

Decision No. 38538

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of CALWA WATER WORKS - J. R.
Erskine and Helen M. Keller, Owners,
and James D. Matthews and Mary A.
Matthews, prospective assignees of
their interest therein, for order
authorizing transfer of public utility
water properties and further author-
izing issuance of an instalment note
and execution of a deed of trust and a
chattel mortgage of said public utility
water properties, and to exercise
franchise rights.

Application
No. 27059

PAUL STANIFORD, for applicants.

BY THE COMMISSION:

O P I N I O N

In this application, the Commission is asked to enter an order authorizing J. R. Erskine and Helen M. Keller, doing business under the fictitious name of Calwa Water Works, to sell that portion of their water properties now used in distributing water to users in the Town of Calwa to James D. Matthews and Mary A. Matthews, and authorizing the Purchasers to issue a note for \$5,500 and execute a deed of trust and a mortgage of chattels to secure the payment of such note. The Commission is also asked to grant to applicants a certificate of public convenience and necessity authorizing them to exercise the rights and privileges granted by Ordinance No. 275 of the County of Fresno, adopted by the Board of Supervisors on October 11, 1929.

The properties which J. R. Erskine and Helen M. Keller, hereinafter sometimes referred to as the Sellers, have agreed to sell, comprise the franchise granted by said Ordinance No. 275, lots 38 and 39 in Block 7 of Calwa Township, and that part of Calwa Water Works which is now used in distributing water to water users in the Town of Calwa, including all underground mains and pipes beginning at the intake located immediately northeast of the main line of the Santa Fe Railway in the vicinity of Vine Avenue, also including all valves, hydrants and meters and all tools, equipment and supplies in place on or pertaining to said distribution system of Calwa Water Works. There is excluded from the sale the wells, pumps, water mains, stand pipes, meters and any equipment of any kind used in the furnishing of water to the Santa Fe Railway at Calwa.

The distribution system now supplies water to about 400 consumers residing in the Town of Calwa. The operating revenues for 1944 amounted to \$7,525.45. James D. Matthews and Mary A. Matthews, husband and wife, hereinafter sometimes referred to as Purchasers, have agreed to pay for the properties \$7,500. Of this sum they will pay \$2,000 in cash. The balance will be represented by a \$5,500 note, payable in monthly installments of \$100 or more with interest at the rate of 6% per annum on the deferred balances. The agreement of sale obligates the Purchasers to forthwith install a new well on lot 38 or lot 39, a pressure tank and a pipe line to connect the well with the present distribution system. The testimony shows that the Purchasers will immediately upon the granting of this application make arrangements for the installation of a new well, pump and pressure system of sufficient capacity to render adequate service. It is

expected that this installation which is a condition precedent to the transfer of the properties will be completed in sixty days. The payment of the note will be secured by a deed of trust and a chattel mortgage which will be liens not only on the properties they acquire from the Sellers, but also on the properties which they are obligated to install. A copy of the deed of trust and of the chattel mortgage are on file in this application. They appear to be in satisfactory form.

The agreement of sale provides that the Sellers, in the event of a failure of Purchasers' water supply, will sell them water at the rate of 5¢ per 1,000 gallons for a period of four years. The testimony shows that under the terms of this agreement, the Purchasers will be required to pay only for water actually delivered and that they will at all times be free to develop their own water supply or acquire water from other sources. The amount which they agree to pay for water in the case of an emergency is not an issue in this proceeding. If it becomes an issue in any subsequent proceeding before the Commission, the Commission will at that time determine how much of the amount paid for water should be included in operating expenses.

The Sellers should deliver to the Purchasers all un-refunded consumers' deposits which are not now refundable under their rules and regulations. Such consumers' deposits should be refunded by the Purchasers in accordance with said rules and regulations. Deposits now refundable should be returned by the Sellers.

There is on file in this application a copy of Ordinance No. 275. This ordinance authorizes Sellers, their successors and assigns, to operate, maintain, use, repair, replace or remove the system of conduits, mains and pipe lines, together with valves,

fittings, pumping plant or plants, and other equipment appurtenant thereto and for the transmission of water through said system of conduits, mains and pipe lines in, through, or along certain public alleys, streets and highways in Calwa Township, Calwa Acres, North Calwa Addition, Sunset Heights, Esperanza Tract, and Mosesian Industrial Tract, all in the County of Fresno, State of California, and on Cedar Avenue between Annadale Street and Vine Street in the County of Fresno; and to make such extensions of and additions to said existing pipe lines as the reasonable needs of the public may require. Applicants' request for a certificate to exercise the rights and privileges under such franchise should be granted. The certificate of public convenience and necessity, however, is being granted subject to the following provisions of law:

(a) The Commission shall have no power to authorize the capitalization of the franchise involved herein or this certificate of public convenience and necessity or the right to own, operate or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right, and . . .

(b) That the franchise involved herein shall never be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the grantee of the necessary publication and other sum paid by it to the grantor at the time of the acquisition.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of water properties, the issue of a note, the execution of a deed of trust and a mortgage of chattels, and the exercise of franchise rights; a public hearing having been held on this matter before Examiner Fankhauser; and the Commission being of the opinion that the requests of applicants should be granted as herein provided; that the money, property or labor to be procured or paid for through the issue of a note for \$5,500 by James D. Matthews and Mary A. Matthews is reasonably required by them for the purpose herein stated, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. J. R. Erskine and Helen M. Keller, doing business under the fictitious name of Calwa Water Works, their successors and assigns may exercise the rights and privileges granted by the Board of Supervisors of the County of Fresno, State of California, by Ordinance No. 275, adopted October 11, 1929.

2. J. R. Erskine and Helen M. Keller, doing business under the fictitious name of Calwa Water Works, may, after the effective date of this order and on or before April 1, 1946, sell and transfer to James D. Matthews and Mary A. Matthews the properties described in the agreement of sale dated October 17, 1945, a copy of which is on file in this proceeding as Exhibit "E", such sale to be in accordance with the terms and conditions of said agreement.

3. James D. Matthews and Mary A. Matthews may, after the effective date of this order and on or before April 1, 1946,

execute a deed of trust and a mortgage of chattels in, or substantially in, the same form as those filed in this proceeding as Exhibits "C" and "D" respectively, and may issue their note in the principal sum of \$5,500, payable in monthly installments of \$100, or more, beginning February 1, 1946, with interest on the deferred balances at the rate of 6% per annum, such note to be issued for the purpose of paying in part for the water properties to be transferred under the authority herein granted.

4. If James D. Matthews and Mary A. Matthews acquire said properties, they are hereby directed to file, on or before the date they acquire said properties, four copies of schedule of rates for water service furnished by said properties, which rates shall not be higher in any particular than the applicable rates now on file.

5. If James D. Matthews and Mary A. Matthews acquire said properties, they are hereby directed to file, on or before April 1, 1946, four sets of rules and regulations applicable in, and in the vicinity of, the Town of Calwa, each set of which shall contain a map or sketch drawn to an indicated scale on sheets approximately 8½x11 inches in size, delineating thereon in distinctive markings the boundaries of the present service area and the location thereof with reference to the surrounding territory, it being understood, however, that the filing of such a sketch shall not be construed as conclusive determination of the area dedicated.

6. If James D. Matthews and Mary A. Matthews acquire said properties, they are hereby directed to file, on or before April 1, 1946, four copies of a comprehensive map drawn to an indicated scale of not less than 600 feet to the inch, delineating the area served in, and in the vicinity of, the Town of Calwa and its location with reference to the source of supply and the surrounding territory. Such a map shall show the source and date

thereof and include data to determine clearly the location of the various properties comprising the service area.

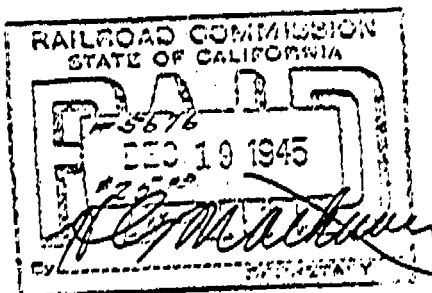
7. The authority granted herein will become effective when James D. Matthews and Mary A. Matthews, or either of them, have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which minimum fee is Twenty-five (\$25.00) Dollars.

8. The action taken herein shall not be construed as a finding of value for any purpose other than the proceeding herein involved.

9. Within thirty (30) days after the execution of the deed of trust and the mortgage of chattels herein authorized, James D. Matthews and Mary A. Matthews, or either of them, shall file a copy of said deed of trust and said mortgage of chattels with the Railroad Commission; a statement showing the date on which they took possession of said water properties and the amount of consumers' deposits the Sellers have turned over to them for return to consumers, and a copy of the agreement covering the sale of water by Sellers to Purchasers.

Dated at San Francisco, California, this 14th day of December, 1945.

Harold Huber



Francis Dwyer

John P. Lippard

Harold Huber

Commissioners