

Decision No. 41337

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Eva M. Arnerich, dba The Eva M. Arnerich Irrigation Water Service to sell and transfer the water system owned and operated by her, near Los Gatos, California to Henrietta Arnerich; of the latter to sell and transfer said system to Almaden Water Company, a corporation, and of Almaden Water Company to issue and deliver to said Henrietta Arnerich, as consideration for such sale and transfer, (a) 3 shares of its capital stock and (b) a promissory note for \$29,700.00 payment thereof to be secured by a deed of trust of the properties comprising said system.

ORIGINAL

Application No. 28857

Reginald L. Vauzhan, for applicants.

OPINION

In this application the Commission is asked to issue its order:

a) Authorizing applicant Eva M. Arnerich to sell and transfer her public utility water system to applicant Henrietta Arnerich, and authorizing the latter to sell said water system to applicant Almaden Water Company, a corporation;

b) Authorizing applicant Almaden Water Company to issue and deliver to Henrietta Arnerich in payment for said water system three shares of its capital stock and a promissory note for the sum of \$29,700, the payment of which is to be secured by a deed of trust and guaranteed by Louis A. Benoist and Brayton Wilbur;

c) Granting to applicant Almaden Water Company a certificate of public convenience and necessity authorizing it to render water service as a public utility in the area shown in green on Exhibit "1" on file in this application, in addition to supplying water in the areas authorized by Decisions Nos. 31234 and 31509; and

d) Fixing just, reasonable, compensatory and uniform rates to be charged by Almaden Water Company within the areas which it proposes to serve.

The Commission by Decision No. 31234, dated August 27, 1938, in Application No. 21906, and by Decision No. 31509, dated December 5, 1938, in Application No. 22253, granted Eva M. Arnerich certificates of public convenience and necessity authorizing her to operate a public utility water system to supply water for irrigation purposes in the area shown in red and in the area shown in purple on the map filed as Exhibit "1". It is proposed to transfer the rights which she acquired under such decisions and all of her public utility properties to Henrietta Arnerich, who in turn will transfer the certificates and properties to Almaden Water Company. The area covered by Decision No. 31234 comprises about 1,000 acres, located mostly on the east side of the former right-of-way of the Southern Pacific branch line near the intersection of Kooser Road with Blossom Hill Road. Service is now being given in most of this area. Decision No. 31509 covers about 1,500 acres lying westerly from the service area covered by Decision No. 31234, but not immediately adjacent thereto. The area extends westerly to Los Gatos Creek. In addition to acquiring said certificates, Almaden Water Company is now asking for a certificate

of public convenience and necessity covering an area of about 1,160 acres, 800 of which comprise an area between the two service areas of the Arnerich Irrigation system, lying to the west of the Southern Pacific right-of-way. The remaining 360 acres lie east of the right-of-way between Guadalupe Creek and Kooser Road, of which about 230 acres belong to the Almaden Ranch. The total acreage proposed to be served with irrigation water by Almaden Water Company is about 3,400, most of which consists of vineyards and orchards. The Arnerich pipe lines cross those of the Almaden Ranch and are interconnected with the pipe system owned by Almaden Ranch.

Almaden Water Company is a corporation organized and existing under the laws of California. It has an authorized stock issue of \$50,000, divided into 500 shares of \$100 each. The testimony shows that heretofore Eva M. Arnerich has sold and transferred all of her properties, including her public utility water system, to Henrietta Arnerich. At the time she was not aware of the fact that the transfer of the public utility water system had to be authorized by the Commission. She now asks permission to consummate such transfer to Henrietta Arnerich, who in turn asks permission to sell and transfer said public utility water system to Almaden Water Company for \$30,000, payment to be made by the issue of three shares of stock by Almaden Water Company and the company's secured installment noninterest bearing note for \$29,700. \$700 of the principal is payable in 1948, and \$1,000 annually thereafter until the entire principal is paid. The payment of the note will be secured by a deed of trust which will be a lien on the properties acquired from Henrietta Arnerich and will be guaranteed by Louis A. Benoist and Brayton Wilbur.

The latter are the present owners of the Almaden Ranch. The investment in the Arnerich Water System is by a Commission engineer reported at \$35,173.96. He estimates the depreciation reserve requirement at \$3,296.48.

Both the Almaden Ranch and the Arnerich public utility water system obtain their water supply, directly or indirectly, from Guadalupe Creek, sometimes called Arroyo Seco de los Capitancillos. In normal years water is stored in the Santa Clara Valley Water Conservation District's Guadalupe reservoir. Such water is slowly released to percolate in the gravels along the course of the stream. While it is the policy of the District not to permit riparian owners to pump or divert from the creek any surface waters resulting from storage, percolation of such water into gravels increases the amount which may be pumped by such owners from wells or pits located near the stream bed. The terrain is such that wells located in lands away from the stream benefit very little, if any, from the percolation of stored waters and the supply from such wells is not sufficient for normal irrigation requirements. Therefore, although all of the lands proposed to be included in the service area of the Almaden Water Company are located within the District's boundary, they are largely dependent upon water that can be delivered to them from pumping plants located along the creek. In dry years practically no water is stored in Guadalupe reservoir. At the time of the hearing there was no water in the reservoir. The pumps of the Almaden Ranch are located below the Arnerich pumps. Some time ago the owners of the Almaden Ranch instituted a suit to prevent Eva Arnerich from taking water away from Guadalupe

Creek. To settle this litigation, the owners of the Ranch and the owners of the Arnerich Water System agreed to the transfer of the Arnerich Water System to Almaden Water Company in exchange for said three shares of stock and said promissory note for \$29,700.

Under the terms of the agreement filed as Exhibit "E" Henrietta Arnerich, to whom the three shares of stock will be issued, agrees to endorse and deliver the shares of stock to American Trust Company, San Jose Branch, California, with instructions to deliver the shares to Louis A. Benoist and Brayton Wilbur when they have paid her \$300 and when Almaden Water Company has paid the \$29,700 note. So long as Louis A. Benoist and Brayton Wilbur comply with the terms of the agreement, they have the sole and exclusive voting rights incident to the stock with full power to manage and control the corporation, and the right to receive any dividends declared on the stock. They agree that the corporation will sell no properties without the written consent of Henrietta Arnerich until the \$29,700 note is paid, and that they will undertake to see that said property is protected and that the corporation will conduct its operations efficiently and economically consistent with giving the consumers adequate service. The Almaden Water Company agrees to employ at \$100 a month, Francis C. Arnerich as its manager. He shall perform his duties as manager in strict compliance with the policy set by Louis A. Benoist and Brayton Wilbur. The employment contract may be terminated by either party on six months' notice.

It is proposed that the area heretofore supplied with water by Almaden Ranch as an accommodation, according to the

testimony, be covered by a certificate of public convenience and necessity, and that Almaden Water Company be authorized to supply water in that area. It will transfer to the Water Company the pipe lines which are now located in the area that are owned by the Almaden Ranch. The Almaden Ranch will retain its pumping plant and water rights, but will permit the Almaden Water Company to operate such plant when not being operated by the Ranch, provided it pays for the water obtained the actual cost of producing it. During the past year the Ranch used no water. All water produced was sold to ranchers residing in the area now to be covered by a certificate of public convenience and necessity.

The testimony shows that Almaden Water Company will undertake to perform all legal obligations which Almaden Ranch has assumed in connection with its sale of water.

There was a shortage of water on the Arnerich system during 1947. It has never supplied any water in the service area covered by Decision No. 31509, which on Exhibit "1" is marked as service area "2". It should not undertake water service to any one in that area without the prior consent of the Commission. Such consent will be given upon the submission of satisfactory evidence showing that Almaden Water Company has an adequate supply of water. Whatever water supply is now available to Almaden Water Company should be equitably distributed to service areas covered by Decision No. 31234 and by this decision.

The evidence in this proceeding as to the operating revenues and expenses which will be applicable to the operations of the combined systems is somewhat meager and incomplete. The

only such information submitted was that contained in the report of the Commission's engineer. His figures must be corrected to the extent that of the Almaden Ranch system only the pipelines will be transferred to the Almaden Water Company and that irrigation service to the Almaden Ranch is not to be included in the operations of the new utility. Nevertheless, even with these adjustments made in the light of all other testimony, it appears that the net revenues will produce a rate of return not over three percent on the tangible capital investment devoted to rendering the service. This clearly indicates that an increase in rates is justified.

Under the combined operations it is essential that there be established uniform rates for all service to be rendered and the Commission has been requested to make them just, reasonable and compensatory. The presently authorized rates of the Eva M. Arnerich Irrigation Water Service are:

Over 500 gallons per minute	\$2.00 per hour
Less than 500 gallons per minute	1.50 per hour

For irrigation service rendered by the Almaden Ranch as an accommodation to other consumers, it has charged \$1.50 per hour for service from a pump said to deliver from 600 to 700 g.p.m. and \$2.50 per hour for service from a new pump claimed to deliver from 1,000 to 1,100 g.p.m. However, under present methods of operation of the two systems, no actual measurement is made of the amount delivered by any pump to the consumer. To overcome this inaccurate method of charging by the estimated "run of the pump", which varies in production with the advance of the season and other factors, it is necessary to have some positive means of

water measurement installed either on the pump discharge or at the point of delivery, so that the consumer may know that he receives the quantity for which he is charged. The utility will be ordered to install suitable devices for this purpose.

In the following order a schedule of rates will be authorized which is intended to render the utility additional revenue over that obtainable under the rates heretofore charged. The schedule will also be designed to include rates varying with the time of year to encourage the use of irrigation water in months of low demand and in years of more abundant precipitation.

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

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

O R D E R

The Commission has considered the evidence submitted at the hearing had on this application before Examiner Fankhauser, and it being of the opinion that the money, property or labor to be procured or paid for by the issue of three shares of stock and

a \$29,700 note herein authorized is reasonably required by Almaden Water Company for the purposes herein stated, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application should be granted, subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

1. Eva M. Arnerich may, after the effective date hereof and on or before June 30, 1948, sell and transfer all of her public utility water properties including the certificates of public convenience and necessity granted by Decisions Nos. 31234 and 31509, described in this application, to Henrietta Arnerich, who may, within said time, sell and transfer said public utility water properties and certificates to Almaden Water Company.

2. Almaden Water Company may, after the effective date hereof and on or before June 30, 1948, issue in payment for said properties, three (3) shares of stock and a non-interest bearing installment note for \$29,700, and execute a deed of trust to secure the payment of said note, said note and said deed of trust to be in substantially the same form as the note and deed of trust on file in this application as Exhibit "A".

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require, and will require Almaden Water Company, a corporation, to construct, maintain and operate a public utility system for the production, distribution and sale of water in the area shown in green on the map filed as Exhibit "1" in this proceeding and hereby made a part of this order by reference, said area being

more particularly described as follows:

Almaden Service Area #3, embracing two parcels, described as follows:

- a. Parcel No. 1: All that area comprising 800 acres, more or less, located between the Arnerich Service Areas #1 and #2, bounded as follows: Beginning at the intersection of Kooser Road and the former Southern Pacific Company's right-of-way, thence southerly along Kooser Road to Blossom Hill Road, thence westerly along Blossom Hill Road to Harwood Avenue, thence northerly along Harwood Avenue to a point about five-sixteenths of a mile north of its intersection with the Los Gatos and Almaden Road, thence diagonally northwesterly to a point about three-sixteenths of a mile north of the intersection of Union Avenue with Carlton Avenue, thence northerly along Union Avenue to the said former Southern Pacific Company's right-of-way, thence easterly and southeasterly along the said right-of-way to its intersection with Kooser Road, the point of beginning.
- b. Parcel No. 2: That area comprising 360 acres, more or less, located southeasterly of the Arnerich Service Area #1, bounded as follows: Beginning at the intersection of Kooser Road and the former Southern Pacific Company's right-of-way, thence northeasterly along Kooser Road about fifteen-sixteenths of a mile, thence about one-eighth of a mile southeasterly and again about one-eighth of a mile northeasterly along Kooser Road to its intersection with an unnamed road running southeasterly

Parcel No. 2: (Continued)

through a subdivision known as the Gardner Seifert Tract, thence about three-eighths of a mile southeasterly along said unnamed road to Arroyo Seco de los Capitancillos (sometimes called Guadalupe Creek), thence southwesterly along Arroyo Seco de los Capitancillos about one and one-eighth of a mile to the former Southern Pacific Company's right-of-way, thence northwesterly one-half mile, more or less, to its intersection with Kooser Road, the point of beginning; specifically excluding, however, the westerly portion of said area which comprises the Almaden Ranch properties of about 230 acres, but including certain lands of one La Barbera and one Lamantia, at the easterly end thereof, leaving a net service area within this parcel of 130 acres, more or less.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity is hereby granted to Almaden Water Company to construct and/or acquire, maintain and operate a public utility for the production, distribution and sale of water within the territory herein described.

FURTHERMORE, IT IS HEREBY FOUND AS A FACT that the rates heretofore charged by the Eva M. Arnerich Irrigation Water Service, are unjust and unreasonable insofar as they differ from the rates herein established; that the rates herein established are just and reasonable rates to be charged for the service to be rendered; that the increase in rates authorized by this decision is hereby found to be justified; and, basing its order upon the

foregoing findings of fact and upon further statements of fact contained in the opinion which precedes this order,

IT IS HEREBY FURTHER ORDERED as follows:

3. Almaden Water Company, a corporation, is hereby authorized and directed to file in quadruplicate with this Commission, in conformity with the Commission's General Order No. 96, within thirty (30) days from and after the effective date of this order, the schedule of rates set forth in Exhibit "A" attached hereto and made a part of this order, said rates to apply for all water service rendered after the date said rates are filed, in the areas covered by the certificate of public convenience and necessity herein granted and by the certificates of public convenience and necessity acquired from Henrietta Arnerich.

4. Almaden Water Company shall, beginning not more than sixty (60) days from and after the effective date of this order, keep a written record of the quantity of water produced by each of its pumping units for delivery to any and all of its consumers, as shown by one or more suitable and reasonably accurate meters or other measuring devices; said records to show at least two entries during the period that water is being delivered to any consumer and not less than two entries daily during the time that any pump is in operation and delivering water to one or more consumers; and said records and measuring devices to be open for inspection by the water users at reasonable hours.

5. Almaden Water Company, within sixty (60) days from the effective date of this order, shall submit to this Commission

for its approval four (4) sets of rules and regulations governing relations with its consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet 8½ x 11 inches in size, delineating thereupon in distinctive markings the boundaries of its present service area and the location thereof with reference to the immediate 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.

6. Almaden Water Company, within sixty (60) days from the effective date of this order, shall file with this Commission four (4) copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated by appropriate markings the territory presently to be served. 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 property 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.

7. Almaden Water Company shall not serve water nor accept any application to serve water to any portion of the service area covered by Decision No. 31509 hereinbefore designated as Arnerich Service Area #2, until further order of this Commission which may be made upon showing by the company that it has secured and developed an additional source of water supply or

that its existing sources of supply are adequate to extend its service to said Area #2.

8. Within thirty (30) days after the sale and transfer of the properties herein authorized, Almaden Water Company shall file with the Public Utilities Commission a statement showing the number of shares of stock issued under the authority herein granted, to whom said shares of stock were issued, a copy of the note and a copy of the deed of trust executed under the authority herein granted, and a copy of the deeds or bills of sale under which it holds title to its properties.

9. This order will become effective twenty (20) days after the date hereof, provided Almaden Water Company has then paid the fee, thirty (\$30.00) dollars, prescribed by Section 57 of the Public Utilities Act. If the fee has not been paid during said twenty (20) days, the authority herein granted will become effective upon the payment of said fee.

Dated at San Francisco, California, this 23rd day of March, 1948.

R. J. ...
Justice F. Gallivan
David H. ...
Harold P. Kula
Helen ...
Commissioners

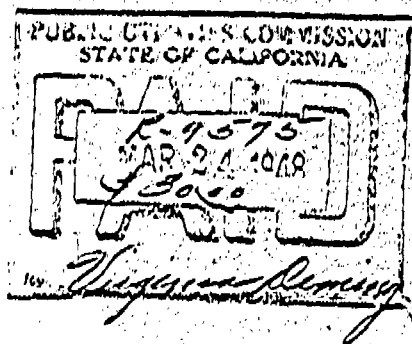


EXHIBIT "A"

SCHEDULE OF RATES
ALMADEN WATER COMPANY
APPLICATION NO. 28857

Schedule No. 1

GENERAL IRRIGATION SERVICE

Applicability:

Applicable to all agricultural irrigation service.

Territory:

Within the company's entire service area, lying northeast of Los Gatos and about five miles south of San Jose, in Santa Clara County.

Rates: 6

<u>Quantity Charge:</u>	<u>Hourly Rate</u> <u>Per 100 G.P.M.</u> <u>Delivery</u>
During January and February	\$0.375
During March	0.40
During April	0.425
During May and June	0.45
During July to December	0.40
<u>Minimum Charge:</u>	\$1.00 per hour