

ORIGINAL

Decision No. 28381

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of Mr. Fred J. Stewart and Mark Rhodes for Certificate of Public Convenience and Necessity.

Application No. 26777

Fred J. Stewart and Mark Rhodes, in propria persona. Luce, Forward, Lee & Kunzel, by Albert J. Lee For Protestants. Philip W. Knights for Fallbrook Utility District.

CRAFTER, COMMISSIONER:

OPINION

Fred J. Stewart and Mark Rhodes, copartners, ask the Commission for a certificate of public convenience and necessity to operate a public utility water system near the town of Fallbrook, in San Diego County. The approval is asked of a schedule of metered rates providing for a monthly minimum charge of \$2.00 per month for the first three thousand gallons, and 10 Cents per thousand gallons for all water used in excess of the minimum.

A public hearing in this matter was held at Fallbrook.

The area proposed to be served consists of eight parcels of land totalling 50 acres, more or less, located three miles south of Fallbrook. The residents in this district, including applicants herein, are engaged in specialized farming and general agricultural pursuits. At present these residents depend upon their own and other private wells for water but as these supplies are wholly inadequate, they all desire and find it necessary to receive additional water from applicants. The rates proposed are satisfactory and acceptable to the users.

Stewart and Rhodes, in August 1944, acquired a five-acre parcel of land, having located thereon a well, drilled some twenty years ago, which has produced a yield of 105 gallons per minute under test, an amount approximately twice the estimated requirements of the consumers now proposed to be served. The testimony

shows that the present investment in water producing, storing, and distribution facilities is \$942. For proper utility operation applicants intend to install additional facilities at an estimated cost of \$3,520.

The granting of a certificate to applicants was protested by a group of adjoining property owners who contended that the withdrawal of water from the well on applicants' five-acre tract would greatly diminish the underground water supply in the general adjoining and adjacent territory, and would reduce the quantity of water available to said protestants for use upon their own lands. However, no conclusive evidence was presented showing that applicants' well was solely or otherwise responsible for any fluctuation in local ground water elevations and conditions; furthermore, the record shows that none of these protestants had objected to the drilling or operation of any of the 35 or 40 other wells located within the drainage area from which protestants and applicants obtain their water supplies. In the event that any serious damage, as feared by protestants, occurs now or in the future, the injured parties have their remedies in the civil courts, rather than before this Commission which has no jurisdiction over such matters.

Another protest against granting this certificate was made by the Fallbrook Public Utility District on the grounds that a public utility water system operated as proposed by the applicants would result in competition harmful to the District, and that the water users in the area proposed to be served by applicants are entitled by law to petition for annexation to the District and receive all benefits incident thereto. However, Mr. Rhodes, one of the applicants herein, testified that an application which he had filed with the District for water service had been denied. Mr. Stewart stated that he also would like to have his lands annexed to the District. The evidence presented in this connection conclusively indicates that the District has not as much water as it desires for its present requirements and has not sufficient water to take in additional lands of applicants and their proposed consumers at this time. It appears that the necessary additional water supply may not be available for District expansion for some time in the near future.

The pipe lines of this utility are all installed or to be located on private rights of way and easements, except across and along the state highway U. S: 395: No franchise, therefore, or other county authority is required for the purposes of this proceeding.

No other public utility serves in the area for which a certificate is requested and there being an urgent demand and necessity for water in the area proposed to be served, it appears in the public interest that the certificate be granted and the requested rates be authorized.

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

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.

The following form of Order is recommended:

ORDER

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 now being fully advised in the premises,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity requires, and will require, the construction and operation of a public utility water system by Fred J. Stewart and Mark Rhodes, a copartnership, in an area comprising approximately 50 acres located on U. S. Highway 395, about three miles south of Fallbrook, San Diego County, which area includes portions of Lots 22, 35, 36, 37, and 38, Subdivision of Tract D, Rancho Monserate, Map No. 821, County of San Diego, and which areas are designated as Parcels 1, 2, and 3 on a map marked Exhibit 1 filed in this proceeding.

IT IS HEREBY ORDERED as follows:

1. That a certificate of public convenience and necessity be and it is hereby granted to Fred J. Stewart and Mark Rhodes, a copartnership, to operate a public utility for the sale and distribution of water

within the territory herein before described;

- 2. That Fred J. Stewart and Mark Rhodes, a copartnership; be and they are authorized and directed to file in quadruplicate; in conformity with this Commission's General Order No. 96; in not less than ten (10) days before beginning to sell water, the following schedule of rates to be charged for all water delivered to their customers on and after the first day of December, 1945, which schedule of rates is found to be just and reasonable for the service to be rendered:

Schedule No. -1

GENERAL METERED SERVICE

Applicability:

Applicable to all domestic, commercial and industrial metered water service.

Territory:

In an area comprising approximately 50 acres located on U. S. Highway 395, about three miles south of Fallbrook, San Diego County, which area includes portions of Lots 22, 35, 36, 37, and 38, Subdivision of Tract D, Rancho Monserate, Map No. 821, County of San Diego.

Rates:

<u>Monthly Minimum Charges:</u>	<u>Per Meter Per Month</u>
5/8 x 3/4 inch meters.....	\$2.00

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

Monthly Quantity Rates:

First 3,000 gallons or less.....	\$2.00
Over 3,000 gallons, per 1,000 gallons.....	.10

- 3. That Fred J. Stewart and Mark Rhodes, a copartnership, within thirty (30) days after the effective date of this Order, shall file four 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 of about 8" x 11 inches in size, indicating thereon the service area and the location thereof with reference to the surrounding territory. Such filing shall not be construed as a determination or establishment, in whole or in part, of the dedicated area of service; and
- 4. That Fred J. Stewart and Mark Rhodes, a copartnership, within sixty (60) days after the effective date of this Order, shall file four copies of a comprehensive map or sketch, drawn to

an indicated scale of not less than 400 feet to the inch, delineating correctly thereon, by appropriate markings, the various tracts of land in the territory served. Such 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 area of service. Such filing shall not be construed as a determination or establishment, in whole or in part, of the dedicated area of service.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

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 at San Francisco California, this 6<sup>th</sup> day of November 1945.

Edward Anderson  
Justin F. Carr  
Francis Clark

Just Powell  
COMMISSIONERS