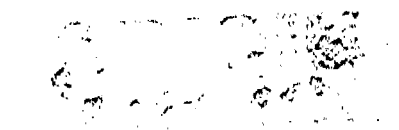


Decision No. 27267

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE SAN JOSE WATER WORKS,
a corporation, for: (1) Order author-
izing sale of certain public utility
properties; and (2) Order authorizing
said corporation to discontinue public
utility operations; and the application
of SAN JOSE WATER WORKS, a corporation,
for: (1) Order authorizing purchase of
capital stock of a public utility cor-
poration; (2) Order authorizing purchase
of certain public utility properties;
(3) Order authorizing mortgage of public
utility properties; (4) Order authoriz-
ing issue and sale of bonds and stocks.



Application No. 17740

McCutchen, Olney, Mannon & Greene
and R. C. Leib, for applicants.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

In a supplemental application filed on July 30, 1934 in the above entitled proceeding, San Jose Water Works, hereinafter sometimes referred to as the Company, asks permission to issue \$1,187,000.00 face value of 5% 20-year first mortgage bonds, \$501,500.00 par value of preferred stock and \$1,451,100.00 par value of common stock, all for the purposes hereinafter stated.

San Jose Water Works is indebted to The San Jose Water Works in the sum of \$1,801,250.00. This indebtedness represents the balance of the purchase price due on the properties of The San Jose Water Works. In addition, it assumed an obligation of \$48,750.00 representing the premium to be paid upon the redemption of \$1,000,000.00 of first mortgage bonds, the payment of which it assumed.

The Commission by Decision No. 26643 dated December 11, 1933 authorized San Jose Water Works to issue, subject to the provisions of such decision, \$2,000,000.00 of general and refunding 5-1/2% bonds in further consideration for the transfer by The San Jose Water Works to San Jose Water Works of the business, properties, assets, rights and franchises of The San Jose Water Works theretofore transferred and in full performance of all remaining obligations of San Jose Water Works under the reorganization plan and agreement of March 14, 1932, as amended, as indicated in the fourth supplemental application filed in this proceeding.

The Company now reports that it does not desire to exercise the authority granted by Decision No. 26643. It proposes to liquidate its indebtedness due The San Jose Water Works through the issue and sale at not less than 90 and accrued interest of \$997,000.00 of 5% 20-year first mortgage bonds, \$501,500.00 par value of preferred stock and \$501,500.00 par value of common stock at the par value thereof. The Company asks permission to issue the bonds at not less than 90 and the preferred and common stock at par. On this basis the Company will realize from the bonds and stock \$1,900,300.00, or \$99,050.00 more than the amount due The San Jose Water Works. The proceeds of the bonds and the par value of the stock is \$50,300.00 in excess of the aforesaid indebtedness including the assumed premium. The excess will vary with the price realized from the sale of the bonds. This excess, whatever the amount may be, should be charged to Account 15, "Other Suspense". If hereafter a valuation is made of the Company's lands and the Commission finds such value/^{to be}in excess of that now appearing on the company's books, consideration will be given to the transfer of said amount to the land account.

The company also asks permission to issue and sell at not less than 90 and accrued interest, \$190,000.00 of 5% 20-year first mortgage bonds and use the proceeds for the acquisition of property or for the construction, completion, extension or improvement of its facilities, that is, for additions and betterments to, and extensions of, its water supply and distributing system on or after July 1, 1934. The Commission has not been furnished with any detailed statement showing what additions and betterments or extensions applicant proposes to install. The order following will provide that applicant may issue and sell the said \$190,000.00 of bonds, provided it deposit the proceeds from the sale of said bonds with the American Trust Company, Trustee, under the indenture securing the payment of such bonds and expend the same only for such purposes as the Commission may authorize hereafter in a supplemental order or orders.

The \$1,187,000.00 of bonds which applicant San Jose Water Works asks permission to issue will be known as Series "C" bonds. They will be dated August 1, 1934 and mature August 1, 1954, and will bear interest at the rate of 5% per annum, payable semi-annually on February 1 and August 1 of each year. They are redeemable at par plus accrued interest plus a premium of 5%, less 1/4 of 1% for each full year after their date and prior to their redemption. They are convertible into common stock for a period of 10 years after their date on the basis of \$125.00 in principal amount of bonds for each \$100. in par value of common stock, with a further provision for adjustment of the conversion basis in the event of the issuance of common stock below par so as to protect the conversion rights of the bondholders from dilution. If all the \$1,187,000.00 of bonds are converted into common stock on the basis of \$125. face value of bonds for \$100. par value of common stock, the Company would have to issue \$949,600. of common stock for the conversion of the bonds. The order following will authorize the issue of \$949,600.00 of common stock for such purpose. If a greater amount is necessary for such purpose the

Company will be required to file a supplemental application for permission to issue the additional stock.

To provide certain protective features for the Series "C" bonds, San Jose Water Works will execute a supplemental trust indenture amending its trust indenture of July 1, 1926. The supplemental indenture contains several important amendments. Among other things, it provides that after the issue of \$2,000,000.00 of bonds the company may issue additional bonds in an amount not exceeding 75% of the actual cost of additions, betterments and extensions, provided that the net earnings of the company for the period of 12 consecutive calendar months within the 14 calendar months immediately preceding the time of making the application for the authentication and delivery of additional bonds shall have amounted to at least two times the aggregate of (a) the annual interest on the bonded indebtedness then outstanding; and (b) the annual interest to accrue on the additional bonds, the authentication of which is applied for. For this purpose, net earnings are considered as being the gross earnings of the company less its expenses, including in such expenses, taxes, excises, license fees, rentals and adequate expenses or charges for proper current maintenance and depreciation, but not including interest or sinking fund payments. The supplemental indenture also obligates the Company to create a sinking fund for the benefit of the holders of Series "C" bonds and for the purpose of retiring a portion of such bonds and further securing the payment of such bonds. Under the sinking fund provision the Company is required to deposit with the trustee annually an amount equal to 2-1/2% of the greatest amount of first mortgage bonds outstanding. The annual amount must be deposited quarterly. At least one half of the sinking fund deposits must be made in cash. The

remainder may, at the option of the company, be represented by the cost of additions and/or betterments or extensions to the company's properties, against which it may not issue any bonds. All cash in the sinking fund shall be applied by the trustee to the purchase of Series "C" bonds.

As indicated, the Company asks permission to issue and sell its bonds at not less than 90% of their face value and accrued interest. The application recites that if the underwriters will be able to re-sell the bonds in excess of 95% of the principal amount thereof, plus accrued interest, they will furthermore pay one half of such excess to the Company in further consideration for the bonds. Under existing conditions, we believe the Company should realize more than 90% and accrued interest for its bonds. However, because of the uncertainty as to the conditions when the bonds will be actually sold, the order following will fix a minimum price of 90 and accrued interest.

Upon the conclusion of the proposed financing, San Jose Water Works will have outstanding \$2,000,000.00 of bonds, \$1,501,500.00 par value of preferred stock and \$1,501,500.00 par value of common stock. The indebtedness of \$1,801,250.00 now appearing on the Company's balance sheet will be eliminated.

FOURTE SUPPLEMENTAL ORDER

The Commission having considered the request of San Jose Water Works for permission to issue bonds and stocks in the amount stated in the foregoing supplemental opinion and being of the opinion that this is not a matter on which a public hearing is necessary, that the money, property or labor to be procured or paid for by the issue of the bonds and stocks herein authorized is reasonably required

by said Company for the purposes specified in this order, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income, and that this supplemental application should be granted as herein provided, therefore,

IT IS HEREBY ORDERED that the order in Decision No. 24228 dated November 16, 1931, as amended, be, and the same is hereby, further amended as follows:-

1. San Jose Water Works may issue and sell after the effective date of this supplemental order and prior to October 15, 1934 at not less than 90% of their face value and accrued interest, \$997,000.00 of Series "C" first mortgage 5% 20-year bonds dated August 1, 1934; it being understood that the company will receive one half of any excess of the re-sale price of such bonds received by the underwriters over and above 95% of the principal amount thereof and accrued interest.
2. San Jose Water Works may pay the net proceeds of the sale of said \$997,000.00 of bonds to The San Jose Water Works and issue and deliver after the effective date of this supplemental order and prior to October 15, 1934 to The San Jose Water Works \$501,500.00 par value of preferred stock and \$501,500.00 par value in common stock, said payment of proceeds and delivery of stocks to be accepted by The San Jose Water Works as further consideration for the transfer by The San Jose Water Works to San Jose Water Works of the business, properties, assets, rights and franchises heretofore transferred and in full performance of all remaining obligations of San Jose Water Works under the reorganization plan and

agreement of March 14, 1932.

3. San Jose Water Works may issue and sell after the effective date of this supplemental order and prior to October 15, 1934 at the same price as provided in paragraph one of this supplemental order, \$190,000.00 face value of its Series "C" first mortgage 5% 20-year bonds dated August 1, 1934, provided it deposit the net proceeds with the trustee under its trust indenture, and expend the proceeds for such purposes as hereafter authorized by the Commission.
4. For the purpose of converting the aforesaid \$1,187,000.00 of bonds into common stock, San Jose Water Works may issue on or before August 1, 1944 not exceeding \$949,600.00 par value of its common stock, said bonds to be converted at the option of the holder into common stock on the basis of \$125.00 in principal amount of bonds for each \$100.00 par value of common stock.
5. San Jose Water Works may execute a supplemental trust indenture substantially in the same form as the supplemental trust indenture filed with the Commission on August 4, 1934, provided that the authority herein granted to execute such supplemental trust indenture 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 supplemental trust indenture as to such other legal requirements to which said supplemental trust indenture may be subject.
6. The authority herein granted will become effective when San Jose Water Works has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is One Thousand

(\$1,000.00) Dollars.

7. San Jose Water Works shall keep such record of the issue, sale and delivery of the stocks and bonds 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.

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

Leon A. Whittell

M. B. Harris

A. J. [unclear]

Commissioners.

Fee \$1,000 ¹⁰/₁₀₀

RAILROAD COMMISSION
STATE OF CALIFORNIA

AUG 9 1934

[Signature]
SECRETARY

Fee # 315.2