

Decision No. 31234

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EVA M. ARNERICH for a certificate of
public convenience and necessity.

Application No. 21906

ORIGINAL

E. L. Maxwell, for Applicant.

John M. Burnett and D. C. Kirby,
for Almaden Vineyards Corporation
and others, Protestants.

BY THE COMMISSION:

O P I N I O N

Eva M. Arnerich owns an irrigation system in Santa Clara County serving an area of approximately 1,000 acres located near the intersection of Kooser, Dent, and Kirk roads five miles south of the City of San Jose, in Santa Clara County, and in this proceeding asks for a certificate of public convenience and necessity to operate as a public utility.

A public hearing in this matter was held before Examiner C. C. Brown at Los Gatos.

The water supply for this system is obtained from two wells situated along the banks of Arroyo de los Capitancillos, also known as Guadalupe Creek. The first well was originally installed in 1929 to irrigate applicant's ranch; the other well was drilled in 1936 near the first to obtain additional water for general distribution. Water is pumped from both wells by electrically-driven turbine pumps into a concrete-lined storage reservoir of 175,000 gallons capacity but may also be delivered directly into the dis-

tribution system. Forty-three consumers are served at the present, nineteen receiving water under written contracts. The water is used for agricultural irrigation, principally prune and apricot orchards. No domestic service is rendered.

The two wells can yield a maximum flow of 750 gallons per minute during the season of maximum production but have fallen as low as 250 gallons per minute during the latter part of the dry period of years of abnormal drought. However, since the operation of the Santa Clara Valley Water Conservation District, which has a dam on the upper reaches of the Arroyo de los Capitancillos used to surcharge and replenish downstream water-bearing gravels, the fluctuation in flow has been much less and production higher during the early and late fall months.

The distribution system consists of five and one-half miles of ten- and twelve-inch concrete pipe, most of which is on rights of way or easements over private property. Some of the distribution lines are owned by the individual consumers. The plant and equipment owned and installed by applicant are claimed by her to represent an investment of sixty-eight thousand dollars (\$68,000). However, the evidence indicates that of this sum a large part included expenditures for operation, maintenance, and other costs of upkeep. The testimony presented by the Commission's engineer, R. E. Savage, indicates that the historical cost of the used and useful properties as of June 1, 1938, is not over twenty-two thousand dollars (\$22,000), exclusive of right of way and easement values.

The testimony indicates that since about the year 1931 water not used upon applicant's home ranch has been sold to neighbors and that since the installation of the new well in 1936 there

has been water served to as many as forty-seven consumers in the vicinity who collectively own or lease 1,000 acres of land, more or less. A large number of the ranchers receiving water through the Arnerich system testified that they are solely dependent upon this plant for irrigation as no other water supply in adequate quantity is available. The evidence shows that water in volume sufficient for irrigation purposes cannot be obtained easily at any considerable distance away from the actual creek-bed in this area. No other public utility water system operates in or near the vicinity of the territory supplied by applicant and it is clear that public convenience and necessity demand the continuance of the service proposed herein.

Protest against the granting of this certificate was made by Almaden Vineyards Corporation and in behalf of certain other ranch owners or lessees receiving water from the pipe lines of the Almaden Vineyards Corporation, which water is pumped from a source in or near the said Arroyo de los Capitancillos. Opposition was based upon the grounds, among other things, that applicant's plant is insufficient to supply all demands of her consumers and that there already is in existence within the service area of applicant a system of pipe lines constructed and maintained by Almaden Vineyards Corporation adequate to supply all parties proposed to be served through the Arnerich plant. While the first contention obviously is true, the other is not only misleading but is also contrary to the evidence. It is a fact that applicant has not sufficient water to supply all the water requirements of those irrigationists who would like to avail themselves of her facilities. Water for agricultural, irrigation purposes is now and always has been scarce in this area and such

as is available is relatively costly. For this reason the limited supply must be prorated as far as possible among those fortunate enough to be able to participate in its use. As to the second contention, it is sufficient to state the system referred to by protestants does not offer an adequate or, in fact, any supply of water at all throughout the applicant's proposed service area. Almaden Vineyards Corporation in the past has at times furnished surplus water to some properties in adjacent territory through individual agreements only, and, according to the testimony, this system has frequently been short of water for the relatively small number of consumers then served. Furthermore, the record fails to disclose any offer whatsoever made by or in behalf of the said Vineyards Corporation to furnish the irrigators in this area with the same or even similar service to that provided by applicant, at any specified rates or charges or upon any known terms and conditions. It does appear, however, that the protestants are mainly concerned in preventing further deliveries of water to irrigators now served by applicant in order to protect the supply of water available at the intake facilities of the Almaden Vineyards Corporation system. If so, this is not the proper forum for the prosecution of such action. The Railroad Commission is not vested with authority to assume jurisdiction over the determination of title to disputed water rights. It is, however, most vitally interested in the struggle of the rancher to obtain water and will make every reasonable effort to insure continued enjoyment in the use of any properly available water supply for such purposes and prevent unwarranted and unnecessary interference therewith.

The rates proposed are acceptable to the consumers and

are the same as heretofore charged in the past. The outstanding contracts will henceforth be disregarded. In addition, the charges are substantially equivalent to those made for this general class of service by many other pumping plants in this section of the Santa Clara Valley. However, the "run of the pump," so-called, will vary in production in accordance with the advance of the season and for this reason where the rate is based primarily upon an hour's run of the pumping plant a meter or meters should be installed in the discharge line to permit a check of the delivery capacity at any and all times. Such installation should not be costly and should, therefore, place no unreasonable burden upon applicant.

Applicant submitted a statement that she had been granted permission by the Board of Supervisors of Santa Clara County to install and maintain pipe lines in the county roads in the proposed service area. This authority satisfies the franchise requirements at this time.

O R D E R

Application having been filed as entitled above, a public hearing having been held thereon, the matter having been duly submitted and the Commission being now fully advised in the premises,

The Railroad Commission of the State of California hereby declares that public convenience and necessity require that Eva M. Arnerich operate a water system in that certain area delineated on the map attached to the application herein, which is made a part hereof by reference, and bounded as follows:

Beginning at the intersection of Kooser Road and the east boundary of the former Southern Pacific right of way at a point approximately five miles southerly of the City of San Jose, in Santa Clara County; thence easterly along the center of Kooser Road to Dent Avenue; thence northerly along the center of Dent Avenue to Branham Lane; thence along the center of Branham Lane to Kirk Road; thence northerly along the center of Kirk Road to Foxworthy Avenue; thence westerly along the center of Foxworthy Avenue and Robbins Avenue to Union Avenue; thence southerly along the center of Union Avenue to the northerly boundary of the former Southern Pacific right of way; thence along the north and east boundaries of the former right of way of Southern Pacific Company to its point of intersection with Kooser Road, the point of beginning.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Eva M. Arnerich to operate a public utility water system in the above described area, subject to the following terms and conditions:

Eva M. Arnerich, applicant herein, shall keep a written record at her pumping plant of the quantity of the water produced by the pump as shown by a meter, said record to show at least two entries daily during the period that the pump is in operation and delivering water and to be open for inspection by the water users at reasonable hours.

IT IS HEREBY FURTHER ORDERED that Eva M. Arnerich be and she is hereby authorized and directed to file with this Commission, within five (5) days from and after the date of this Order, the following schedule of rates to be effective for all irrigation water service rendered on and after the 1st day of September, 1938:

Over	500 gallons per minute-----	\$2.00 per hour
Less than	500 gallons per minute-----	1.50 per hour

IT IS HEREBY FURTHER ORDERED that Eva M. Arnerich be and she is hereby directed to file with this Commission, within thirty (30) days from and after the date of this Order, rules

and regulations governing relations with her consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 27th day of August, 1938.

Ray W. Whipple
Leon Whitell
Francis D. Miller
Ray L. Kelley
Commissioners.