

ORIGINAL

Decision No. 26928

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
YUBA-BUTTE ORCHARDS COMPANY, LTD.,)	
a corporation, for an order authorizing)	
the issuance of a promissory note and)	Application No. 19333
the execution of a deed of trust se-)	
curing the same.)	

Devlin & Devlin and Diepenbrock,
by A. I. Diepenbrock, for applicant.

V. T. McGillicuddy, for minority
stockholders, protestants.

BY THE COMMISSION:

O P I N I O N

In this application the Yuba-Butte Orchards Company, Ltd. asks permission to issue a note for the sum of not exceeding \$14,000.00, payable one year after date, with interest at the rate of six percent. per annum payable semi-annually, and to execute a deed of trust to secure the payment of such note.

Applicant is a corporation organized under the laws of the State of California on August 4, 1911. It was organized under the name of Los Verjels Land and Water Company. By proceedings duly and regularly had and taken, its name was changed on or about May 14, 1931 to Yuba-Butte Orchards Company, Ltd. Some time prior to 1915 applicant constructed a dam known as the Los Verjels Dam across the channel of Dry Creek in Yuba County. This dam was constructed of concrete and is of the multiple arch type

Eastwood design, consisting of 16 arches supported by vertical buttresses. The dam has a height of about 56-1/2 feet from stream bed with a crest length of about 340 feet. The reservoir created by such dam as it exists now has a capacity of approximately 1500 acre feet.

On October 7, 1930 State Engineer Edward Hyatt found the dam unsafe, unsecure, and unstable, and a menace and hazard to lives and property. On January 30, 1933 the State Engineer issued an order directing applicant to make certain repairs to the dam on or before May 1, 1933. These repairs were not made within the time specified. On August 22, 1933 the Department of Public Works of the State of California filed a proceeding in the Superior Court in and for Yuba County, California, asking the court to issue its order preventing the company from operating the dam so as to constitute a menace and hazard to lives and property, and that if the repairs to the dam are not made within the time specified by the court order, the dam be destroyed and removed. This action is still pending. By virtue of an order issued by the State Engineer on January 9, 1934, the company is required to keep open the sluiceways in the dam. Such order is to remain in effect until revoked by the State Engineer.

The record shows that applicant has made various unsuccessful attempts to obtain money from its stockholders or from other sources to repair its dam and place it in a safe operating condition. Recently it has been successful in obtaining a loan from Bank of America National Trust & Savings Association of not exceeding \$14,000.00. The loan is to be represented by a note payable in one year, with interest at six percent. per annum, payable semi-annually and secured by a deed of trust on the com-

pany's operative property and by the unconditional guarantee of D. McDonald, who owns 114,295 shares of applicant's outstanding stock, out of a total of 182,539 shares.

To issue such note and execute such deed of trust the instant application was filed on February 27, 1934. Proceeds from the note would be used to pay the cost of work necessary to comply with the orders and directions of the State Department of Public Works, and to make other necessary repairs and improvements to applicant's dam and irrigation system, as follows:-

1. Extend length of present spillway to total opening of 100 feet. 17 feet on south end, 15 feet on north end.
2. Remove old timber spillways. Excavate into solid rock bank 17 feet on south end and 15 feet on north end.
3. Fill arches No. 1, and 2, on north end and arches No. 16 and 17 on south with rock and pave floor with concrete. Construct concrete side walls for spillway to prevent erosion of spillway and provide connections for flash boards in spillway walls.
4. Construct masonry walls (of concrete or masonry rock) on stream side of spillway below dam sufficient to carry water to stream clear of footings approximately 50 feet in length on each side.
5. Additional concrete on footings of buttresses No. 3, 4, 5, 6, 7, 13, and 14 where weathering of concrete has occurred and bond to foundation needs to be strengthened.
6. Lower stream bed below dam and drain pond to allow for examination of and strengthening footings of buttress No. 9, 10, and 11.
7. Remove old forms and clear rubbish and debris from around dam.
8. Stopping to full extent possible of all leaks in dam.
9. Construct removable flash board weirs for spillway. 6 x 6 posts 3" flash boards. 4 x 6 knee braces. 5' openings. Provide timber walkway across top of dam.
10. Install metal sluice gate to replace log stop gate.
11. Enlarge main irrigation ditch from Diversion Dam 500 feet down stream and line with concrete.
12. Clean main irrigation ditch throughout its length.
13. Replace 3 timber flumes in main irrigation ditch."

The cost of the above work is estimated at \$10,000.00. The exact cost cannot be determined at this time. In addition, the company proposes to use any balance of the loan that may remain after the completion of the above work and the repairs of the dam to the satisfaction of the State Department of Public

Works, to pay taxes and attorney fees. The taxes to be paid are reported at \$560.48 and the attorney fees due at the end of 1931 at \$773.00. A. I. Diepenbrock, of the firm of Devlin & Devlin and Diepenbrock, and who is also secretary of applicant, indicated^{at}/the hearing, that he and his firm had rendered legal services to applicant since 1931, and that they expected payment. He, however, did not indicate the amount thereof.

In addition to the above indebtedness, the company owes V. T. McGillicuddy \$3,000.00 and D. McDonald \$7,000.00, and accrued interest. No arrangement has been made to pay any of such indebtedness.

The 1933 gross revenue of the company was \$725.00, which was less than its operating expenses. It is alleged that if applicant's properties are placed in a safe and good operating condition, it can increase its revenues.

The granting of this application is opposed by V. T. McGillicuddy, representing the minority stockholders. He takes the position that the company is insolvent, that it has no means of paying the \$14,000.00 or any less sum for which a note may be issued, and that the execution of the deed of trust in effect constitutes a sale of the properties. We are aware that if certain provisions of the deed of trust are not met, the trustee or the beneficiary may take possession of the property and acquire title thereto. However, if the dam is not put in a safe condition, applicant may be enjoined from using it, with the result that those who have depended upon applicant for a water supply will be without water. We feel that^{in view of}/the offer made by D. McDonald, namely, that he will contribute his pro rata share necessary to

pay the loan, if the minority stockholders do likewise, what the execution of the deed of trust does not necessarily mean the sale of the property. The loan will enable applicant to put its properties in an operating condition.

Because of existing rainfall conditions, storage of water should be taking place now. The State engineer, realizing the urgency of the situation, has modified his order of January 9, 1934 and will allow applicant to store a limited quantity of water. For the purpose of conserving such water as may be available, we believe that the repair of applicant's ditches and flumes should be undertaken immediately. However, no part of the \$14,000.00 loan, or any part of a loan of a lesser amount, should be expended for any purpose except the repair of applicant's dam, flumes and ditches, unless hereafter authorized by a supplemental order. Upon being notified that the State Department of Public Works has found the repair work on the dam to be satisfactory, the Commission will consider a supplemental application for permission to expend the balance of the loan.

O R D E R

The Commission having considered applicant's request to issue a note for not exceeding \$14,000.00 and execute a deed of trust to secure the payment of said note, a public hearing having been held before Examiner Fankhauser, the Commission being of the opinion that applicant has need for such funds as it will obtain through the issue of the said \$14,000.00 note, and that this application should be granted, as herein provided, and not otherwise, therefore,

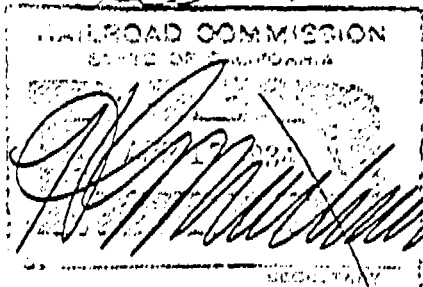
IT IS HEREBY ORDERED that Yuba-Butte Orchards Company, Ltd. be, and it is hereby, authorized to execute a deed of trust similar in form to the deed of trust filed in this proceeding, to secure the payment of a note for the principal sum of not exceeding \$14,000.00 payable one year after date with interest at the rate of not exceeding six percent. per annum payable semi-annually, the issue of which note is hereby authorized.

The authority herein granted is subject to the following conditions:-

1. No proceeds obtained through the issue of the said \$14,000.00 note, or through the execution of said deed of trust to secure the payment of a note for a lesser amount, may be expended for any purpose other than the repair of applicant's dam and the repair and enlargement of its ditches and flumes.
2. Yuba-Butte Orchards Company, Ltd. shall file with the Railroad Commission monthly reports^{showing} in detail the expenditures incurred in the repair of its dam, and the repair and enlargement of its ditches and flumes. Said repairs to the dam shall meet the objections raised, or which may be raised, by the State Department of Public Works.
3. Sixty (60) days before the maturity of the aforesaid note, the directors of Yuba-Butte Orchards Company, Ltd. shall give the company's stockholders an opportunity to contribute their pro rata share necessary to pay the said \$14,000.00 note, or note for a lesser amount, to prevent a sale of the company's properties.

4. The authority herein granted will become effective fifteen (15) days after the date hereof and after applicant has paid the minimum fee prescribed by the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.
5. Yuba-Butte Orchards Company, Ltd. shall keep such record of the issue of the note herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.
6. The authority herein granted to execute a deed of trust is for the purpose of this proceeding only, and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

DATED at San Francisco, California, this 9th day of April, 1934.



Fee # 30845

C. C. Seaver
Leon Whidell
W. H. Cunn
M. B. Davis
W. H. [unclear]
 Commissioners.