

Decision No. 37967

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
 JOSEPH A. MOORE and ARLIE S. MOORE
 for an Order or Certificate Authorizing
 Applicants to Conduct a Water System
 for the Purpose of Delivering Water
 to Residences on a Tract of Land near
 the City of Modesto, County of
 Stanislaus, State of California.

Application No. 24759

T. B. Scott, for Applicants.
L. J. Gilliam, in propria persona.

BY THE COMMISSION:

O P I N I O N

In this proceeding Joseph A. Moore and Arlie S. Moore, husband and wife, ask the Railroad Commission for a certificate of public convenience and necessity to operate a public utility for the purpose of furnishing water for domestic and other uses to the inhabitants of the Modesto High School Tract and other adjacent unincorporated territory comprising approximately 160 acres located in the west half of Section 5, Township 4 South, Range 9 East, M.D.B. & M., north of the Tuolumne River and just south of the City of Modesto in Stanislaus County, California. The Commission is also requested to establish the rates to be charged for the water service to be rendered, which request was amplified at the hearing to include schedules of both flat and metered rates.

A public hearing in this matter was held in Modesto before Examiner E. Ronald Foster.

Applicants are now engaged in the business of supplying water to approximately 77 residences located in the Modesto High School Tract, comprising about 20 acres, which has been subdivided into some 188 lots, most of which are about 25 feet

wide by 125 feet deep. Applicants desire to extend their service to include all of the California Homes Tract and Graham Acres, and Lots 6 to 26 of Rouse Colony, which subdivisions contain approximately 76 parcels varying in size from one-half to ten acres. A certificate is desired to cover this entire area to operate as a public utility under the jurisdiction of the Railroad Commission. The additional territory now devoted principally to gardening is supplied with water from individual, private wells. The owners of the California Homes Tract have requested that this subdivision be included in applicants' service area.

The water distribution piping in the original service area, the Modesto High School Tract, was laid in 1935 by a Mr. Edward Ealey, who installed pumping equipment in two wells, neither of which is now a part of the system. Applicants came into possession of the water works in 1939, when Mr. Ealey transferred to them by deed the real estate, wells, pumping plants and appurtenances, and by bill of sale the water distributing system. Because the supply from the two wells then in use proved to be inadequate, the applicants in May, 1940, drilled a new well on other property on which they installed the pumping plant and pressure tank now used in supplying water for the system. This pumping plant and the building which houses it are located on land owned by the applicants, being a parcel 25' x 50' comprising portions of Lots 26, 27 and 28 in Block B of the same tract. When these new facilities had been connected to the distribution mains and put in service, the system was disconnected from the two wells which previously had been the source of water supply. The latter wells, accompanying pumping plants, and the lots upon which they were located, were sold to Dora B. Trask on November 18, 1940. This sale was transacted under a deed of trust which had been executed by Edward Ealey in February, 1939, to guarantee payment of a note held by Mrs. Trask. (1)

(1) The California Supreme Court on June 16, 1944, affirmed a judgment of the Stanislaus County Superior Court (Trask v. Moore, 24 A.C. 362) in an action brought by Mrs. Trask to quiet title to the water system. After satisfying the judgment, (which, among other things, required him to account to Mrs. Trask for proceeds of the operation) Moore took a deed from Mrs. Trask covering Lots 7 and 8 in Block D, Lots 22 and 23 in Block B, and the entire water system connected therewith, including appurtenances, serving the Modesto High School Tract. Applicant recently filed an amendment to the application, setting forth the foregoing facts, and attached copies of the Supreme Court's decision and the deed. To the extent that our authorization may be required therefor, the Order herein will provide for the acquisition of the properties evidenced by said deed.

The well now in use is 99 feet deep with 12-inch casing and is equipped with a deep well turbine pump driven by a 10-horsepower electric motor automatically controlled by switches maintaining a system pressure between 25 and 40 pounds per square inch. The water is pumped into a 4,000-gallon steel pressure tank, from which it is delivered into the distribution system consisting of some 4,000 feet of six, four and two-inch mains. There are now 77 services installed, of which 70 are 3/4-inch and the 7 others are 1/2-inch, none of them being equipped with meters.

Whereas Mr. Baley had made a uniform flat charge of \$2 per month per service, soon after applicants acquired possession of the water works in 1939 the rates were changed to \$1.75 per month for 1/2-inch connections, \$2.30 for 3/4-inch connections and \$3.10 for 1-inch connections, although there are none of the latter at the present time. In addition to serving the entire Modesto High School Tract, applicants now supply water to four homes in Graham Acres, adjacent on the north; and to one consumer in the adjoining California Homes Tract. No service is now rendered east of Colorado Avenue nor to any inhabitants of Rouse Colony.

The 1/2-inch services have caused general dissatisfaction. Applicants are willing and should replace them with 3/4-inch connections within six months from the date of this Order. It is also desired that the schedule of flat rates be so designed as to provide for equitable charges for those customers having large irrigated areas, multiple family residences, and other types of premises requiring more or less than the average quantity of water. A schedule of meter rates is requested in case it becomes advisable to install meters on any or all of the services at some future time.

Mr. L. J. Gilliam, a consumer, voiced the only objection to the rates now being charged and stated that in letters written to the Commission in 1939 he had protested the rate of \$2.30 which he contended was an illegal charge over the rate of \$2 formerly charged by the subdivider, Mr. Baley. In this connection it may be pointed out that this is the first formal proceeding before the Commission concerning this water system and that the record has insufficient evidence concerning the

previous operations of the real estate subdivider to warrant any findings in this regard reflecting upon the new water system installed and operated by applicants herein.

At the hearing, a report was presented by Verner R. Muth, one of the Commission's hydraulic engineers, containing a detailed appraisal of the properties totalling \$5,886 on the basis of the estimated original cost, as of January 21, 1943, and showing the corresponding depreciation annuity to be \$110, computed by the sinking fund method at 5 per cent. His report shows that the amounts collected annually for water service rendered by applicants during the years of 1940, 1941 and 1942 have been \$1,918, \$1,942 and \$2,087, respectively. Pending the lifting of restrictions on the construction of residences in this vicinity, no material increase in the number of customers can be anticipated. Mr. Muth estimated that the normal annual maintenance and operating expenses for the immediate future will be \$1,410, exclusive of depreciation. On the basis of these figures, which were not questioned, it appears that the net revenues are greater than necessary to render a reasonable return on the applicants' investment in utility property. In the Order which follows this Opinion, schedules of flat and metered rates will be authorized which are designed to be more equitable between the various classes of users and fair to both the utility and its customers.

There is no evidence of a demand or need of water service from applicants' system in the territory lying east of Colorado Avenue nor in the portion of Rouse Colony lying north of Graham Acres. Therefore, it is the opinion of the Commission that the certificate to be granted at this time should apply only to those subdivisions known and designated as Modesto High School Tract, Graham Acres and California Homes Tract.

To remedy the complaint that the water pressure is too low, particularly during periods of maximum demand in the summer months, applicants should increase the system pressure to the limits necessary to render adequate and satisfactory service to all parts of the service area. Furthermore, it is strongly recommended

that, at least before service is extended beyond the territory now being supplied, applicants either install or procure the use of another pumping unit to be added to the system, which should be of sufficient capacity to serve as a standby unit in the event of failure of the existing plant and to provide an auxiliary unit for peak demands.

From the evidence submitted, it appears that applicants are financially able to make addition and improvements as needed; that in the operation of said system, applicants will compete with no person, firm or corporation in serving this area with water; and that it is for the best interests of this community that a certificate of public convenience and necessity be granted.

The certificate of public convenience and necessity issued herein is subject to the following provisions of law:

"That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right."

O R D E R

Application as entitled above having been filed with the Railroad Commission, 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 and will require the operation of a public utility water system by Joseph A. Moore and Arlic S. Moore, his wife, in three adjoining subdivisions known as Graham Acres, Modesto High School Tract, and California Homes Tract, which territory is located north of the Tuolumne River and south of the City of Modesto in Stanislaus County, as shown on the map marked Exhibit No. 6, filed in this proceeding, and which is hereby made a part of this Order by reference, and which territory is more particularly described as follows:

Beginning at a point about 1/4-mile north of the southwest corner of Section 5, T. 4 S., R. 9 E., M.D.B. & M., which beginning point is approximately the intersection of the center lines of Franklin Avenue

and Robertson Avenue; thence proceeding northerly along the westerly boundary of said Section 5, being the center line of Franklin Avenue, a distance of 3/8-miles more or less to a point opposite the northerly boundary of that certain subdivision of land known as Graham Acres; thence easterly along the northerly boundary of said Graham Acres which is a line approximately parallel with and 3/8-mile south of the northerly boundary of said Section 5, a distance of about 1/4-mile to the center line of Colorado Avenue; thence southerly along the center line of said Colorado Avenue a distance of 3/8-mile more or less to the southerly boundary of that certain subdivision of land known as California Homes Tract; thence westerly along the southerly boundary of said California Homes Tract a distance of about 1/4-mile to the point of beginning; containing a total area of 60 acres, more or less.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Joseph A. Moore and Arlie S. Moore, his wife, to operate a public utility for the sale and distribution of water for domestic and other purposes within the territory hereinbefore described.

IT IS HEREBY FURTHER ORDERED that it is an additional condition of this Order that before public utility service is extended to the residents of Graham Acres and California Homes Tract subdivision, Joseph A. Moore and Arlie S. Moore, his wife, shall file with this Commission a certified copy of a franchise, permit or consent issued by the Board of Supervisors of Stanislaus County granting them permission to use the public roads, streets and alleys for the purpose of installing, operating and maintaining a water system within the territory applicable to the certificate granted herein.

IT IS HEREBY FURTHER ORDERED that Joseph A. Moore and Arlie S. Moore, husband and wife, be and they are hereby authorized to acquire from Dora B. Trask, pursuant to a certain deed in joint tenancy executed June 3, 1944, a copy of which is attached to the amendment to the application filed herein as Exhibit "A" thereof, the following described property situated in the Modesto Irrigation District, County of Stanislaus, State of California, to-wit:

PARCEL NO. 1:

Lots 7 and 8 in Block "D" of the MODESTO HIGH SCHOOL TRACT, according to the Map thereof, filed in the office of the County recorder of Stanislaus County, California, on April 24, 1925, in Vol. 9 of Maps at page 90.

PARCEL NO. 2:

Lots 22 and 23 in Block "B" of MODESTO HIGH SCHOOL TRACT, according to the Map thereof, filed in the office of the County Recorder of Stanislaus County, California, on April 21, 1925, Vol. 9 of Maps at page 90;

Together with all improvements, buildings and pumping equipment, piping, and the entire water distribution system connected therewith and serving the entire Modest High School Tract, and appurtenances thereto.

IT IS HEREBY FURTHER ORDERED that said Joseph A. Moore and Arlie S. Moore, his wife, 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 schedules of rates to be charged for all water service rendered to their consumers subsequent to the 1st day of July, 1945, which schedules of rates are hereby found to be just and reasonable for the service to be rendered,

Schedule No. 1

GENERAL SERVICE AT FLAT RATES

Applicability:

Applicable to service of water for general household, cooling, garden and irrigation purposes.

Territory:

Within the entire area defined as Graham Acres, Modesto High School Tract and California Homes Tract subdivisions.

Rates:

Per Month

- | | |
|---|--------|
| 1. For one dwelling, house or other single unit of five (5) rooms, or less, and bathroom, including reasonable and necessary quantities of water for an irrigated area of not over 4,000 square feet of lawns, gardens, shrubbery and trees | \$2.00 |
| 2. For each additional dwelling unit of five (5) rooms, or less, and bathroom, taking service through same connection | 1.00 |
| 3. For each additional room over five (5) in any dwelling unit | .10 |
| 4. 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 six months of the year (May to October, both inclusive), per 100 square feet | .05 |

Schedule No. 1 - Continued

GENERAL SERVICE AT FLAT RATES

Rates - Continued:

Per Month

5. For each window-box type air cooling unit, in addition to the dwelling rate, a charge may be made during months of use which will be considered as the months of May, June, July, August and September, except where the customer notifies the utility as to the months during the above period in which the unit will not be in service, provided the unit is disconnected during such months, subject to inspection by the utility's representatives:

Circulating type	\$0.25
Noncirculating type50

6. Dairying establishments, at 20¢ per animal cared for, including water for drinking, washing and sterilizing purposes, minimum charge 1.00

7. Auto courts, stores, service stations, and uses not otherwise classified, to be charged for at metered rates.

Schedule No. 2

GENERAL METERED SERVICE

Applicability:

Applicable to all domestic and commercial water service, at option of either the customer or the utility.

Territory:

Within the entire area defined as Graham Acres, Modesto High School Tract and California Homes Tract subdivisions.

Rates:

Per Meter
Per Month

Quantity Charge:

First 1,500 cubic feet, or less	\$1.50
Next 8,500 cubic feet, per 100 cubic feet09
Next 25,000 cubic feet, per 100 cubic feet02
Over 35,000 cubic feet, per 100 cubic feet07

Schedule No. 2 - Continued

GENERAL METERED SERVICE

<u>Rates - Continued:</u>	<u>Per Meter</u> <u>Per Month</u>
<u>Minimum Charge:</u>	
For 5/8 x 3/4-inch meter	\$1.50
For 3/4-inch meter	1.75
For 1-inch meter	2.50
For 1 1/2-inch meter	3.50
For 2-inch meter	5.00

The Minimum Charge will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the quantity Rates.

IT IS HEREBY FURTHER ORDERED that Joseph A. Moore and Arlie S. Moore,

his wife, be and they are hereby directed as follows:

1. Within thirty (30) days from the date of this Order, to file with this Commission four sets of rules and regulations governing relations with their customers, 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; it being understood, however, that the filing of such sketch shall not be considered 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.
3. Within ninety (90) days from the date of this Order, to replace all existing 1/2-inch service connections from the water mains to the customer's pipe lines at the property line with piping of 3/4-inch diameter or larger, and a signed written statement shall be filed with this Commission indicating the date upon which the last of the existing 1/2-inch service connections were so replaced.

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 5th day of June, 1945.

Harold Oudman
Justin J. Casper
Richard Clarke
Thomas Egan
Frank R. Lewis
 Commissioners