

Decision No. 28182

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JAMES IRVINE, VICTOR ETIENNE, JR.)
and W. H. SPAULDING as the bond-)
holders protective committee of San)
Francisco, Napa and Calistoga Rail-) Application No. 19937
way for an order approving a plan of)
said committee for the reorganiza-)
tion of said railway.)

Earl and Hall, for applicants.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

The Commission by its Decision No. 28072 dated June 24, 1935 tentatively and conditionally approved the reorganization plan under which the properties formerly owned by the San Francisco, Napa and Calistoga Railway are to be refinanced and transferred to the San Francisco and Napa Valley Railroad, a corporation.

On November 6, 1935 a supplemental application was filed in this matter asking the Commission to grant to applicants the necessary authority to carry the reorganization plan filed in this proceeding, into effect. The properties formerly owned by the San Francisco, Napa and Calistoga Railway are now in the possession of Clyde E. Brown as receiver. He requests permission to deliver the said properties to James Irvine, Victor Etienne, Jr. and W. H. Spaulding as the bondholders protective committee of San Francisco, Napa and Calistoga Railway. They in turn ask permission to transfer said properties to the San Francisco and Napa Valley Railroad in consideration of the issuance by said San Francisco and Napa Valley Railroad to said James Irvine, Victor Etienne, Jr. and W. H. Spaulding of \$283,400.00 face

amount of income bonds, 30,000 A shares and 30,000 B shares of stock of San Francisco and Napa Valley Railroad.

Applicant San Francisco and Napa Valley Railroad has filed a copy of its Articles of Incorporation and a copy of its proposed trust indenture which it asks permission to execute. We find that both the Articles of Incorporation and the Trust Indenture are in satisfactory form. The Articles of Incorporation of the San Francisco and Napa Valley Railroad provide for the issue of two classes of shares of stock to be designated respectively, Class A and Class B. The total number of shares which the corporation has authority to issue is 60,000. The aggregate par value of all shares is \$60,000.00. The number of Class A shares is limited to 30,000 and the par value of each share of such class is \$1.00, while the number of Class B shares are limited to 30,000 and the par value of each share is \$1.00.

As indicated in the Commission's Decision No. 28072 dated June 24, 1935 the Class A stock will be distributed to the holders of the \$283,400. of first mortgage bonds of San Francisco, Napa and Calistoga Railway who have deposited their bonds under the reorganization plan, while the Class B stock will be distributed to the holders of debentures who have deposited debentures under said reorganization plan. In addition to receiving the 30,000 shares of Class A stock, the holders of the said first mortgage bonds will also receive \$283,400. of 5% income bonds of the San Francisco and Napa Valley Railroad.

It is further stated in the Commission's Decision No. 28072 that resort is had to the issue of income bonds for two reasons; first, in the event the new company does not earn interest on the outstanding bonds it is under no obligation to pay the same and therefore it cannot be declared to be in default for its failure to pay interest; and second, the issue of the income bonds preserves to the holder of

the first mortgage bonds a lien upon the railway properties.

FIRST SUPPLEMENTAL ORDER

The Commission having considered applicants' requests and being of the opinion that this is not a matter in which a public hearing is necessary, that the money, property or labor to be procured or paid for through the issue of \$283,400.00 of income bonds, 30,000 shares of Class A and 30,000 shares of Class B stock is reasonably required by applicant for the purposes herein stated and that the expenditures for said purposes are not in whole or in part reasonably chargeable to operating expense or to income and that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:-

1. Clyde E. Brown as receiver of the properties of San Francisco, Napa and Calistoga Railway, be, and he is hereby authorized, after the effective date hereof and prior to March 1, 1936, to deliver to James Irvine, Victor Etienne, Jr. and W. E. Spaulding, as the bondholders protective committee, the properties formerly belonging to the San Francisco, Napa and Calistoga Railway acquired by said James Irvine, Victor Etienne, Jr. and W. E. Spaulding by purchase at foreclosure sale and now held and possessed by said Clyde E. Brown as receiver.
2. San Francisco and Napa Valley Railroad may, after the effective date hereof and prior to March 1, 1936, issue \$283,400.00 face amount of its first mortgage 5% income bonds, 30,000 of its Class A shares and 30,000 of its Class B shares of stock for the purposes herein stated.
3. James Irvine, Victor Etienne, Jr. and W. E. Spaulding may, after the effective date hereof and prior to March 1, 1936, sell and convey and San Francisco and Napa Valley Railroad may purchase and acquire in consideration of the issuance by

said San Francisco and Napa Valley Railroad, to said James Irvine, Victor Etienne, Jr. and W. E. Spaulding of \$283,400.00 face amount of 5% income bonds, 30,000 Class A shares and 30,000 Class B shares of stock of said San Francisco and Napa Valley Railroad, all of the properties formerly belonging to San Francisco, Napa and Calistoga Railway and acquired of said James Irvine, Victor Etienne, Jr. and W. E. Spaulding at foreclosure sale.

4. James Irvine, Victor Etienne, Jr. and W. E. Spaulding as the bondholders protective committee may, after the effective date hereof and prior to March 1, 1936, exchange said income bonds and said Class A and Class B shares of stock of San Francisco and Napa Valley Railroad to be received by them as aforesaid, for first mortgage 6% bonds and debentures of San Francisco, Napa and Calistoga Railway, that is to say, to divide and distribute ratably among the owners of first mortgage 6% bonds of San Francisco, Napa and Calistoga Railway deposited under the bondholders protective agreement referred to in the original application herein, aggregating \$283,400.00 face amount, in exchange for such deposited bonds, all of said \$283,400.00 face amount of income bonds and all of said 30,000 Class A shares of stock, in such manner that each owner of such deposited bonds of San Francisco, Napa and Calistoga Railway shall receive income bonds of a like principal amount with the deposited bonds of San Francisco, Napa and Calistoga Railway owned by him and shall receive that proportion of said 30,000 Class A shares of stock which the principal amount of deposited bonds of San Francisco, Napa and Calistoga Railway owned by him bears to the aggregate amount of such deposited bonds of San Francisco, Napa and Calistoga Railway; and to divide and distribute ratably among the owners of debentures of said San Francisco, Napa and Calistoga

Railway who, prior to the date of said foreclosure sale, paid to the depositary under said bondholders protective agreement, money at the rate of \$5.00 for each \$1,000.00 face amount of debentures held, to-wit; the owners of \$58,100.00 face amount of debentures, the 30,000 Class B shares of stock in such manner that each such owner of debentures shall receive that proportion of said 30,000 Class B shares of stock that the amount of money paid by him to said depositary bears to the total amount of money paid to said depositary by all such owners of debentures.

5. San Francisco and Napa Valley Railroad may, after the effective date hereof and prior to March 1, 1936 execute and deliver to the American Trust Company an indenture substantially in the same form as that attached to the supplemental petition filed in this proceeding on November 6, 1935 as Exhibit B, provided that the authority herein granted to execute said indenture is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the provisions of the Public Utilities Act and is not intended as an approval of said indenture as to such other legal requirements to which said indenture may be subject.
6. The reorganization plan filed in this proceeding is hereby approved and the applicants are hereby authorized to carry the same into effect.
7. San Francisco and Napa Valley Railroad shall, within thirty(30) days after the distribution of said bonds and stock, by said bondholders committee, file with the Commission a statement showing the names of the persons to whom said bonds and stock were issued and delivered and the face amount of bonds and the number of shares and class of stock delivered to each such

person.

8. The authority herein granted will become effective when San Francisco and Napa Valley Railroad has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Two Hundred and Eighty-four (\$284.00) Dollars.

9. San Francisco and Napa Valley Railroad shall file with the Commission within thirty(30) days after the execution of the indenture herein authorized, two certified copies of said indenture, and shall, at the time it files with the trustee the statement required to be filed with said trustee by Section Six of Article Three of said indenture, file with the Commission a copy of the statement filed with said trustee.

DATED at San Francisco, California, this 21st day of December, 1935.

Leon Whalley
W. H. Lee
W. B. Lewis
D. M. Thompson
Charles R. Allen

Commissioners.

