

ORIGINAL

Decision No. 44235

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ELMER M. KANE and BURT L. WETZEL)
 to sell, and MORO WATER COMPANY, a)
 corporation, to purchase a water)
 distribution system operated two)
 miles south of Fallbrook, San Diego)
 County, California, on Highway 395,)
 and the application of MORO WATER)
 COMPANY for an order authorizing)
 the issuance of 80 shares of its)
 capital stock.)
 -----)

Application
No. 31131

W. B. Dennis, for applicants; Phil D. Swing, for
 Laurence E. Harrison, Helen G. Harrison, Clarence
 C. Story and Myrtis A. Story, protestants.

O P I N I O N

This is an application for an order of the Commission authorizing Elmer M. Kane and Burt L. Wetzel, hereinafter referred to as Sellers, to sell a certain water system to Moro Water Company, a corporation, and authorizing said corporation to issue 80 shares of its common stock, of the aggregate par value of \$8,000.

A public hearing was held on the application on May 2, 1950, at which time the matter was submitted for decision.

Information filed with the Commission shows that Sellers, doing business as a partnership under the firm name and style of Moro Public Utility, since 1947 have been engaged in operating a system for the distribution of water to approximately 10 customers in San Diego County about two miles south of Fallbrook, having acquired the same from Fred Stewart and Mark Rhodes pursuant to authority granted by the Commission by Decision No. 40069, dated

March 17, 1947. They report that their properties include a certificate of public convenience and necessity acquired by them under said Decision No. 40069, approximately three-fourths of an acre of land, water rights, two wells and the pumps located therein, approximately 3,400 feet of pipe lines with a concrete reservoir having a capacity of 55,000 gallons, three two-inch meters, one one-inch meter and five 3/4-inch meters. Sellers report their assets and liabilities as of December 31, 1949, as follows:

Assets

Cost of land	\$ 400.00
Cost of plant and equipment	6,732.67
Cash on hand and in bank	476.76
Notes and accounts receivable	8.20
Other assets	<u>537.50</u>
Total assets	<u>\$8,155.13</u>

Liabilities

Owners' investment in assets	\$7,403.93
Reserve for accrued depreciation	555.06
Other liabilities	<u>196.14</u>
Total liabilities	<u>\$8,155.13</u>

The application shows that Sellers now desire to incorporate their business and accordingly have caused the organization of Moro Water Company⁽¹⁾ to take over the system and to conduct the operations. It is proposed that the corporation will acquire the system subject to the outstanding liabilities and will issue to Sellers 80 shares of its stock of the par value of \$100 each. It is reported that Sellers will continue in charge of the operations.

(1)

Moro Water Company was organized under the laws of the State of California on or about February 7, 1950, with an authorized capital stock of 100 shares with a par value of \$100 each. A certified copy of its Articles of Incorporation is attached to the application as Exhibit A.

According to the record herein, an action for damages heretofore was brought in the Superior Court in and for the County of San Diego against Kane and Wetzel and the Moro Public Utility, as defendants, by Laurence E. Harrison, Helen G. Harrison, Clarence C. Story and Myrtis A. Story, who are the owners of land in the vicinity of that upon which the wells of the utility are located and who have entered an appearance as protestants in this proceeding before the Commission.

The record shows, among other things, that findings were made and a judgment entered by the court on November 25, 1949, against the defendants in the amount of \$2,500 in favor of the Harrisons and in the amount of \$7,500 in favor of the Storys; that on January 26, 1950, the court granted a motion by the defendants for a new trial; and that on February 27, 1950, upon hearing being had, the court granted the complainants leave to file an amended complaint, with Fred Stewart and Mark Rhodes, the former owners of the utility, being made additional parties defendant.

The matter before the court has not been determined. Counsel for applicants in this proceeding before the Commission stipulated that any order of the Commission authorizing the sale of the system as here prayed for shall contain a provision that the sale be made subject to all known liabilities of the partnership, and particularly the liabilities which the existing system may have to the Harrisons and the Storys, if any. Counsel for protestants stated that such an order would be satisfactory.

Counsel for protestants furnished proof that at the date of hearing the Articles of Incorporation of Moro Water Company had not been filed in the office of the County Clerk of the County of San

Diego. He made the point that Moro Water Company has not complied with Sections 311 and 312 of the Corporations Code and is not entitled to maintain any action or proceeding in relation to the real property and is not entitled to be a party to this application. However, counsel for applicants stated that in the event the Commission grants the pending application, the Articles of Incorporation would be filed with the County Clerk before the execution and recording of deeds of conveyance. It does not appear to the Commission that the point raised is sufficient to warrant withholding approval of the application, if such approval otherwise is in order.

A review of the application indicates that the sale of the water system as here proposed is not adverse to public interest and that, accordingly, an order should be entered. The action taken herein shall not be construed to be a finding of the value of the system herein authorized to be transferred.

O R D E R

A public hearing having been held on this application, the Commission having considered the matter and 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 30 shares of stock is reasonably required by Moro Water Company for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED that Elmer M. Kane and Burt L. Wetzel, partners doing business as Moro Public Utility, be, and they hereby are, authorized, after the effective date hereof and on or before

September 30, 1950, to sell their certificate of public convenience and necessity and the water system referred to in this proceeding, to Moro Water Company, a corporation, and Moro Water Company, in part payment therefor, be, and it hereby is, authorized to issue not exceeding 80 shares of its capital stock of the aggregate par value of \$8,000, the authority herein granted being subject to the following conditions:

1. The sale of the water system under the authority herein granted shall be made subject to all liabilities pertaining to said system heretofore incurred by Elmer M. Kane and Burt L. Wetzel, partners doing business as Moro Public Utility, including the liabilities they may have to Laurence D. Harrison, Helen G. Harrison, Clarence C. Story and Myrtis A. Story.

2. Elmer M. Kane and Burt L. Wetzel shall file with the Commission within thirty (30) days after the transfer of the water system under the authority herein granted, a copy of the deed and assignment conveying the title to said water system to Moro Water Company, and a statement indicating the date upon which they relinquished control and possession of said system.

3. Within thirty (30) days after the date of the transfer of said water system, the rates, rules and regulations of Elmer M. Kane and Burt L. Wetzel now on file with the Commission shall be refiled under the name of Moro Water Company, in accordance with the procedure prescribed by General Order No. 96, or, in lieu of such refiling, Moro Water Company may file a notice of adoption of said presently filed rates, rules and regulations. No increase in the presently filed rates shall be made unless properly authorized by the Commission.

4. Elmer M. Kane and Burt L. Wetzel, on or before the date of the transfer of said water system, shall refund all deposits which customers are entitled to have refunded, and shall file with the Commission a written statement showing the amount of deposits, if any, refunded and the amount, if any, of unrefunded deposits. The obligation to pay unrefunded deposits, if any, shall be assumed by Moro Water Company.

5. Moro Water Company shall file with the Commission a report as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that as a condition to this order's becoming effective, Moro Water Company shall file with the Commission a certified statement showing that it has filed with the County Clerk of San Diego County a copy of its Articles of Incorporation.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 26th day of May, 1950.

R. E. Dindurand
James J. Callahan
Robert F. J. J. J.
Harold P. Aule
Frederick P. Potter
Commissioners