

Decision No. 44849**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
M. J. KING, INC., a corporation,  
For Certificate of Public Convenience  
and Necessity, to furnish water service  
in the Redwood Manor Subdivision, San  
Mateo County

Application No. 30982

In the Matter of the Application of  
CLYDE HENRY, doing business under the  
firm name and style of FRIENDLY ACRES  
WATER COMPANY, for a certificate of  
public convenience and necessity to  
furnish water service in "REDWOOD MANOR"  
subdivision, San Mateo County

Application No. 31238

Cosgrove, Molinari & Tinney, by  
Floyd J. Cosgrove, for M. J. King, Inc.,  
applicant in Application No. 30982, and  
protestant in Application No. 31238;  
Winston A. Langlois, for Clyde Henry,  
doing business as Friendly Acres Water  
Company, applicant in Application No. 31238,  
and protestant in Application No. 30982;  
Cuthbert B. Currie, City Attorney, by  
Frank L. Hannig, for City of Redwood City,  
interested party in both applications.

O P I N I O N

In these proceedings the applicants, M. J. King, Inc.,  
a corporation, and Clyde Henry, an individual doing business under  
the trade name of Friendly Acres Water Company,<sup>1/</sup> severally request  
authority to furnish a domestic water service within the area known

<sup>1/</sup> For brevity, applicant M. J. King, Inc. hereinafter will be  
designated as King; and applicant Clyde Henry, doing business  
as Friendly Acres Water Company, will be referred to as Henry.

as Redwood Manor Subdivision, Tract No. 553, situated near Redwood City in San Mateo County. King seeks a certificate of public convenience and necessity, under Section 50(a), Public Utilities Act. Henry, who provides a domestic water service in a tract adjoining Redwood Manor under a certificate previously issued, seeks an order permitting him to supply such a service within Redwood Manor, or, if necessary, granting a certificate authorizing the performance of this service.

A public hearing was held before Examiner Austin at Redwood City on May 3, 1950, when both proceedings were submitted. These applications were consolidated for hearing and decision. Accordingly, a single decision will be rendered, covering both matters.

In support of its proposal, King called its vice president, B. I. Lusk. Henry testified in his own behalf. Certain consumers residing in Redwood Manor also were produced as witnesses.

Redwood Manor lies south of and adjacent to Redwood City. Upon this tract are located some 210 dwellings; only 15 vacant lots remain, upon which it is contemplated that commercial structures would be built. Immediately east of Redwood Manor lies Friendly Acres, a larger tract. Both areas are currently served by Henry. Under a certificate of public convenience and necessity previously issued by the Commission, Henry has served Friendly Acres for several years.<sup>2/</sup> Pursuant to arrangements originally consummated with King, Henry also serves Redwood Manor. These will be described

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<sup>2/</sup> By Decision No. 29506, rendered February 1, 1937, in Application No. 20800, a certificate of public convenience and necessity was issued to Clyde Henry, doing business under the fictitious name of Friendly Acres Water Company, authorizing the operation of a domestic water service within the tract known as Friendly Acres. This was identified as a subdivision lying along the Bayshore Highway adjacent to Redwood City in San Mateo County, which has been developed for suburban homes.

presently. Henry claims the right to serve this tract under the certificate covering his operations in Friendly Acres. The territory lying north and west of Redwood Manor is served by California Water Service Company.

Since its incorporation in June, 1941, King has been engaged in business as a general contractor. Primarily this involves the development of real estate subdivisions which, in turn, entails the installation of water systems. Since 1947, King has operated a domestic water supply system in Sacramento County, known as the Del Paso Water Company, serving some 700 consumers. In so doing, it was stated, this applicant has become familiar with the operation of water utilities. The record indicates that it is financially qualified to carry on the proposed operation.<sup>3/</sup>

<sup>3/</sup> King's assets and liabilities were reported as follows:

	<u>As of</u> <u>June 30, 1949</u>	<u>As of</u> <u>Dec. 31, 1949</u>
<u>Assets</u>		
Current Assets	\$ 403,022.55	\$ 662,386.81
Other Assets	387,739.88	358,060.65
Property Plant and Equipment Cost (Net Book Value less Reserve for Depreciation)	55,809.65	56,529.70
Prepaid Expenses	1,178.21	2,743.80
Organization Expenses	203.79	203.79
	<u>847,954.08</u>	<u>1,079,924.75</u>
<u>Liabilities</u>		
Current Liabilities	314,815.69	594,020.96
Other Liabilities	349,443.17	308,182.25
Deferred Sales	11,100.00	-
Capital Stock and Surplus		
Capital Stock	100,000.00	100,000.00
Earned Surplus	72,595.22	77,721.54
	<u>847,954.08</u>	<u>1,079,924.75</u>

Income and Expenses were reported as follows:

	<u>Year Ending</u> <u>June 30, 1949</u>	<u>Six Months</u> <u>Ending Dec. 31, 1949</u>
Income	\$ 163,316.53	\$ 59,390.40
Expenses	143,567.62	54,264.08
Net Profit before Federal Income Tax	19,748.91	5,126.32
Net Profit	15,306.67	-

Since June 30, 1949, Lusk testified, King's financial condition has improved.

Henry has had wide experience in the operation of domestic water supply systems. For some years he has provided such a service at Brisbane, immediately south of San Francisco; at West Sacramento; at Friendly Acres Subdivision; and at Klamath, in Del Norte County. Formerly he operated a water system at Visitacion, which he sold some 10 years ago. He also was engaged in the distribution of electric power at Point Arena and Klamath, but he recently disposed of these operations. Under the name of Henry Enterprises, he carries on a business at San Francisco, dealing in motors, both electric and diesel. The evidence discloses that Henry is financially qualified to conduct the proposed operation at Redwood Manor, if he were authorized to do so.

King and Henry entered into a written agreement, dated September 20, 1946, relating to the construction and operation of the water supply system in Redwood Manor. By the terms of this contract, King agreed to construct the system, subject to Henry's right of inspection as the work progressed; and Henry agreed to purchase it

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4/ A summary statement of property accounts was submitted by Henry covering his various public utility enterprises, and excluding the machinery business. This reveals the following figures, as of December 31, 1949:

	<u>Total</u>	<u>Friendly Acres Water Company</u>
Asset Accounts	\$ 273,159.68	\$ 94,159.77
Accumulated Depreciation	<u>66,970.25</u>	<u>8,327.26</u>
Net Book Values	206,189.43	85,832.51

In addition, Henry's investment in the machinery business is substantial.

from King at the stipulated price of \$23,625, payable in install-  
ments, concurrently with the installation of units of service.<sup>5/</sup>  
Title to the system would not pass to Henry until the purchase  
price, or any judgment recovered therefor, had been fully paid.  
Remedies were provided, of which King might avail itself in the  
event of Henry's default. Henry agreed to construct his own  
connecting facilities to the system and maintain them at his  
expense; he also was obligated, at his expense, to maintain the  
system in good condition and repair. Henry undertook to provide  
this subdivision with an adequate water service. The contract was  
subject to modification by the Commission.

In accordance with the agreement, King, through a sub-  
contractor designated in the contract, installed the pipes and  
mains comprising the water supply system in this subdivision.  
Construction was begun between July and September, 1946. The  
cost thus incurred was borne by King; the amount so expended was  
not shown. The record does not indicate whether a franchise was  
secured from the local authorities authorizing the laying of pipes  
within this tract. However, a map of the subdivision, duly certi-  
fied by the proper county authorities, was filed with the County  
Recorder before the work was undertaken. Upon completion of  
construction of the system, Henry assumed the burden of its  
operation. Ever since, he continuously has provided a water  
service within the tract.

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<sup>5/</sup> Under this agreement, the purchase price was payable in install-  
ments of \$105 for each unit of service within the subdivision,  
whenever such unit would be placed in use, until the total sum  
of \$23,625 had been fully paid. Each installment became due  
within 90 days after the installation of service for that unit.  
Upon the expiration of five years from the date of the agreement,  
no further payment would be required, provided that the purchaser  
had fully performed his obligations under the agreement, and  
that more than half of the specified purchase price had been  
paid.

In the performance of this agreement, discord arose between the parties. Henry, so Lusk testified, defaulted in the payment of installments of the purchase price, as they became due. At times, it was said, he offered small sums which Lusk refused to accept.<sup>6/</sup> They also differed concerning the acquisition of some 1,700 feet of 6-inch main, situated on Spring Street between Fifth and Ninth Avenues, which belonged to the municipality of Redwood City. This main, so Lusk testified, was an essential part of any water system designed to serve Redwood Manor adequately; if it were not available, a new line would have been necessary. The City declined to transfer the line to King, since the latter held no certificate authorizing the operation of a public utility water system. Henry not only refused to purchase this line, Lusk testified, but he would not even negotiate with the City to acquire it.<sup>7/</sup> King, therefore, leased the line from the City, depositing the sum of \$1,000 for that purpose, and permitted Henry to use it as part of his distribution system. Henry testified that the water supply system had been improperly installed; as a result, he had been obliged to make many repairs.

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<sup>6/</sup> On one occasion, Lusk testified, Henry tendered a check for some \$300 in payment of an obligation, then amounting to about \$4,500; later he proffered a check for \$1,200. Both of these offers were refused.

<sup>7/</sup> It appears from Lusk's testimony that Henry considered himself obligated, under the agreement, to purchase and operate only the system which King had installed, through its subcontractor. Since this did not include the line owned by Redwood City, mentioned above, Henry refused to take steps to acquire or lease it.

These disputes culminated in an action which was brought by King against Henry, in the Superior Court of San Mateo County.<sup>8/</sup> On September 19, 1949, a judgment was rendered in this action under which it was determined that King was entitled to recover from Henry the sum of \$22,050 and costs, to be paid into court, for immediate payment to King, within 30 days after entry of the judgment. In default of such payment within the 30-day period specified, it was decreed that King should be deemed the owner and entitled to the possession of the real and personal property comprising the water system in Redwood Manor; Henry was debarred from claiming any interest therein; and King was entitled to restitution thereof. Moreover, Henry's rights under the agreement, described above, were terminated. The judgment was entered September 22, 1949. The record shows that it has become final.

Pursuant to this judgment, King must be regarded as the owner of the water system and entitled to its possession. Within the 30-day period prescribed, Henry failed to pay the sum determined to be due from him.<sup>9/</sup> Moreover, Lusk asserted, he never had offered to return the system to King. This statement was challenged by Henry, who testified he had made such an offer but it had been rejected; furthermore, he stated, King never had demanded the return

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8/ This action was brought by M. J. King, Inc. against Clyde W. Henry, individually, and doing business under the firm name of Friendly Acres Water Company. It was identified on the docket of the court as Case No. 44212.

9/ Henry testified that he considered the price fixed by both the contract and the judgment to be unduly high. In his opinion, the sum of \$15,000 represented the fair value of the property comprising the water system.

of the system. The record discloses that any such offer, if, in fact, it ever was made, is embodied in correspondence passing between the attorneys for the respective applicants. Henry was granted permission to submit copies of these letters after the hearing as a late-filed exhibit, but this never was done.

Subsequent to the rendition of the judgment, Henry continued in the possession of the system, using it to supply water to the residents of Redwood Manor. Lusk testified that he had done so without King's authority or consent. Apparently, however, Henry was permitted, through King's sufferance, to remain in possession of the system in order to avoid the public inconvenience which might flow from any interruption in the service.<sup>10/</sup> Throughout this period, Henry testified, he had been required to repair the system extensively.

Upon assuming possession of the system, Henry installed certain facilities in addition to those which King had provided.<sup>11/</sup> These consisted of the meters, meter boxes, and service connections between the mains and the meters. It was conceded that Henry is the owner of this property. His investment in these facilities, including repairs, aggregates some \$18,000.

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<sup>10/</sup> King's application alleges (paragraph 6) that at the present time, in order to eliminate hardship to residents of the affected area, and at the suggestion of the court in deciding the action referred to above, Henry "...has been permitted to maintain a temporary service through applicant's [i.e., King's] system to the residents of said area."

<sup>11/</sup> In addition to the mains, which were laid on each side of the street, King installed the pipe lines extending from the houses to the meters. As stated, Henry installed the meters and also the pipes and valves connecting them with the mains.

Immediately following the rendition of the judgment, Henry removed the meters and connecting pipes which he previously had installed. He then undertook to collect charges from the consumers, based on an average meter rate as indicated by past readings. Because of the resulting informal complaints voiced by many consumers, Henry consulted members of the Commission staff, who advised him that he must continue to provide the service and that in the absence of meters he could exact charges no higher than those applicable under the minimum rates. Thereupon, he reinstalled the meters. No interruption in the service, Henry testified, resulted from these activities. The cost of removing and subsequently replacing the meters amounted to some \$500, he stated; in addition, the resulting loss of anticipated revenue amounted to about \$3,600.<sup>12/</sup> When the meters were removed, and coincidentally, so he stated, with his offer to return the system, Henry billed King for the water supplied consumers. King, however, refused to assume this obligation.

Applicants described their respective sources of water supply. King expects to obtain water from California Water Service Company, which, he stated, already had made such a commitment. Both Redwood City and the San Francisco Water Department, it was stated, might serve as additional sources. To supply both Friendly Acres and Redwood Manor, Henry procures water from the San Francisco Water Department. If authorized to continue the service at Redwood Manor, he would look to the same source. At present, each of these subdivisions is served through a separate connection with the Department mains.

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<sup>12/</sup> This figure is based upon the charges which Henry estimates he could have collected at the meter rates, in addition to those predicated upon the minimum rates which actually were collected, during the period following the removal of the meters and prior to their reinstallation.

Each of the applicants described generally the rates which would be established. King proposed to adopt rates similar to those observed by California Water Service Company in nearby and adjoining territories, commonly referred to as the "Bear Gulch" rates.<sup>13/</sup> These, it was stated, would be somewhat lower than those now prevailing in Redwood Manor. Henry has extended to Redwood Manor the rates currently observed in Friendly Acres. By combining the two subdivisions, it was said, larger quantities of water could be, and in fact are, obtained from the San Francisco Water Department than if each were supplied separately. Thus, he is enabled to take advantage of the lower wholesale rates applicable to larger quantities of water purchased. If either subdivision were served individually, neither would require sufficient water to bring it within the lower wholesale rate bracket. The consumers, he asserted, benefit by the existing (and proposed) arrangement. Were it not possible to purchase water at the lower wholesale rates, he would have been obliged to seek rate increases because of the higher cost thus entailed.

The testimony of both parties regarding the rates to be applied is somewhat uncertain. A tabulation submitted by an engineer associated with the Commission's Hydraulic Division indicates that, for the water supplied through smaller meters, Henry's existing quantity rates, both in Friendly Acres and Redwood Manor, are somewhat higher than those exacted by California Water Service Company under the "Bear Gulch" scale. As to the larger meters, however, the minimum charges under the scale last mentioned would be slightly higher.

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<sup>13/</sup> These rates were last considered in Decision No. 43878, rendered March 7, 1950, in Application No. 30049 (Re California Water Service Company, 49 Cal. P.U.C. 463).

Henry asserts that, under his existing operative rights, he is authorized to provide a domestic water service in Redwood Manor subdivision. Should it be held otherwise, he seeks a certificate authorizing the continuance of his present service. His right to serve this tract, it is contended, rests upon the certificate he now holds, authorizing the operation of such a service in Friendly Acres, which, as stated, immediately adjoins Redwood Manor.<sup>14/</sup>

Henry also offered to purchase from King the existing system of pipes and mains in Redwood Manor, at a price and upon such terms as the Commission might find reasonable. As stated, he considers the contract price unreasonably high. If this could not be accomplished, he proposed to install his own system, stating that he is ready and willing, and possesses the financial ability to do so.

Complaints, both general and specific, were voiced concerning the nature of the service which Henry had provided in Redwood Manor. Lusk testified that many such complaints had been called to his attention. Four consumers also dealt with this subject. Their testimony related to the allegedly high rates exacted, to the low water pressure experienced, to the shutting off of the water supply, and to the quality of the water furnished. Their complaints regarding the rates do not appear to be meritorious, since they dealt with the collection of charges on a metered rather than on a flat rate basis; Henry, in turn, purchases water on a metered basis. Their testimony indicates that the water pressure often has been quite low; this condition recurs frequently and has been of long standing. At times, it appears, the water supply has been

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<sup>14/</sup> See Section 50(a), Public Utilities Act.

shut off; although this happens only occasionally, it causes considerable inconvenience. It also was shown that the water contains a substantial quantity of sediment; to remedy this condition (which has long continued), some consumers have installed filters. One witness testified that at a meeting of consumers called to consider these complaints, Henry's representative was unable to answer satisfactorily their inquiries. Another consumer, whom Henry produced, testified that his service had been satisfactory.

Henry undertook to answer these charges. He stated he had received no complaints concerning the rates. The sediment found in the water, he said, was due to silt contained in the mains of the San Francisco Water Department; this condition exists elsewhere on the peninsula. Frequently, he said, his mains were flushed through the fire hydrants. The complaints concerning low pressure, expressed at the hearing, were the first of that nature which he had heard in more than a year, he testified. Since pressure can be controlled by valves, this condition would be remedied immediately, he stated. Some months previously, he stated, a new 6-inch main had been installed to meet this very situation.

A review of the evidence is convincing that some of these complaints are well founded. The water pressure, it appears, is unduly low; this condition has continued for many months. It is not disputed that the water has been shut off at times, thus causing considerable inconvenience to consumers. The water contains an objectionable quantity of sediment though, apparently, some effort has been made to relieve this situation.

Henry conceded that in a proceeding concerning his operations at West Sacramento, the Commission found that he had been providing an inadequate supply of water to the consumers served by that system. Accordingly, it had permitted another utility to enter the field. This action, he said, was taken several years ago.

In the light of this showing, the Commission must determine which of the two applicants should receive a certificate to serve Redwood Manor. King, it appears, owns the existing water supply system and is in a position to provide the service immediately. Its facilities were shown to be adequate for that purpose. Henry's general characterization of the system as having been improperly installed is entitled to but little weight, since, under the contract, he was afforded an opportunity to voice his objections as construction of the pipes and mains progressed. Although King has had no wide experience as a public utility operator, it nevertheless has afforded a satisfactory service in the community which it now serves in Sacramento County.

Henry, it is true, has had much wider experience than King as a public utility operator. The record discloses, however, that in some respects, and at one locality in particular, the Commission has found his service to be inadequate. In fact, the service which he has provided in Redwood Manor is in many respects unsatisfactory, as pointed out above.

The Commission will not undertake, in this proceeding, to inquire into the reasonableness of the price which Henry agreed to pay for the system at Redwood Manor. Henry's liability under

the contract has been determined by the judgment rendered in the action brought by King, which long since has become final. In this proceeding, the Commission cannot, even if it desired to do so, require King to transfer its system to Henry at a price which may be found reasonable; moreover, the record does not sanction any undertaking to accomplish such a result through indirection. There appears to be no justification for the construction of a new system by Henry, in accordance with his proposal; this merely would result in needless duplication of existing facilities.

Upon full consideration of the evidence, we conclude that a certificate should be issued to King authorizing the establishment of a domestic water supply service in Redwood Manor. Henry's application, accordingly, will be denied.

In accordance with its commitment, King will be required to file the rates presently in effect on the Bear Gulch System of California Water Service Company. The parties shall be expected to avoid any interruption in the service afforded this tract. To insure this, appropriate provisions are included in the following order.

The certificate of public convenience and necessity issued herein is subject to the following provision 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

Applications having been filed as above entitled, a public hearing having been held thereon, the matters having been duly submitted and now being ready for decision,

IT IS HEREBY FOUND AS A FACT that public convenience and necessity will require the construction and operation of a public utility water system by M. J. King, Inc., a corporation, within the area known as Redwood Manor Subdivision, Tract No. 553, lying south of and adjacent to the City of Redwood City in San Mateo County, California, more particularly described and delineated in the map attached to the application, filed in Application No. 30982, and therein designated as Exhibit B.

IT IS ORDERED that a certificate of public convenience and necessity be and it hereby is granted to M. J. King, Inc., a corporation, to construct and operate a public utility system for the distribution and sale of water within the territory hereinabove described.

IT IS FURTHER ORDERED that said M. J. King, Inc., shall:

1. File the rates set forth in Exhibit A attached to this order, to be effective on or before the date service is rendered to the public, together with rules and regulations and tariff service area map acceptable to this Commission and in accordance with the requirements of General Order No. 96.
2. Notify this Commission in writing of the completion of the system for which this certificate is granted, within thirty (30) days thereafter.
3. File, within forty (40) days after the system is placed in operation, four copies of a comprehensive map, drawn to an indicated scale of approximately 400 feet to the inch, delineating by appropriate markings the various tracts of land and territory served and the location of the various properties of applicant.
4. Submit to the Commission for approval, within thirty (30) days after commencement of public utility service pursuant to the certificate herein granted, the proposed journal entries to set up its fixed capital accounts.

The authorization herein granted will lapse if not exercised within one (1) year after the date hereof.

IT IS FURTHER ORDERED that Clyde Henry shall continue to serve water to the residents and consumers of said Redwood Manor Subdivision, Tract No. 553, on a temporary basis, until such time as M. J. King, Inc. either may acquire from said Henry, on a mutually satisfactory basis, the existing service pipes and meters in said tract; or until it may replace such pipes and meters with its own facilities. In either event, such arrangements shall be consummated with all reasonable dispatch and not later than sixty (60) days after the effective date hereof.

IT IS FURTHER ORDERED that Application No. 31238 filed by Clyde Henry, doing business as Friendly Acres Water Company, for a certificate of public convenience and necessity to provide a water service, within the area above described, be and it hereby is denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 3<sup>rd</sup> day of October, 1950.

A. E. Anderson  
Justin F. Craven  
Walter L. Luce  
Harold H. Hale  
Kenneth D. Dutton  
Commissioners.

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all water service furnished on a metered basis.

TERRITORY

In the territory known as Redwood Manor Subdivision Tract No. 553, situated near Redwood City, in San Mateo County.

RATES

<u>Quantity Rates:</u>	<u>Per Meter</u> <u>Per Month</u>
First 500 cubic feet, included in minimum charge	
Next 2,500 cubic feet, per 100 cubic feet . . . .	\$0.29
Next 27,000 cubic feet, per 100 cubic feet . . . .	.25
Over 30,000 cubic feet, per 100 cubic feet . . . .	.20

Minimum Charge:

For 5/8-inch meter . . . . .	\$1.70
For 3/4-inch meter . . . . .	2.75
For 1-inch meter . . . . .	4.25
For 1 1/2-inch meter . . . . .	8.00
For 2-inch meter . . . . .	12.50
For 3-inch meter . . . . .	22.50
For 4-inch meter . . . . .	35.00
For 6-inch meter . . . . .	70.00
For 8-inch meter . . . . .	105.00

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