

Decision No. 31510

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
P. H. BOTTOMS and CECIL F. WHITE,
co-partners doing business under the
firm name and style of Valley Com-
press Company, a corporation, to
purchase, the whole of the warehouse
property and other property and assets
of said co-partnership located at
Pinedale, Fresno County, California.

Application No. 22289

Abbott, Appel & Dains, by Ivores R. Dains,
for applicants.

BY THE COMMISSION:

O P I N I O N

In this application P. H. Bottoms and Cecil F. White, co-partners doing business under the firm name and style of Valley Compress Company, ask permission to sell their public utility warehouse properties and assets to Valley Compress Company, a corporation.

The application shows that P. H. Bottoms and Cecil F. White since about October 1, 1937 have been engaged in a warehousing and cotton compressing business at Pinedale, Fresno County. For the period from October 1, 1937 to August 31, 1938 the co-partners report compress revenues of \$44,403.92, storage revenues of \$58,165.68 and other revenues of \$29,577.44, a total of \$132,147.04. During the same period they report expenses including depreciation and interest of \$99,442.16, leaving net income of \$32,704.88.

In Exhibit A they report the assets and liabilities of the co-partnership as of August 31, 1938, as follows:-

ASSETS

Cash in bank		\$15,402.11
Accounts receivable		6,172.12
Inventories		7,201.74
Land		10,021.70
Buildings	\$90,598.04	
Machinery & Equipment	35,813.08	
LESS: Reserve for depreciation	<u>4,853.98</u>	
		<u>121,557.14</u>
Total assets		<u>\$160,354.81</u>

LIABILITIES

Notes payable		\$ 1,606.00
Acceptances payable		1,577.00
Accounts payable		3,184.24
Contract payable, Valley Cotton Finance Co.		30,000.00
Deed of Trust, Pensacola Co.		91,746.15
Capital:		
P.H. Bottoms—Cash advanced	\$ 3,400.00	
Less drawings	2,763.46	
C.F. White " "	<u>1,100.00</u>	
Net profit for period	32,704.88	
		<u>32,241.42</u>
Total liabilities and capital		<u>\$160,354.81</u>

It is reported that the co-partners now are desirous of liquidating the business and of dissolving their partnership. On or about September 6, 1938 R. G. Hamilton & Co., a corporation, offered to purchase from said P. H. Bottoms all of his right, title and interest in and to all of the property and assets of the co-partnership, with certain minor exceptions, and all of the issued and outstanding capital stock (\$30,000. par value) of Valley Cotton Finance Corporation⁽¹⁾ for the sum of \$60,000.00, plus the assumption of liabilities of \$3,000.00, and also offered to purchase from Cecil F. White all of his right, title and interest in and to said property and assets, with certain minor exceptions, and in consideration agreed to cause to be issued to him forty per cent. of the authorized common stock of a corporation to be

(1) Valley Cotton Finance Corporation sold to the co-partnership the compressing machinery now operated. The balance unpaid on said machinery is \$30,000. consisting of a contract dated June 15, 1937 payable on or before 5 years, with interest at 6%.

formed for the purpose of acquiring and operating the properties and business of the co-partnership. Both offers were accepted. Thereafter R. G. Hamilton & Co. caused Valley Compress Company, a California corporation, to be organized and offered to have transferred to it all the tangible property and assets of the co-partnership in consideration of the issuance by the corporation of all its authorized capital stock, that is to say, 60,000 shares of six per cent. cumulative preferred stock of the aggregate par value of \$60,000.00 and 1000 shares of common stock of the aggregate par value of \$1,000.00, such transfer to be subject to indebtedness of about \$95,983.90. All of the preferred stock and 600 shares of the common stock will be issued to R. G. Hamilton & Co. and 400 shares of the common stock to Cecil F. White.

The properties to be transferred to the new corporation include approximately sixty-seven acres of land at Pinedale upon which are located six buildings, having a storage space of 280,000 square feet, and machinery and equipment, inventories, materials and supplies, office furniture and fixtures, all the issued and outstanding stock of Valley Cotton Finance Corporation and accounts receivable, excepting a storage item of approximately \$180.00. It appears that the properties will be transferred subject to indebtedness of \$95,983.90 which is represented by trade acceptances payable of \$1,577.00, notes payable of \$1,423.00, insurance payable of \$1,237.75 and a deed of trust in the amount of \$91,746.15.

The Articles of Incorporation of Valley Compress Company show that it was organized under the laws of the State of California on or about September 8, 1938 with an authorized capital stock of \$61,000.00, divided into 61,000 shares of the par value of \$1.00 each, consisting of \$60,000.00 of preferred stock and \$1,000.00 of common stock.

The preferred stock may be redeemed at any time in whole or in part at the option of the corporation at \$1.05 a share plus all accrued and unpaid dividends. In the event of any liquidation, dissolution or winding up of the corporation the holders shall be entitled to be paid for each share the par value thereof, that is, \$1.00 a share, plus all accrued and unpaid dividends. The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, cumulative dividends payable quarterly at the rate of six per cent. of the par value.

The Articles of Incorporation provide that the voting power is to be vested exclusively in the holders of the common stock, provided however that in the event dividends are not paid to the holders of the preferred shares for any period of the two consecutive years the holders of such preferred shares shall have the right to elect a majority of the Board of Directors until all dividends in arrears have been paid.

It is of record that applicant, Valley Compress Company, a corporation, has been authorized by the Commissioner of Corporations to issue not to exceed 60,000 shares (\$60,000.00 par value) of its preferred stock and 1,000 shares (\$1,000.00 par value) of its common stock to R. G. Hamilton & Co., a corporation, in exchange for all of the issued and outstanding stock of Valley Cotton Finance Company, a corporation, and the property and assets described in its application first to be transferred and assigned to said applicant, subject to liabilities and encumbrances not exceeding in the aggregate, \$95,983.90.

Applicant, Valley Compress Company, a corporation, is not asking permission to issue its stock. It is apparently proceeding upon the theory that such authorization is not necessary. Whether or not it is

required is, in the event the validity of the stock is questioned, for the courts rather than this Commission, to determine. However, we do not approve the stock structure of Valley Compress Company as originally submitted in this application. Recently, R. G. Hamilton & Co., who will own all of the preferred stock and 60% of the common stock of Valley Compress Company, has filed with us a stipulation in which it agrees that for the fiscal year 1938-1939 and each and every fiscal year thereafter until all of the preferred stock of Valley Compress Company, a corporation, shall have been redeemed by said corporation, one-half of the net profits of said corporation will be set aside in a special fund for the redemption of said preferred stock and such fund will be applied to the redemption of the preferred stock of the corporation from time to time, pursuant to the procedure for the redemption provided in the articles of incorporation. R. G. Hamilton & Co. further stipulate that, in the event of the sale by R. G. Hamilton & Co. of any of its shares of the preferred stock of Valley Compress Company, that prior to such sale, if any, it will cause Valley Compress Company, a corporation, to amend its articles of incorporation so as to provide for the redemption of its preferred stock, pursuant to the foregoing stipulation and also amend its articles of incorporation so as to provide that in the event that dividends are not paid to holders of the preferred shares of the corporation for any period of six consecutive months, the holders of the preferred shares shall have the right to elect a majority of the board of directors of Valley Compress Company until all dividends in arrears on the preferred shares shall have been paid.

Through the redemption of the preferred stock by the use of the corporation's net profits, the equity behind the common stock will be increased.

O R D E R

The Commission having been asked to authorize the transfer of the public utility warehouse properties owned by P. H. Bottoms and Cecil F. White, co-partners, doing business under the firm name and style of Valley Compress Company to Valley Compress Company, a corporation, a public hearing having been held before Examiner Fankhauser and the Commission having considered the evidence submitted at such hearing and it being of the opinion that in view of the stipulation filed herein by R. G. Hamilton & Co., said application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED that P. H. Bottoms and Cecil F. White, co-partners, doing business under the firm name and style of Valley Compress Company, be, and they are hereby, authorized to sell on or before December 31, 1938, their public utility warehouse properties more particularly described in the deed filed in this proceeding as Exhibit D and in the bill of sale filed in this proceeding, to Valley Compress Company, a corporation.

IT IS HEREBY FURTHER ORDERED that P. H. Bottoms and Cecil F. White, co-partners, doing business under the firm name and style of Valley Compress Company, and Valley Compress Company, a corporation, shall join in common supplement to the tariff on file with the Commission by P. H. Bottoms and Cecil F. White, co-partners, doing business under the firm name and style of Valley Compress Company, said P. H. Bottoms and Cecil F. White, co-partners, doing business under the firm name and style of Valley Compress Company, on the one hand withdrawing and said Valley Compress Company, a corporation, on the other hand adopting and establishing as its own, such tariff and all effective supplements thereto.

IT IS HEREBY FURTHER ORDERED that within thirty(30) days after the transfer of the properties herein authorized to be transferred, Valley Compress Company, a corporation, shall file with the Railroad Commission a copy of the deed and/or other instrument of conveyance under which it acquires and holds title to said properties.

DATED at Los Angeles, California, this 5th day of December, 1938.

R. G. Washburn

Grant R. Martin

Ray C. Rice

COMMISSIONERS