

Decision No. _____

31269

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MARBLEHEAD LAND COMPANY,
a corporation, and MALIBU WATER COMPANY,
a corporation, for orders authorizing
the conveyance by Marblehead Land Com-
pany of certain properties, etc.

ORIGINAL

Application No. 22193

Gibson, Dunn & Crutcher, by J. C. Macfarland,
for Malibu Water Company;
Herbert F. Laugharn and William H. Neblett, by
Allan McCurdy, for Marblehead Land Company;
Mark M. Cohen and Irwin Fulop, for Dr. Cowan,
a property owner;
Salisbury, Robinson & Himrod, by W.B. Dennis,
for T.R. Cadwalader, Permanent Trustee for
Marblehead Land Company;
Farrand & Slossen, by Ross C. Fisher, for Security-
First National Bank of Los Angeles.

BY THE COMMISSION:

O P I N I O N

In this application Marblehead Land Company, a corporation,
and Malibu Water Company, a corporation, have applied to the Railroad
Commission for orders as follows:-

1. Authorizing the conveyance by Marblehead Land Company
to Malibu Water Company of certain properties used by it
in the development and distribution of water, a part of
which is to be conveyed subject to the lien of the Deed
of Trust in favor of Security-First National Bank of
Los Angeles.
2. Authorizing Malibu Water Company to issue 100,000 shares
of its capital stock, of the par value of \$1.00 each, to
Marblehead Land Company in exchange for said properties.
3. Decreeing that upon the delivery of the conveyance of said
property by Marblehead Land Company to Malibu Water Company,
Marblehead Land Company has divested itself of its public
utility character and is no longer subject to the jurisdic-
tion of the Railroad Commission.
4. Certifying that the Second Amended Plan of Reorganization
of Marblehead Land Company, dated March 11, 1938, filed by
the Marblehead Land Company, as debtor, in proceedings for
the reorganization of said Marblehead Land Company, under
Section 77B of the Bankruptcy Act, now pending in the United
States District Court for the Southern District of California,
Central Division, No. 27354-Y, on March 14, 1938, is approved
by the Railroad Commission as to the public interest therein
and the fairness thereof.

A public hearing was held in the matter before Examiner MacKall in Los Angeles on September 14, 1938. Although notice of such hearing previously had been given to consumers now receiving service from the water system involved in this proceeding and had been published in a newspaper of general circulation published in Los Angeles, no one entered an appearance in opposition to the granting of the application. At the hearing, counsel for Malibu Water Company further asked the Commission to make its order specifically granting to the Company a certificate of public convenience and necessity.

The application shows that Marblehead Land Company is a corporation organized on or about June 30, 1921 under the laws of the State of Delaware. Since its incorporation, it has been engaged in owning, operating and subdividing real estate, the major portion of which is located in Los Angeles County and consists of what is known as the Malibu Ranch lying along the Pacific Ocean north of Santa Monica. In addition it appears that incidental to its real estate and subdivision activities it has for some years last past furnished water to certain lessees of parts of its Malibu properties and to individuals who have purchased lands from it along the ocean front, chiefly in that section known as Malibu Beach. At present service is given to 214 consumers.

The Company at no time applied to or received from this Commission a certificate authorizing it to operate as a public utility, nor did it, prior to the making of this application, file its schedule of rates for water service. It alleges that its water service has been given as a matter of convenience.

The record shows that heretofore Marblehead Land Company became involved in financial difficulties and on February 8, 1936 filed in the District Court of the United States, for the Southern District of California, Central Division, a petition for its reorganization under the provisions of Section 77b of the Bankruptcy Act, which petition is now pending. Thereafter on March 14, 1938, it filed in said court its second amended plan of reorganization which, it reports, has been accepted by more than two-thirds in amount of each class of its creditors and by all its stockholders. T. R. Cadwalader has been appointed Permanent Reorganization Trustee for Marblehead Land Company.

It is the desire of those in control of the affairs of Marblehead Land Company, to separate the water operations from the real estate activities and accordingly to that end they have caused the organization of Malibu Water Company for the purpose of having it receive the water properties now owned by Marblehead Land Company and thereafter of operating them as a public utility water company. The present and proposed service area is shown on a map filed in this proceeding as Exhibit "4".

Upon the acquisition of the properties by Malibu Water Company it is felt by applicants that Marblehead Land Company no longer will be, if it is now, a public utility company under the jurisdiction of this Commission, and accordingly the Commission has been advised that if it authorizes the transfer of the properties to, and the operation thereof by, the Malibu Water Company, it will not be asked to pass upon the fairness of the reorganization plan.

Malibu Water Company was organized on or about August 12, 1938 under the laws of the State of California with an authorized capital stock of \$100,000. divided into 100,000 shares of the par value of \$1.00 each, all common. It proposes to issue all of its authorized stock at this time to Marblehead Land Company in exchange

for the water properties to be conveyed to it under the program outlined in this proceeding. The physical properties to be so conveyed, according to the testimony of T. R. Cadwalader, originally cost \$343,035.93 and have a depreciated value at this time of \$220,875.15.

It is not necessary for the Commission at this time to make a finding of value of the water properties referred to herein. In our opinion sufficient showing has been made to warrant an order authorizing the issue of \$100,000. of stock by Malibu Water Company and the order herein will so provide.

Malibu Water Company proposes, for the present at least, to maintain the same schedule of rates now charged by Marblehead Land Company, namely, a flat charge of \$1.50 per month for a 3/4" connection and \$2.25 per month for a 1" connection, but at a later date to install meters and to seek the Commission's approval of a schedule providing for metered rates. This matter, however, is not now before us.

It appears that during 1933 Marblehead Land Company executed to Security-First National Bank of Los Angeles its promissory notes and its deeds of trust on certain of its properties, including properties now to be conveyed to the water company. According to Exhibit D, the indebtedness to the bank aggregated \$568,788.07 as of June 1, 1938. At the hearing in this matter, counsel for applicants stated that the Federal Court in the reorganization proceedings before it had recognized the validity of the lien and of the renewal thereof. A new note and deed of trust will now be executed to the bank in renewal.

It is one of the provisions of the plan for reorganization that the water properties will be transferred to Malibu Water Company subject to the present and renewal lien to Security-First National Bank of Los Angeles. Malibu Water Company will not be a

party to the execution of the note and deed of trust and will not assume the payment of the principal and interest.

While it is possible that Security-First National Bank of Los Angeles may, in the future, succeed by foreclosure or other proceedings to the properties covered by the lien of the deed of trust to it, nevertheless the properties operated by Malibu Water Company will be impressed with the public service which cannot be removed by transfer, foreclosure or other proceeding.

O R D E R

Marblehead Land Company and Malibu Water Company having applied to the Railroad Commission for orders authorizing the transfer of properties and the issue of stock and for a certificate of public convenience and necessity, as indicated in the opinion preceding this order, a public hearing having been held and the Commission having considered the matter and being of the opinion that the application should be granted as herein provided,

IT IS HEREBY ORDERED as follows:

1. Marblehead Land Company may on or before December 31, 1938 transfer to Malibu Water Company the properties referred to in this application used by it in the development and distribution of water, such transfer to be in accordance with the terms and conditions outlined in the application.
2. Marblehead Land Company upon the transfer of its properties to Malibu Water Company, as authorized herein, is hereby relieved of the duties and functions of a public utility water corporation in the territory in which it is or may be furnishing public utility service by means of the properties it is herein authorized to transfer to Malibu Water Company.

3. Malibu Water Company may, on or before December 31, 1938, in payment for the properties herein authorized to be transferred to it, issue \$100,000. par value of its common capital stock, it being the opinion of the Commission that the money, property or labor to be procured or paid for through such issue is reasonably required for the purpose specified herein and that the expenditure for such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.
4. Malibu Water Company, within thirty (30) days after acquiring the properties referred to herein shall file with the Commission (a) a copy of each deed of conveyance as actually executed by which it receives title to the said properties; (b) a statement showing the exact date upon which it acquired and commenced operating said properties; (c) a statement of the issue of the stock herein authorized; (d) its schedule of rates to be charged for service rendered by it, which schedule shall be identical with that now charged by Marblehead Land Company, and its rules and regulations governing relations with its consumers.
5. The authority herein granted will become effective upon the date hereof.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require and will require Malibu Water Company, a corporation, to construct, acquire, operate and maintain a water system for the purpose of supplying water for domestic, commercial and irrigation uses within the area

IT IS HEREBY ORDERED, that a certificate of public convenience and necessity is hereby granted to Malibu Water Company in accordance with the foregoing declaration.

Laurel and
Leon
Raymond
Ray & Riley