

Decision No. 35897

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application

of

FRANK V. MAYO and CLARA ANN MAYO,
for a Certificate of Public Convenience
and Necessity to Supply Water to Certain
Unincorporated Territory Adjacent to
the City of Stockton.

Application No. 24818

CALIFORNIA WATER SERVICE COMPANY,
a corporation,

Complainant,

vs.

Case No. 4641

FRANK V. MAYO and CLARA ANN MAYO,

Defendants.

O. C. Parkinson, for Applicants and for Defendants.

McCutchen, Olney, Mannon and Greene, by
Henry D. Costigan and Scott Elder, for
California Water Service Company,
Protectant Intervener and Complainant.

BY THE COMMISSION:

O P I N I O N

In Application No. 24818, Frank V. Mayo and Clara Ann Mayo, his wife,
ask the Railroad Commission for a certificate of public convenience and
necessity to operate a public utility water system under the fictitious firm
name and style of Oak Park Court Water Company in certain unincorporated
territory located northeast of and adjacent to the City of Stockton in

San Joaquin County, California. The Commission is also requested to establish the rates to be charged for water service rendered to consumers in said territory.

California Water Service Company, a corporation, filed a protest requesting a denial of the certificate. This company owns and operates a waterworks supplying the City of Stockton and vicinity.

California Water Service Company, in Case No. 4641, complains that Frank V. Mayo and Clara Ann Mayo, his wife, have violated Section 50 (a) of the Public Utilities Act in that said Defendants have not obtained a certificate from the Railroad Commission that public convenience and necessity require or will require the construction by them of a water system, nor were they serving, supplying, distributing or selling water. The Railroad Commission therefore is asked to require Defendants to cease and desist from said construction until the Commission renders its decision on this complaint, or until further order of the Commission.

Public hearings in these two matters were held in Stockton before Examiner Wm. Stava and by stipulation both proceedings were combined for the taking of evidence and for decision.

Applicants are developing Tract No. 66, San Joaquin County, designated as Oak Park Court Subdivision, located on California Street just outside of and adjacent to the City of Stockton and containing approximately 6½ acres. An adjoining 4½-acre parcel of land, lying northerly thereof, is reserved for future development. The application for certificate embraces the entire area of 11 acres. All of said property is owned by Applicants, except a parcel of land 150' x 110' at the corner of California Street and Alpine Avenue, which parcel is included in the service area. The subdivision contains 38 lots upon which Applicants plan to build immediately 37 houses, the 38th lot being reserved for the well, pumping plant, storage tank and other facilities required for the operation of the proposed water system.

Water service for the subdivision was first requested from The Stockton Land Association which operates a public utility supplying water in a large residential area lying immediately west of Oak Park Court and across California Street, being within the city limits of Stockton. The Association refused by reason of its limited plant facilities. Thereafter water was requested from California Water Service Company whose nearest mains are approximately 300 feet south of the subdivision. The Company was willing to extend service to this area provided the subdividers deposited with the utility the entire estimated cost of the necessary facilities, amounting to \$2,128, before construction would be commenced, subject to refund under its rules and regulations. However upon the grounds of an alleged uncertainty created by prevailing war conditions, the utility would not guarantee either immediate or final completion of the piping. Whereupon, the Applicants declined to make the cash deposit demanded but offered in lieu thereof to post a surety bond to indemnify the utility for any possible breach of contract by them. This was refused by the utility. In order to avoid further delay, Applicants installed their own water system, obtaining promptly and without difficulty the material and equipment necessary to complete the development, a defense housing project. The plant is now in place and was practically finished at the time of the last hearing held in these proceedings.

The source of water supply is a 10-inch well, 140 feet deep. Water is pumped into a 3500-gallon pressure tank. The distribution system comprises some 1600 feet, more or less, of 4-inch and 2-inch pipe. Four wharf-type fire hydrants have been connected to the mains for fire protection purposes. The services to all houses are of 3/4-inch pipe. No meters are to be installed for the time being. The first unit of waterworks is estimated to cost \$5,216.

The California Water Service Company has insisted that the certificate be denied and that said company be granted the sole authority to supply

water in Oak Park Court. The record discloses no exclusive franchise or other right vested in protestant company to provide this service, but does show, however, that said company elected to ignore the necessity for prompt and reasonable readjustment to vastly changed economic conditions in the flexible and fair interpretation of its rules, regulations and operating policies, an attitude which forced Applicants to enter a field entirely foreign to their principal business and to their wishes in order to protect their investment and enable them to continue operations. Frank V. Mayo and Clara Ann Mayo, his wife, have acted entirely in good faith and have proceeded strictly in due accord within their rights and privileges.

Applicants will be granted a certificate as prayed and a schedule of rates will be established in the following Order. The complaint will be dismissed.

O R D E R

The proceedings as entitled above having been filed with the Railroad Commission, public hearings having been held thereon, the matters having been duly submitted and the Commission being now fully advised in the premises, now therefore,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require and will require the construction, operation and maintenance of a public utility water system by Frank V. Mayo and Clara Ann Mayo, his wife, doing business under the fictitious firm name and style of Oak Park Court Water Company in that certain unincorporated territory consisting of eleven acres, more or less, of land located northeasterly of and adjacent to the City of Stockton, in the County of San Joaquin, California, which area is bounded on the south by a 2.62-acre tract formerly owned by the Stockton Electric Railroad Company and now owned by the Stockton City Lines, Inc., on the west by California

Street, on the north by Alpine Avenue and on the east by the Stockton Rural Cemetery, as more particularly delineated upon the map entitled "Tract No. 66, Subdivisions of San Joaquin County, Oak Park Court Subdivision" and attached to the application herein, and which is hereby made a part of this Order by reference.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Frank V. Mayo and Clara Ann Mayo, his wife, doing business under the fictitious firm name and style of Oak Park Court Water Company, for the construction, operation and maintenance of a public utility water system in the territory hereinbefore described.

IT IS HEREBY FURTHER ORDERED that it is a condition of this Order that Frank V. Mayo and Clara Ann Mayo, his wife, doing business under the fictitious firm name and style of Oak Park Court Water Company, shall never claim before this Commission or any other public body an amount for the certificate of public convenience and necessity granted herein in excess of the actual cost of acquiring it.

IT IS HEREBY FURTHER ORDERED that said Frank V. Mayo and Clara Ann Mayo, his wife, operating under the fictitious firm name and style of Oak Park Court Water Company, be and they are hereby authorized and directed to file in quadruplicate with this Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged for all water service rendered to their consumers subsequent to the first day of November, 1942, which schedule of rates is hereby found to be just and reasonable for the service to be rendered:

RATE SCHEDULE

FLAT RATES

	<u>Per Month</u>
1. For each dwelling or house, including reasonable and necessary quantities of water for an irrigated area of not over 4,000 square feet of lawns, gardens, shrubbery and trees	\$1.75

RATE SCHEDULE (Contd.)

FLAT RATES - Continued

- | | <u>Per
Month</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 2. For irrigation of grounds planted to lawns, gardens, shrubbery and trees in excess of the 4,000 square feet included in the dwelling rate, payable each month of the six-month period May to October, both inclusive, per 100 square feet | \$0.02 |
| 3. Users not otherwise classified, to be charged for water at measured rates. | |

METERED RATES

Minimum Monthly Charges:

For 5/8 x 3/4 inch meter	\$1.75
For 3/4 inch meter	2.25

Each of the foregoing "Minimum Monthly Charges" will entitle the consumer to the quantity of water which that minimum monthly charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates:

First 900 cubic feet	\$1.75
Next 2,100 cubic feet, per 100 cubic feet15
Next 2,500 cubic feet, per 100 cubic feet12
All over 5,500 cubic feet, per 100 cubic feet10

IT IS HEREBY FURTHER ORDERED that Frank V. Mayo and Clara Ann Mayo, his wife, operating under the fictitious firm name and style of Oak Park Court Water Company, be and they are hereby directed as follows:

1. Within thirty (30) days from the date of this Order, to submit to this Commission for its approval quadruplicate sets of rules and regulations governing relations with their consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet approximately 8 1/2 x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the authorized service area and the location thereof with reference to the surrounding territory; provided, however, that such map or sketch shall not thereby be considered by this Commission, or any other public body, as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.

- 2. Within sixty (60) days from the date of this Order, to file with this Commission four copies of a comprehensive map drawn to an indicated scale of not less than 400 feet to the inch, upon which shall be delineated correctly by appropriate markings the various tracts of land in the territory for which the certificate is granted herein. This map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire utility area of service; provided, however, that such map shall not thereby be considered by this Commission, or any other public body, as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.

IT IS HEREBY FURTHER ORDERED that Case No. 4641 be and the same is hereby dismissed without prejudice.

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 October, 1942.

 H. Baker
 Francis D. Havens
 Richard K. Kase
 Commissioners.