

Decision No. 7352.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

City and County of San Francisco,
a municipal corporation,

Complainant,

vs.

Spring Valley Water Company,
Defendant.

In the Matter of the Application
of Spring Valley Water Company,
for permission to increase the
rates and charges for water furn-
ished by it to the City and County
of San Francisco and its inhabit-
ants.

Case No. 842.

Application No. 2739.

ORIGINAL

McCutchen, Willard, Mannon & Green, by E. J.
McCutchen and Allan P. Matthew, for Spring
Valley Water Company,
John J. Daily for City and County of San Francisco,
C. D. Salfield in propria persona.

BRUNDIGE, LOVELAND AND BENEDICT, Commissioners:

O P I N I O N

The above entitled proceedings were consolidated for hearing and decision.

On April 5, 1921, Spring Valley Water Company filed its second amended supplemental petition in Application No. 2739. In the amended and supplemental petition, the Company asks the Commission to make an order granting permission to increase the rates and charges in such amounts as will yield the Company a just and reasonable return upon the value of its properties used and useful in the public service.

The Company also asks the Commission to make an order requiring petitioner to charge and collect rates based upon actual consumption and upon the same general principles as those

made effective by Decision No. 5730, dated September 3, 1918.

In Case No. 842, as originally filed, the City and County of San Francisco questioned the rates of the Spring Valley Water Company. At the hearing had on the second amended and supplemental petition in Application No. 2739, the City and County of San Francisco did not question the present rates of the Company, but rather contended that the Company should forthwith take steps to augment the water supply of the City and County of San Francisco and that any expenditures made by the Company for that purpose should be made as suggested by the City's engineers, so that the properties acquired or constructed can be used in conjunction with the City's Hetch Hetchy project.

A decision in the original proceedings was postponed pending the sale of the properties of the Spring Valley Water Company to the City and County of San Francisco. On November 24, 1920, the Commission made a report fixing \$37,000,000 as a reasonable compensation for such properties of Spring Valley Water Company as the City and County of San Francisco desired to acquire. At the election held on March 8, 1921, the purchase proposal failed to secure the necessary two-thirds of the votes cast.

In its report of November 24, 1920, the Commission, referring to the water situation confronting the City and County of San Francisco, said:

"There is no escape from the conclusion that the present supply of water for the City of San Francisco is dangerously near the point of insufficiency. Immediate steps to increase the supply should be taken.

"The water supply can be increased only in two ways: Either by the City doing its own development in the immediate future, or by creating conditions whereby the Spring Valley Water Company can be put in position to proceed with such development. In view of existing conditions, it is not to be expected that the company is ready or able to raise the necessary new capital for construction and extensions, and the City cannot afford to wait for an improvement of the urgent present water situation until the completion of the Hetch Hetchy system."

The electorate of the City and County of San Francisco, having decided against the purchase of the Spring Valley Water Company properties, it is incumbent upon the Company to incur the

necessary expenditures to furnish the City with an adequate water supply. The Commission in its report of November 24 announced that if the Company is called upon to make a further investment to safeguard the water needs of the community, there must go with it, "reasonable assurance that the investment made by the Company for that purpose may not be destroyed."

The record shows that the further development in the Calaveras water supply is the only practicable means available to the Company. Such development will entail not only an increase in the height of the Calaveras dam, but likewise the provision of increased conduit and pumping facilities, since the existing conduit of the Spring Valley Water Company from the Alameda system to the Peninsular reservoirs is now being utilized to its capacity. According to estimates filed with the amended application for increased rates, the expenditures which would be requisite in order to carry this program into effect would exceed the sum of \$12,000,000. This investment in conjunction with the refunding of the Company's bond and note indebtedness of \$20,359,000, for which provision must be made in 1923, presents a problem which the officers of the Company say they are unable to solve at the present time irrespective of the measure of any increase in rates that may be granted.

The City and County of San Francisco presented a protest against the Company expending approximately \$12,000,000 for the purpose of raising the Calaveras dam and constructing an additional conduit and pumping facilities as outlined by the Company. The City's protest recites that it is engaged in the construction of a system of water supply works to bring water into the City from the Sierra Nevada mountains, and that the project calls for the construction of an aqueduct from a point in the vicinity of the Hetch Hetchy Valley to San Francisco, the course of which will pass near the Calaveras reservoir of the Spring Valley Water Company. Attention is directed to the construction program of the City and objection is made to the construction of another pipe line on the part of

the Company on the ground that it would represent "a useless and extravagant duplication of capital" and "would not conform to or fit in with the water supply now in course of construction by the City." The City accordingly says in its protest:

"Should it become necessary to bring additional water into the City from the Company's Calaveras sources before the completion of the Hetch Hetchy system by the City, such additional water can be transmitted through the City's aqueduct under such reasonable and equitable arrangement as will meet with the approval of this Commission."

This suggestion on the part of the City and County of San Francisco, we believe, to be well made, and it is clear that if any co-operative plan can be devised whereby the additional pipe line from the Alameda system to the Peninsula reservoir can be constructed by the City in conformity with its Hetch Hetchy project and made temporarily available for the transmission of the water of the Spring Valley Water Company, a very considerable expenditure can be obviated and the Company as well as the rate payers be relieved from an unnecessary burden. It appears from the testimony of the Company's officials that sufficient conduit capacity exists between the San Andreas reservoir and the City to carry approximately 10,000,000 gallons of water daily in addition to the supply now conveyed by this means. A bond issue has already been authorized by the City, from the proceeds of which a portion of the Hetch Hetchy conduit extending from the Alameda system to the Peninsula reservoirs, together with the necessary pumping facilities, could be built. While the Commission obviously has not jurisdiction over the municipality, such as would enable it to order the construction of this conduit, nevertheless, inasmuch as the City has itself proposed this solution, the Commission feels impelled to take it into consideration and strongly recommends that the plan suggested by the City be carried out.

We are of the opinion that there is but one course which the Commission can follow, and that is, to endorse the provision of some means by which an increased supply of water can be developed and made available to consumers in the City and County of San Francisco.

This entails a requirement that the Spring Valley Water Company increase its Calaveras development to such extent as may be necessary and practicable and that the offer of the City to provide the necessary means of conveyance from the Alameda system to the Peninsula reservoirs upon equitable terms be accepted. It seems probable that water from the Hetch Hetchy project cannot be made available in San Francisco for some years to come, and if the most economical course is followed in prosecuting the Hetch Hetchy project and local water supplies are first utilized to the extent that may be practicable, a somewhat longer period than ten years will elapse before the Hetch Hetchy program can be fully carried into effect. The Commission is reinforced in this conclusion by consideration of the program outlined by the officials of the City and County of San Francisco during the period immediately preceding the election of March 8, 1921, as set forth in certain official pamphlets which have been placed in evidence by the Company. From these pamphlets it appears that the maturely considered program of the City authorities contemplates the early completion of the Mountain Division of the Hetch Hetchy project, the completion of the San Francisco Bay Division and the prosecution of the remaining units as rapidly as the need for additional water becomes apparent.

As a result of the election held March 8, 1921, we conclude that nearby sources of the water supply must immediately be developed by the Company. While the results of the election have, for the time-being, left in the hands of the Spring Valley Water Company the duty of supplying the City and its inhabitants with water from local sources, the Commission does not believe in the long run that this fact will cause any material deviation from the construction program outlined by the City. Whether the City or the Company brings in this additional water supply from the local sources, the economics of the situation, if not the provisions of the Raker Act, demand essentially that the same program be followed. We will require accordingly that

the Spring Valley Water Company make such increase in its Calaveras system as will produce not less than 24,000,000 gallons of water daily in addition to the present available supply and that the Company shall further hold itself in readiness to utilize the conduit and pumping facilities which the City and County of San Francisco contemplates constructing upon such terms as will afford a fair return to the City upon its investment and will not unduly burden the Water Company and its consumers. It seems certain that under this plan, the waters of the Spring Valley Water Company can be transmitted by means of the City's facilities for at least ten years to come and that the period of use may well extend beyond this time, depending upon the current needs of the community for additional water and the program of construction of the Hetch Hetchy project. We believe that under the terms of the order herein, the investment to be made by the Company and the City will receive adequate protection.

At the time of the last hearing before the Commission, it was recognized by both the Company and the City of San Francisco that the necessity of immediate expenditure by the Company of the large sum of money required to augment its water supply involves a consideration of the Company's financial needs and of the effect of rates thereon. Admittedly, if the present rates do not yield a reasonable return, it can not be expected that the Company's credit will be such as to attract additional capital for investment in the new development. In view of this condition, where immediate action is necessary to forestall a possible water shortage, the Commission has made a check and comparison of valuations of the properties of the Company and of its operating expenses and revenues to determine whether or not an increase in the rate is justified. As a result of such check and comparison and a computation of the rate of return based on these figures, the conclusion is reached that the

earnings of the Company under the present rates are insufficient to maintain its credit, and that the rates should be increased so that the Company's rate of return will be approximately 7%, which, at the present time, we believe to be moderate and justified under the facts and circumstances in this case. Such a return means an average increase of rates of 20%.

Reports filed by the Company, showing its operating revenues and expenses for 1919 and 1920 and the first five months of 1921 are as follows:

	1919	1920	January-May 1921
Operating Revenues	\$3,894,778.76	\$3,974,380.56	\$1,513,696.54
Operating expenses including Taxes and Depreciation	1,876,436.08	2,032,409.63	874,665.84
Net Operating Revenues	\$2,018,342.68	1,941,970.93	744,030.70

In its report of November 24, 1920, the Commission found \$37,000,000 to be a reasonable compensation for the properties of Spring Valley Water Company, which the City and County of San Francisco at that time desired to acquire. In general, this compensation covers the used and useful properties of the Company. If this figure is used as a basis of computation, the Company, in 1919, earned a return of 5.45%; in 1920, 5.24% and during the first five months of 1921, a return of 4.83%.

There is also in evidence in this proceeding, the entire record in the case of Spring Valley Water Company vs. City and County of San Francisco, 252 Fed. 979, decided July 13, 1918, involving the rates of this Company. Using the valuation allowed by Judge Rudkin in that decision and bringing them down to date, we arrive at a valuation upon which the earnings of the Company under the rates show a return less than that above indicated. Similarly, if we assume, as a basis for computation, valuations of the physical properties of the Company made by the Commission's engineers and submitted in evidence in this proceed-

ing, it is apparent that the present rates yield an amount substantially less than the 7% reasonable return. Reference to these various valuation figures is made for purposes of illustration, and not as a finding by the Commission of a specific figure as a rate base in this proceeding. We are satisfied, however, from our consideration of these figures, and other data contained in the record, that an increase in the rates is necessary to yield the Company a return upon which its credit will be such that it can secure additional investment of capital to augment its water supply.

We further conclude that the increase of 20% in the rates will not place upon the consumers of this utility an unreasonable burden, but that such rate is clearly within the amount to which the Company is entitled as a reasonable return upon its properties, used and useful in the public service.

This opinion would not be complete without an expression of the Commission's views with respect to the relation of the problem now before the Commission to the possible future acquisition of the properties of the Spring Valley Water Company by the City and County of San Francisco. The Commission has taken judicial cognizance of the results of the election of March 8, 1921, and the defeat for the time being of the purchase of these properties, which contain the nearby sources of water supply and the means of their development through lack of the necessary two-thirds vote. The Commission has no desire to attempt to influence the future policy of the City, of which the electors must be the sole judges. It feels, however, that the substantial majority vote which the purchase proposition received requires that some protection be given by the Commission to the public in the event that the purchase should ultimately be made. It is the view of the Commission that the Spring Valley Water Company should

hold itself in readiness throughout the term during which this cooperative plan shall be in effect to sell to the City the properties included in its offer of January 14, 1921, at a price which shall not exceed the price heretofore fixed by the Railroad Commission, increased only by the amount of actual expenditures made by the Company for capital purposes between the 1st day of March, 1920 and the 1st day of July, 1921, and other capital expenditures required of the Company under the terms and conditions of our order herein. We feel that the Company may reasonably be expected to give its assent to our recommendation in this respect even though it is not made a condition of the order. The order will specifically require that the special fund which the Company is to set aside for the amortization of its new expenditures in the Calaveras dam shall be transferred to the City in the event that the properties are purchased during the term of the arrangement, and the amount of this fund will, of course, constitute a pro tanto reduction of the price which the City may pay.

The Commission feels justified further in adding its strong recommendation that the Company adopt a policy of selling such lands as are not required for water supply purposes and which were not included in its offer of sale of January 14, 1921, as rapidly as may be consistent with the realization of advantageous prices. The Commission will be interested in receiving from the Company from time to time evidence of compliance with this recommendation, which the Commission believes will be to the common advantage of the Company and of its rate payers.

After a careful consideration of the voluminous records before us and of the factors just mentioned, which so cogently affect the present situation in San Francisco, the following order will be made:

O R D E R

Formal application having been filed herein by the SPRING VALLEY WATER COMPANY for an increase of rates, and complaint having been filed by the City and County of San Francisco, a municipal corporation, against said water company for a reduction in rates, said matters having been consolidated for hearing and decision, public hearings having been held, evidence received and the matters submitted, the Railroad Commission hereby finds that the rates and charges now in effect for the sale and distribution of water by the Spring Valley Water Company in accordance with the schedules on file with the Railroad Commission, are unjust and unreasonable insofar as they differ from the rates hereinafter authorized, and that the rates hereinafter authorized are just and reasonable rates to be charged by said utility. And basing its order upon said findings and further findings and statements of fact contained in the opinion preceding this order,--

IT IS HEREBY ORDERED as follows:

The Spring Valley Water Company is hereby authorized to establish and thereafter to charge and collect, in lieu of the rates and charges now set forth in the schedules on file with this Commission, rates and service charges for the sale and distribution of water and charges for hydrant service which shall exceed the rates, service charges and charges for hydrant service now in effect by twenty per cent (20%), such increases to become effective upon the first day of September, 1921, and to apply to all service rendered on and after that date, except that increases in charges to the City and County of San Francisco for hydrant and water service shall not become effective until the first day of July, 1922 (the foregoing exception being made to

protect the municipal budget which had already gone into effect). The increased rates and charges hereby authorized are expressly subject to the following conditions, to which the Spring Valley Water Company shall be required to give its assent by stipulation to be filed with the Commission prior to the first day of September, 1921:

1. If the City and County of San Francisco shall construct the section of its proposed Hetch Hetchy conduit extending between the Miles Screen Tank on Alameda Creek, in Alameda County, and the Crystal Springs Reservoir in San Mateo County, together with a pumping station at Ravenswood, and is willing to enter into an agreement with the Spring Valley Water Company, under which additional water may be brought from Alameda Creek sources through said conduit and by means of said pumping station into Crystal Springs Reservoir, then and in that event the Spring Valley Water Company shall be required to expend a sum not exceeding \$1,500,000 in increasing the height of its present Calaveras dam to an elevation which will result in an increase of not less than 24,000,000 gallons in the average daily yield of the Calaveras reservoir, and in making such other additions to its structures and facilities as may be requisite to permit the delivery of such additional 24,000,000 gallons daily to Miles Screen Tank. All of such construction shall be completed not later than the date of the completion of the Hetch Hetchy conduit and pumping station proposed to be constructed by the City and County of San Francisco; provided, however, that the required increase in the height of the Calaveras dam may be made in two or more units, and in such event only the first of such units need be completed within the period last specified, and the remaining unit or units shall be completed within such further period or periods of time as

may be jointly determined by the City Engineer of the City and County of San Francisco and the Chief Engineer of the Spring Valley Water Company, and, in the event of their failure to agree thereupon, as may be determined by the Railroad Commission. In order to facilitate the construction of such conduit and pumping station by the City and County of San Francisco, the Spring Valley Water Company shall grant to the City and County of San Francisco an easement of right of way for the installation of said conduit through such lands and rights of way of the Spring Valley Water Company as may be necessary therefor, the location of such conduit to be so determined as will interfere to the least possible extent with the future use by the Spring Valley Water Company of its lands and rights of way. Prior to the granting of said easement to the City and County of San Francisco the Company may require an agreement to the effect that in the event that the properties of the Spring Valley Water Company shall have been purchased by the City and County of San Francisco prior to the 1st day of January, 1932, no payment shall be made for said easement so acquired by the City and County, but in the event that such properties shall not have been so purchased prior to the 1st day of January, 1932, the City and County of San Francisco shall be obligated to pay to the Company on that date the fair and reasonable value of such easement, which value shall be jointly determined by the respective parties prior to the effective date of this order, or, in the event of their failure to agree, shall be fixed by the Commission prior to the grant of such easement. The Company may also make it a condition of said agreement for operating said Hetch Hetchy conduit and pumping station that if the Company should at a future date elect to build its own conduit, or, for any other reason, should not require the

further use of said Hetch Hetchy conduit and pumping station, it may, with the prior approval of the Railroad Commission, to be evidenced by a formal order, and on not less than one year's written notice to the City and County of San Francisco, terminate said agreement, and may make it a further condition of said agreement that the City and County of San Francisco shall give the Company at least three years' written notice of its election to terminate said agreement, and that such notice shall not be given except for the purpose of enabling the City and County of San Francisco to make use of such conduit and pumping station for the transmission of water from its Hetch Hetchy project to San Francisco, and that such termination shall not become effective prior to the time when the City and County of San Francisco shall actually require the use of such conduit and pumping station for such purpose, it being the intent hereof to afford the Company adequate opportunity to provide or acquire other facilities for the transmission or other disposition of its water when said agreement shall be terminated by the City and County of San Francisco. The program of construction and time of completion of said structures shall be subject to joint determination by the City Engineer of the City and County of San Francisco and the Chief Engineer of the Spring Valley Water Company, and in case of their failure to agree upon such program of construction or time of completion in any respect, the difference shall be submitted to the Railroad Commission of the State of California for determination.

2. The Spring Valley Water Company shall, if the City and County of San Francisco undertakes the construction of said conduit and pumping station, stand ready to enter into and execute an agreement with said City and County, under which the Company shall pay to the City and County out of its

revenues commencing with the date at which the delivery of water through said conduit begins, a sum equal to five per cent of the cost of constructing said conduit and pumping station, not exceeding a total of \$250,000 per year, and shall also pay, either through its own operation of said conduit and pumping station or, if that should not prove feasible, through the City's operation of said conduit and pumping station, all operating and maintenance charges, not including, however, replacements, extraordinary repairs, or loss or damage due to faulty construction or employment of defective or inadequate materials. Water brought through said conduit to Crystal Springs reservoir shall, to such extent as may be necessary, be pumped to the elevation of San Andreas reservoir, and thereafter delivered to the Company's consumers in San Francisco.

3. Commencing with the year 1922 the Spring Valley Water Company shall create and establish out of its surplus a fund for the purpose of amortizing the capital expenditures which will be incurred by the Company in accordance with the above requirements, such fund being hereinafter referred to as the amortization fund. Said amortization fund shall be created and maintained as follows:

After full provision has been made during each year for the payment of operating and maintenance expenses, including the cost of operating the Hetch Hetchy conduit and pumping station (including likewise the payment of interest on the cost of construction of such conduit and pumping station as above provided), the payment of taxes and assessments, the creating of a depreciation reserve of \$300,000 per annum, the payment of interest on all bonds and notes and other interest bearing indebtedness, and the payment of dividends at the rate of 5% per annum upon the out-

standing capital stock of the aggregate par value of \$28,000,000, there shall be set aside out of the surplus after meeting the foregoing requirements not less than the sum of \$119,240 each year, which will be placed in the amortization fund until the aggregate of such fund amounts to a sum which would be produced by an annual contribution of \$119,240 for the term of ten years, with interest at 5% compounded annually; provided, however, that if the revenues of any particular year shall exceed the requirements of the Spring Valley Water Company as hereinabove set forth by more than \$119,240, the amount of such excess above \$119,240 shall be apportioned equally between the amortization fund and the surplus of the Spring Valley Water Company; provided further, that if the revenues of any particular year shall be insufficient to yield a surplus of \$119,240 above the aforesaid requirements of the Spring Valley Water Company, the Company shall not, during such year or thereafter, be required to make any contribution to the amortization fund until a surplus shall have been derived in subsequent years in a sufficient aggregate amount to make up such deficit or accumulated deficits, together with interest upon the amount thereof at the rate of 7% per annum; provided, further, that the Spring Valley Water Company shall not be required to make any contribution to the amortization fund during the years 1922 and 1923, but in the event that the properties of the Spring Valley Water Company which were offered for sale to the City and County of San Francisco on the 14th day of January, 1921, shall be purchased by the City and County of San Francisco prior to the 1st day of January, 1932, the sum which shall be transferred to and become the property of the City and County of San Francisco, as hereinafter provided shall be not less

than the sum which would have been accumulated if contribution had been made to the amortization fund in accordance with the foregoing requirements of this condition. All moneys placed in the amortization fund herein required to be established shall be invested by the Spring Valley Water Company in such manner as will in its judgment afford the maximum interest yield consistent with safety of principal.

4. As a further condition of the granting of such increase, it is required that in the event that the properties of the Spring Valley Water Company which were offered for sale to the City and County of San Francisco on the 14th day of January, 1921, shall be purchased by the City and County of San Francisco prior to the 1st day of January, 1932, the amortization fund established in accordance with the requirements of condition "3" hereof shall be transferred to and become the property of the City and County of San Francisco; provided, however, that if up to the time that such properties shall be purchased by the City and County of San Francisco the revenues of the Company shall have been insufficient to meet the requirements of the Company as specified in condition "3" hereof, and such deficit or accumulated deficits shall not have been offset by the surplus derived from the revenue of subsequent years and prior to the time of such purchase, the said amortization fund before being transferred to the City and County may be diminished by the amount of such deficit or accumulated deficits, and only the balance paid over to the City and County of San Francisco. In the event that said properties of the Spring Valley Water Company shall not have been purchased by the City and County of San Francisco prior to the 1st day of January, 1932, the said amortization fund shall thereafter remain the property of the Spring Valley Water Company.

5. The Company shall file with the Railroad Commission, annually or at more frequent intervals and at such date as the Commission may require, statements taken from the books of the Company showing compliance with the foregoing conditions.

IT IS HEREBY FURTHER ORDERED that the SPRING VALLEY WATER COMPANY shall file with this Commission before the first day of September, 1921, the amended schedule of rates and charges in accordance with the provisions of the above order.

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 12th day of August, 1921.

H. B. Bunting
H. D. Loveland
Living Martin
Chas. L. Russell
W. A. Benedict
Commissioners