

**ORIGINAL**

Decision No. 50859

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 NORTH FORK DITCH COMPANY, a corpora- )  
 tion, for an order authorizing the ) Application No. 35901  
 transfer of utility property to )  
 SAN JUAN SUBURBAN WATER DISTRICT. )

Harry B. Sevmour and L. K. Jordan, for  
 North Fork Ditch Company.  
Earl D. Desmond and Howard C. Greenhalgh,  
 for San Juan Suburban Water District.  
Mrs. Richard Codman, in propria persona  
 and as Secretary, Taxpayers' Protective  
 League, Inc., protestant.  
Richard Bartle, for Stone & Youngberg,  
 interested party.  
Verner R. Muth, for the Commission staff.

O P I N I O N

Introduction

North Fork Ditch Company and San Juan Suburban Water District have joined in this application to the Commission, filed October 29, 1954, in which authority is requested for the Company to sell and transfer public utility property to the District pursuant to the terms and for the consideration recited in a contract, a copy of which is annexed to the application as Exhibit "B" and is also in evidence as Exhibit 1. The Company asks to be relieved of all further utility obligations upon consummation of the transfer, the closing date for which is stated in the agreement to be December 31, 1954.

Public Hearing

Public hearing herein was held, after due notice, on December 1, 1954, at Sacramento before Examiner John M. Gregory, at which time the application was submitted for decision.

The Evidence

North Fork Ditch Company is a California public utility corporation engaged in the business of furnishing water for irrigation and for domestic use incidental thereto within an area of approximately 15,000 acres in the Counties of Sacramento and Placer, State of California. The book cost of the Company's properties as of the date of the application is stated to be \$822,963.03.

San Juan Suburban Water District is a water district organized and existing under the Community Services District Law of California (Section 60,000 ff, Government Code). The District contains approximately 20,993.2 acres in the northeasterly portion of Sacramento County and approximately 2,576 acres adjacent thereto in Placer County. The Company's three wholesale consumers, namely, Fair Oaks Irrigation District, Citrus Heights Irrigation District and Orangevale Mutual Water Company are within the limits of the District, which also includes substantially all of the Company's service area.

A part of the District's program involves acquisition of the Company's properties and the operation of such properties by the District without interruption of utility service to the Company's present consumers. The record establishes that 41 of the Company's retail consumers have lands either within or without the exterior boundaries of the District, which have been voluntarily excluded therefrom. Those lands will receive water service from the District after completion of the transfer.<sup>1</sup>

1 The following tabulation summarizes the situation with respect to these 41 consumers:

	<u>Approx. Acreage</u>
8 consumers outside exterior boundary .....	13
33 consumers within exterior boundary but whose lands are excluded .....	974
<u>41</u>	<u>987</u>
Yearly gross income from the 41 consumers amounts to .....	\$5,368.90

On or about May 25, 1954 the Company and the District entered into an agreement of sale and purchase of the properties therein described contingent upon the Company receiving requisite authorization from this Commission and the District securing, among other matters, certain authorizations concerning feasibility of the project and issuance and sale of revenue bonds. The purchase price for the water system is stated in the agreement to be the sum of \$600,000 plus an amount in addition thereto equivalent to the cost to the Company of any capital additions or betterments installed between January 1, 1954 and date of transfer. The Company agrees to waive reimbursement for any additions to capital up to July 1, 1954 exceeding in the aggregate the sum of \$20,000. The sale is to be made on December 31, 1954 by the execution and delivery by the Company to the District of appropriate documents of transfer and by payment by the District to the Company of the full purchase price of the properties.

Included among the terms and conditions of the agreement is the following provision, constituting a portion of Paragraph 4:

"All consumer commitments of the Company in effect on date of closing shall be assumed and performed by the District, including without limitation the granting of consumer credits for the agreed time and rate covering customer deposits for service extensions."

On October 6, 1954, at a District election, the issuance of \$850,000 par value revenue bonds was authorized. The certification and sale of the bonds are contemplated by the District prior to the contract closing date.

#### Consumers' Position

The record shows that although due and timely notice of the time, place and subject matter of the hearing was served upon each of the Company's consumers, only one such consumer, Mrs. Richard Codman,

appeared as a protestant at the hearing. The basis of this protestant's objection, as indicated by her testimony, was that in her opinion the water rights to be acquired by the District from the Company were of undetermined extent and validity.

There is no merit to the objection. The question of the extent or validity of water rights is not pertinent to the issues raised by an application to transfer water utility properties nor is the determination of such rights a subject which is cognizable by this Commission under its constitutional or statutory powers. The legal issues presented by such a question are for the courts to determine.

#### Conclusions

We find from the evidence in this proceeding that the proposed sale and transfer will not be adverse to the public interest. The District's public character qualifies it as a prospective preferential customer from the nearby Folsom Project, which will supply all water for the system after the closing of Folsom Dam.

A contract with the United States, covering relocation of the Company's facilities and the furnishing by the United States of the equivalent of the Company's water entitlement from the American River, has been approved and executed and is now in effect (Decision No. 50131, June 7, 1954, Application No. 35419). All of the Company's obligations under that contract will be assumed by the District and title to the Company's properties will be taken by the District subject to such changes as may occur therein prior to date of transfer as a result of performance under that contract.

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

The application will be granted.

O R D E R

The above-entitled application to sell public utility property having been filed with this Commission, a public hearing having been held, the matter having been submitted and now being ready for decision and it having been found that the proposed transfer will not be adverse to the public interest, therefore,

IT IS HEREBY ORDERED that:

1. North Fork Ditch Company, a corporation, may, on or after the effective date hereof and on or before January 31, 1955, sell and transfer the herein described public utility property to San Juan Suburban Water District pursuant to the agreement of sale and purchase embodied in the application herein.
2. On or before the date of actual transfer North Fork Ditch Company shall refund all deposits which customers are entitled to have refunded.
3. If the authority herein granted is exercised, North Fork Ditch Company shall, within thirty days thereafter, notify this Commission in writing of the date of completion of the transfer herein authorized and whether or not any deposits which consumers may be entitled to have refunded them remain unpaid.
4. Concurrently with consummation of said transfer and provided no refunds to consumers of North Fork Ditch Company then remain unpaid, the schedules of rates, rules and regulations filed by said North Fork Ditch Company with this Commission shall be canceled and said North Fork Ditch Company shall thereafter stand relieved of any obligation as a public utility water company with respect to the properties herein authorized to be transferred.

5. The authority herein granted will expire unless exercised on or before January 31, 1955.

Finding that the public interest will not be adversely affected thereby, IT IS FURTHER ORDERED that this order shall become effective five days after the date hereof.

Dated at San Francisco, California, this 14th day of December, 1954.

Edw. E. Mitchell  
President

James J. Adams

Samuel P. Potts

Verne Higgins

Rae Lester Krenier  
Commissioners