or equipment which it may place upon said reservoir site, and shall maintain said personal property and the said pipe line from near the Foot Hills Hotel to said Town reservoir in condition for us, and shall return all property hereby leased in as good condition as the same now is or may be put in, reasonable wear and use thereof excepted.

Second party agrees that it will supply with water the present customers of first party in said Town of Nordhoff during said term, IT BEING UNDERSTOOD that second party at any time when said supply of water from said Stewart Canyon is insufficient to supply said customers of first party South, East and West of said reservoir site, shall have the right to supply said customers by any other available method of distribution, and upon so supplying said customers with water shall be relieved during such time of the obligation to pump water to said town reservoir.

IT IS FURTHER AGREED that second party shall repay first party for amount incurred for pumping water during the month of January, 1913, amounting to \$31.50.

IT IS ALSO UNDERSTOOD that this lease and agreement is made subject to the approval of the Honorable Railroad Commission of the State of California and it is mutually agreed that the parties hereto shall apply to said Railroad Commission for an order authorizing this lease and agreement, and approving the terms hereof.

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IN WITNESS WHEREOF the parties hereto, pursuant to several resolutions of their respective Board of Directors have caused these presents to be executed in their respective corporate names, under their respective corporate seals, and as their respective corporate acts and deeds, the day and year first above written.

OJAI IMPROVEMENT COMPANY,

(SEAL)

By E. Waldo Forster
Its President

By John J. Burke
Its Secretary

OJAI POWER COMPANY,

(SEAL)

By John J. Burke
Its President

By Edward L. Wiest
Its Secretary.