

LBM

Decision No. 20865

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SAN JOSE WATER WORKS,)
a corporation, for an order author-)
izing it to issue and sell first)
mortgage bonds and to mortgage its)
properties as security for such)
bonds.)

Application No. 20865

Leib & Leib and McCutchen, Olney, Mannon
& Greene, for applicant.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

This is a proceeding wherein San Jose Water Works, a corporation, asks for an order authorizing it to execute a mortgage of chattels and trust indenture and a supplemental mortgage of chattels and trust indenture, and to issue and sell \$2,100,000. of first mortgage 3-3/4 percent. bonds due December 1, 1961 for the purpose of paying outstanding indebtedness.

In a financial statement dated as of October 31, 1936 filed with the Commission, the company reports outstanding \$1,976,000. of bonds, consisting of the following:-

First mortgage 5's, due July 1, 1951	\$	333,000.
First mortgage 5's, due Jan. 1, 1953		480,000.
First mortgage convertible 5's, due Aug. 1, 1954		<u>1,163,000.</u>
Total	\$	<u>1,976,000.</u>

The \$1,163,000. of bonds included above are convertible at this time at the option of the holders thereof into common stock of the company on the basis of \$125. in principal amount of bonds for \$100. par value of common stock. The issue of common stock, should any be required for such conversion, was authorized heretofore by the Commission in Decision No. 27267, dated August 9, 1934, in Application No. 17740.

In an application filed by the company with the Commission on October 28, 1936, numbered 20835, San Jose Water Works advised the Commission that it intended to redeem all its outstanding bonds on January 1, 1937. It reported that assuming no bonds would be converted it would be called upon to pay \$2,059,100. for principal and premium and in addition would have to pay the expenses incident to the redemption. It asked and received permission in that application to issue a promissory note in the principal amount of not exceeding \$2,100,000., to be dated January 1, 1937, to be payable on or before July 1, 1937 and to bear interest at rates ranging from 3% to 3-3/4% per annum to obtain temporarily the necessary funds to finance the cost of redeeming its bonds. (Decision No. 29229, dated October 28, 1936.)

The proceeds from the bonds which applicant now asks permission to issue will be used to pay the said note. Such bonds, it appears, will be issued under a new first mortgage or deed of trust, which will be a chattel mortgage also, and a supplement thereto. They will mature December 1, 1961, will bear interest at the rate of 3-3/4% per annum and will be redeemable at the option of the company on any interest payment date, upon sixty days published notice, at the principal amount and accrued interest plus a premium of 5% if redeemed on or before December 1, 1940; a premium of 4% if redeemed subsequent to December 1, 1940 and on or before December 1, 1944; a premium of 3% if redeemed subsequent to December 1, 1944 and on or before December 1, 1948; a premium of 2% if redeemed subsequent to December 1, 1948 and on or before December 1, 1952; a premium of 1% if redeemed subsequent to December 1, 1952 and on or before December 1, 1956; and at par and accrued interest if redeemed subsequent to December 1, 1956 and on or prior to maturity. Under certain conditions the bonds may

be redeemed at any time, upon giving the required notice.

It will be noted that if none of applicant's bonds are converted into common stock, its program will result in an increase in its total bonded debt of \$124,000. On this point information on file with the Commission indicates that applicant acquired the plants it now operates on March 15, 1932 and in doing so, issued \$2,000,000. of stock, assumed the payment of bonds aggregating \$1,000,000. and continued to owe a balance on the purchase price of \$1,801,250. Thereafter, the company under authority granted by the Commission by Decision No. 27267, dated August 9, 1934, issued \$1,003,000. of stock and \$997,000. of first mortgage convertible 5% bonds to pay the indebtedness of \$1,801,250. and \$190,000. of bonds to finance the cost of additions and betterments.

It thus appears that applicant under authority granted by this Commission heretofore has issued or assumed in the aggregate \$3,003,000. of stock and \$2,187,000. of bonds, a total of \$5,190,000., of which amounts there now are outstanding the \$3,003,000. of stock and \$1,976,000. of bonds, a reduction of \$211,000. in the bonded debt. In addition, an analysis of the company's financial statements from March 15, 1932 to October 31, 1936 indicates that during the period between the two dates it increased its investment in properties and sinking funds by the sum of \$304,800.81 and its net investment in current assets by the sum of \$31,867.69 and that except for the issue of the \$190,000. of bonds referred to above, such increases, as well as the reduction of \$211,000. in the bonded debt, were paid or provided to a large extent, by the use of surplus earnings and moneys represented by the reserve for depreciation. At the conclusion of the proposed financing applicant will, if no bonds are converted into stock, have outstanding stock and bonds in the total amount of \$5,103,000., Through the refunding of the bonds the company should reduce its annual disbursements on account of interest by approximately \$20,000.

It thus appears to the Commission that because of the relationship of applicants' proposed outstanding securities to its assets and earnings, as disclosed in this and former proceedings, and because of the use of surplus earnings to reduce indebtedness and to pay for additions to the properties and assets, that the issue of the \$2,100,000. of bonds should be authorized and the order herein will so provide.

On December 2, 1936 the company filed with the Commission a copy of its proposed mortgage of chattels and trust indenture and a supplemental mortgage of chattels and trust indenture to secure the payment of the new bonds. Several amendments to the first mentioned instrument were filed December 11, 1936. As amended, the indentures are in form satisfactory to the Commission.

There remains one further matter for discussion. The company reports that it has on its books at the present time unamortized discount and expense applicable to the bonds to be redeemed, of \$106,278.97, that it will be required to pay redemption premiums of \$83,190.00, assuming no bonds are converted into common stock, and that its estimated expenses of redemption will be \$2,250. It asks permission to amortize these amounts over the period from January 1, 1937, the approximate date of issue of the new bonds, to and including December 1, 1961, the date of maturity of said bonds.

In general, such items, in our opinion, should be charged forthwith to corporate surplus. To avoid an extraordinary charge to surplus we will permit applicant to amortize the discount, expense and premium in the future. We are granting its request as an accounting convenience and for accounting purposes only. It has not been our practice to consider discounts, expenses and premiums incurred or paid on bonds redeemed as a part of the cost of the money obtained through a succeeding issue. Such permissive order as we may make in

this proceeding relating to the manner in which accounting entries may be made, should not be taken as depriving the Commission of the power to withdraw its authorization at any time or as binding it to accept such entries if involved in other proceedings.

O R D E R

San Jose Water Works having applied to the Railroad Commission for permission to execute a mortgage of chattels and trust indenture and to issue not exceeding \$2,100,000. of bonds, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for through the issue of said bonds is reasonably required for the purposes specified herein and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that San Jose Water Works be, and it hereby is, authorized to issue and sell after the effective date hereof and on or before March 31, 1937, at not less than face value plus accrued interest, not exceeding \$2,100,000. of first mortgage 3-3/4% bonds, Series A, due December 1, 1961, and to use the proceeds, other than accrued interest, which may be used for general corporate purposes, to pay the note issued under authority granted by Decision No. 29229, dated October 28, 1936, provided that any proceeds not needed for such purposes shall be placed in a special bank account and expended only for such purposes as may hereafter be authorized by the Commission.

IT IS HEREBY FURTHER ORDERED that San Jose Water Works be, and it hereby is, authorized to execute after the effective date hereof and on or before March 31, 1937, a mortgage of chattels and trust indenture and a supplemental mortgage of chattels and trust

indenture in or substantially in the same form as those filed in this proceeding on December 2, 1936 as Exhibit B, as amended by a letter dated December 11, 1936, provided that the authority herein granted 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 instruments as to such other legal requirements to which they may be subject.

IT IS HEREBY FURTHER ORDERED that San Jose Water Works be, and it hereby is authorized, unless and until otherwise directed by the Commission, to amortize on or before December 1, 1961, the remaining unamortized discount and expense applicable to its bonds that will be redeemed on or about January 1, 1937 and the premiums to be paid and expenses to be incurred to effect the redemption of said bonds, provided that the Commission reserves the right to withdraw the authorization herein granted at any time.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective ten (10) days after the date hereof, and is subject to further conditions as follows:-

1. Within thirty(30) days after the issue of the bonds herein authorized, applicant shall file with the Commission
 - (a) A report of the issue of such bonds and of the disposition of the proceeds as required by the terms of the Commission's General Order No. 24-A, which order insofar as applicable, is made a part of this order; and
 - (b) Two certified copies of the mortgage of chattels and trust indenture, and the supplements thereto, as actually executed; and
 - (c) A complete copy of the registration statement and exhibits filed with the Securities and Exchange Commission.
2. Applicant shall file with the Commission on or before July 31, 1937 a statement showing in detail the expenses incurred

by it because of the issue and sale of the bonds herein authorized and the account, or accounts, to which such expenses were charged.

DATED at San Francisco, California, this 24th day of December, 1936.

W. B. Harris
Leon Whitwell
W. H. [unclear]

Commissioners.