

ORIGINAL

Decision No. 34695

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of HOME FARMS WATER COMPANY for permission to lease for a term of years its public utility properties now used to furnish water for domestic purposes in and about the Town of Romoland, Riverside County, California; and to be relieved of its obligation to furnish water for any purpose except in and about said Town of Romoland, in the territory covered by the certificate of public convenience and necessity granted by Decision No. 26427, dated October 16, 1933.

Application No. 24195

Al Freedman, for Applicant.

Russel Holt, for Lolah G. Brown  
and Frank L. Holt, Protestants.

HAVENNER, COMMISSIONER:

O P I N I O N

Home Farms Water Company, a corporation, holds a certificate of public convenience and necessity authorizing it to supply water as a public utility in a portion of Riverside County, including the townsite of Romoland. The company is also engaged in private farming operations, being the owner of about 4,000 of the 5,500 acres within the area covered by the certificate declaration. The utility requests authority to lease its "domestic" system in and about Romoland to Al Freedman, one of the three owners of the company, and to be relieved of any utility obligations in and about Romoland dur-

ing the term of the lease.

The utility also requests cancellation of its certificate in so far as the latter permits it to render utility service other than that furnished through the "domestic" system. Certain owners of property in the area outside of the Romoland "domestic" system object to the granting of this portion of the application. (1) Protestants are not now furnished water by applicant. However, they do not appear to own any rights to water beneath their land. They object because they believe that if the application is granted they will lose any "rights" which they may now have to receive water upon their property. Consideration of the historical background of the utility and its predecessors, as well as related real estate activities, is essential to an understanding of the present situation.

#### Historical Resumé.

The "Trumble Farms" area is a small farm subdivision of 640 acres, lying immediately south of Romoland. Mr. Trumble's proposed water company to serve this area was never organized. Most of the protestants own property in the Trumble Farms area. The water rights beneath the land in that area appear to be owned by

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(1) The Commission required applicant to notify "all landowners, tenants, present consumers and all consumers served in the five years last past" of the time and place of hearing. Approximately 500 appropriate notices of hearing, indicating the nature of the proceeding, were mailed. About 60 of the persons so notified reside outside of the state, while almost all of the remaining 440 persons individually notified reside in southern California. Eight property owners appeared in protest at the hearing. The Commission received three letters of protest.

Temescal Water Company. That company, apparently a mutual water company (39 C.R.C. 398, 399), is not a party to this proceeding.

About 1924 one Alexander Hursh, operating under the fictitious name of Pacific Development Company, acquired portions of the Trumble Farms properties, as well as other lands. Some of this property was acquired from Temescal Water Company, and the latter reserved the rights to water beneath such lands. Thereafter Pacific Development Company proceeded to develop and sell these agricultural lands in small tracts, under an installment payment plan whereby the seller agreed to plant to trees or vines and to cultivate, irrigate and care for the same for a period of three years. During such period the seller was to remain in possession and retain title to all crops. Thereafter, if the purchaser so elected, the seller agreed to continue for five more years to farm the lands sold for a consideration of one-fourth the net profit from crop sales. Seller agreed to establish a water company and to issue one "water right certificate" with each acre deeded. Seller reserved the right to all water in or under the land, and conveyance of the land was to be made subject to a covenant running with the land that the grantee would have no right to dig wells or take underground water, except that grantee would have the right to dig wells and take therefrom such water "as may be reasonably necessary for domestic use thereon, including watering of stock, but not for use elsewhere or for any other purpose." Further reserved to the grantor was a right of way across any part of the property for the laying of pipes or ditches necessary according to demands of grantor, together with the right to enter upon the land to drill additional wells, title to which

should remain in the grantor.

Watson Water Company was organized in 1925. Hursh was one of the incorporators, and owned a twenty per cent interest therein. In 1927 Watson Water Company was authorized to supply water for domestic, irrigation and other purposes in and near Romola (Romoland), and in and near Trumble Farms and Romola Farms 1 to 5, inclusive. <sup>(2)</sup> The certificated area outside of Romoland then comprised some 2,600 acres.

Romola Incorporated was organized in 1928. In that same year Pacific Development Company transferred its several businesses to Romola Incorporated. Romola Incorporated sold property under an installment payment plan similar to that of its predecessor.

Thereafter, Watson Water Company sought permission to increase rates for irrigation service on the 2,600 acres outside of Romoland, and also requested authority to render service to about 6,000 additional acres. Several tract purchasers protested the granting of the application, and none appeared in favor thereof. That application was dismissed <sup>(3)</sup>, it being found that Romola Incorporated would be, for an indefinite period, the sole consumer of water for irrigation use, and that public convenience and necessity did not then require that Watson Water Company render utility service in any of the area outside of Romoland. The 1929 decision pointed out that ownership of the land company was practically identical with that of the water company. It also appeared that Watson

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(2) Decision No. 18157, Application No. 13351, April 4, 1927.

(3) Decision No. 20841, Application No. 14935, March 6, 1929.

Water Company had not undertaken to render service outside of Romoland, although the 1927 order authorized service to some 2,600 acres surrounding Romoland.

In 1929 Romola Incorporated went into receivership. A group of contract holders and land purchasers organized Ethanac Rancho, Ltd., a cooperative organization. The cooperative acquired certain encumbered lands, but without clear title. It also acquired some of the stock of Watson Water Company, and assumed certain obligations in order to acquire all of the stock. The cooperative was unsuccessful and transferred its holdings to Home Farms Corporation.

In 1930 Watson Water Company was authorized to transfer its properties to Riverside County Water Works District No. 1. <sup>(4)</sup>  
The transfer was never consummated.

In 1933 Watson Water Company changed its name to Home Farms Water Company. It was then controlled by Home Farms Corporation, which, through stock ownership, was in turn controlled by A. Francis Page and associates. Home Farms Corporation transferred to Home Farms Water Company certain properties theretofore acquired from Ethanac Rancho, Ltd. Home Farms Water Company applied for a certificate and for authority to execute a mortgage and issue bonds. The application alleged that it was then furnishing water to Ethanac (Romoland), and certain surrounding territory comprising some 2,500 acres. Applicant requested authority to serve additional territory. The order enlarged the area within which the company

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(4) Decision No. 22005, Application No. 16207, January 13, 1930.

was permitted to render utility service. (5) The 1933 decision pointed out that because of the receivership proceedings already mentioned, and a foreclosure sale, the development and control of the properties had passed out of the hands of the original promoters.

By supplemental orders Home Farms Water Company was authorized to execute a mortgage and to issue bonds to pay and to secure payment of certain debts. (6)

Subsequently Home Farms Corporation transferred its land and assets to Home Farms Water Company.

Proposed Lease of "Romoland System."

According to the present application, on January 3, 1939, the entire capital stock of Home Farms Water Company was acquired, and is now owned, in equal shares, by Al Freedman, Samuel Hamburger and Albert E. Kern. Applicant alleges that it owns about 4,000 acres of the land within the service area, and devotes all of its activities to the raising of crops on its own land, except that it serves domestic water users in and about Romoland. It states that during 1940 the average monthly number of domestic water users was 65, the gross average monthly income therefrom being \$97.50. Applicant proposes to lease the "domestic" water system to Al Freedman, its vice-president and general manager. Mr. Freedman proposes to continue rendering such service under the existing rates, rules and regulations. The declared purpose of the proposed lease is to relieve the company of the duty of filing reports with the Commission

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(5) Decision No. 26427, Application No. 19045, October 16, 1933.

(6) Decision No. 26491, November 6, 1933, and Decision No. 27359, September 17, 1934, both in Application No. 19045.

involving its non-utility business. The proposed lease is for a term of five years, at the nominal total rental of five dollars, subject to lessee's option to renew for an additional five years. The company asks that it be relieved of its utility obligations to supply domestic water in and about Romoland during the term of the lease.

While there has been no protest to this phase of the application, certain features require comment. First, the proposed agreement does not describe adequately the properties to be leased. For example, the instrument covers some 800 feet of pipe, which is an error, applicant Freedman having testified that he intends to operate and maintain some 4,000 feet of existing lines. Secondly, the extent of the area proposed to be served by the "domestic" system is not clear. Before any authority to lease is granted, applicants should file a revised proposed lease, together with maps of the proposed service area. And it should be clearly understood that lessee will render domestic, commercial and irrigation service<sup>(7)</sup>, and will also make all normal extensions as contemplated by the statute and the filed extension rule.

The utility also seeks to be relieved from any utility obligations during the term of the lease. "Well No. 12" will be leased to Freedman, but the record fails to show that this single well is capable of producing sufficient water for the "domestic" system. Whether lessee, as an individual, will have the facilities

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(7) Throughout this proceeding reference has been made to a "domestic" system. However, filed rates show that domestic, commercial and irrigation service have been rendered in and near the townsite of Romoland.

or the financial ability to render adequate service or make normal extensions under the present extension rule is not clearly established.

Under these circumstances, to relieve the company of all utility obligations as to the Romoland system would not be equitable. The stated reason for the application is accounting simplification and elimination of annual reports to the Commission covering non-utility functions. Hence, should authorization hereafter be granted, it should be limited to the accomplishment of those objectives. One solution would be for Freedman to apply for a certificate to engage in the utility business, such certificate to be effective only during the time that he may be the lessee of the physical properties of the water company. But any authority sanctioning operation of the system by a lessee of the physical properties should not release lessor from its obligation to furnish lessee such financial assistance, as well as such water supply, as may be necessary to maintain adequate utility service.

Proposed Partial Cancellation of Certificate.

Applicant also requests an order cancelling the 1933 certificate, except in so far as authority to furnish water in and about Romoland is concerned. As to the larger area, applicant alleges that it has furnished no water for irrigation purposes, and has received no application therefor, for the past ten years. (8) It

(8) Applicant states that in 1937 it leased one well and certain pipe lines for \$100 to be used in furnishing water to a 40-acre tract which applicant owned, and that in 1938 a 50-acre tract owned by applicant was leased on a cash basis, the rental arrangement requiring applicant to furnish water during that growing season; but alleges that those instances cannot be considered the furnishing of water as a public utility.



is alleged that subsequent to 1933, and through foreclosure proceedings, four wells and some twenty miles of pipe lines have been eliminated from the system, making about seven additional miles of pipe line useless because of no connection with any available water, and that such loss occurred prior to acquisition of the company in 1939 by the present owners. Applicant alleges that when the present stockholders took over the company no pumps had been operated for more than five years, although the new owners paid a back bill of \$32,000 for electric current theretofore used for pumping water for irrigation purposes. It is also alleged that available water has diminished.

Mr. Freedman, general manager of applicant, and one of its three stockholders, testified that it is physically impossible to render irrigation service throughout the larger area because there never was sufficient water <sup>(9)</sup>, and also because the pipe line construction is such that it could not convey the water, even if available. This witness also testified that not more than 700 acres per season can be irrigated; that there has been a consistent annual lowering of the water level; and that because of an excess quantity of salt, water from many of the company's wells is injurious to vegetation unless mixed with other water.

The record shows that irrigation service in the outside area has not been rendered for several years. One property owner testified that some four or five years ago he and a neighbor received a

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(9) "Bear in mind this was originally a wild promotion and it is true they took out prospective customers and put on a big show. Not only Romoland, but the entire area is limited as to water capacity. What they did there, they had a booster pump which showed an enormous quantity of water flowing around." (Witness Freedman.)

little water from the company for the irrigation of five acres. Witness Freedman testified that since the latter part of 1937 no property owner has requested irrigation service.

According to Mr. Freedman, the water rights under about one thousand acres of the land in the outside area are reserved to Temescal Water Company, and the remainder to Home Farms Water Company. However, he also testified that if the present application was granted there would be no reason for any objection by Home Farms Water Company to the drilling of wells by property owners to serve their lands with water for irrigation as well as domestic purposes. On the contrary, he stated that the company "would be glad to waive its rights", and has encouraged the drilling of wells.

Under the circumstances recited, it does not appear that mere rescission of permissive authority to render utility service will deprive property owners in the "outside area" of any rights. The real ground of protest is a fear that the granting of the application may result in the taking away of water rights, rather than utility service. The record shows that utility service has not been rendered for several years, and is not now demanded. It is not within the province of the Commission to adjudicate titles to water rights. That question must be left to the courts. The utility seems willing to waive all rights to water, beneath land not owned by it, which it has acquired itself or inherited from its predecessors. The property owners should be amply protected by the filing of a written stipulation, authorized by the utility's board of directors, waiving all rights to water beneath lands not owned by the utility, and agreeing to refrain from any future assertion

of such rights.

As to the contemplated leasing of properties, it is apparent that the form of the proposed lease must be revised so as to contain a complete and accurate description of the properties to be leased. Such lease should also contain proper guarantees by the utility to the effect that the lessee shall be furnished with an adequate supply of water, as well as such financial aid as may be necessary in order to render proper utility service and make all required extensions.

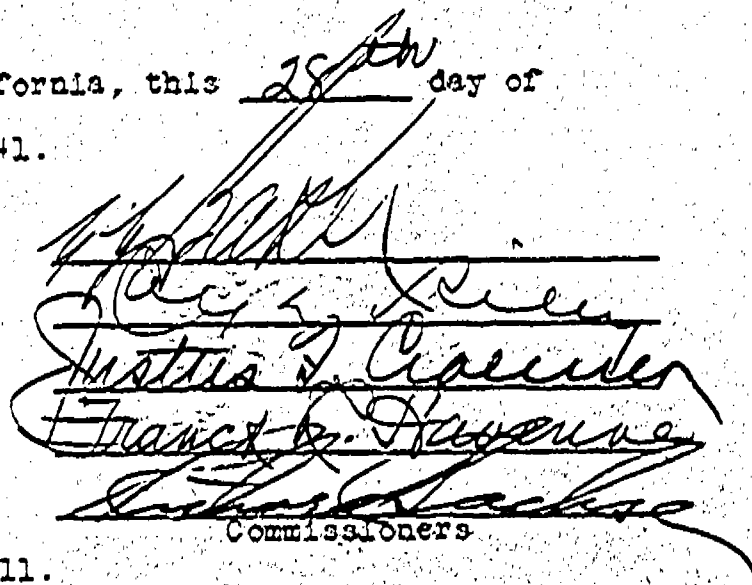
Under the present record, the application will be denied, but with the understanding that applicants may renew their requests by the filing of an appropriate supplemental application covering the matters discussed in this opinion.

O R D E R

The above application having been submitted following the taking of evidence at a public hearing, and based upon the record and upon the factual findings contained in the above opinion, IT IS ORDERED that Application No. 24195 be and it is hereby denied.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated, Los Angeles, California, this 28<sup>th</sup> day of  
October 1941.

  
Commissioners