

Decision No. 51119

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SOUTHERN CALIFORNIA WATER COMPANY)	Application
for authority to issue shares of its)	No. 36690
stock.)	
-----)	

O P I N I O N

In this application Southern California Water Company reports that it proposes to amend its articles of incorporation so as to effect a change in the rights of the holders of outstanding shares of stock.

Applicant is a California corporation with an authorized capital stock of 1,646,552 shares, divided into 146,552 shares of preferred stock of the par value of \$25 each, issuable in series, and 1,500,000 shares of common stock of the par value of \$5 each. As of December 31, 1954, shares were outstanding as follows:

Preferred, 4 $\frac{1}{2}$ % Series, \$25 par	32,000
4 % Series, \$25 par	32,000
5.44% Convertible Series, \$25 par	<u>32,540</u>
Total preferred	96,540
Common, \$5 par	<u>599,551</u>
Total	<u>696,091</u>

Paragraph (7) of Article IV of applicant's articles of incorporation contains certain restrictions with respect to the payment of dividends on the outstanding shares of common stock.

The paragraph reads as follows:

"(7) So long as any of the Preferred Shares shall remain outstanding the consent of the holders of at least two-thirds of the outstanding Preferred Shares, given in person or by proxy either in writing or at a meeting of shareholders called for that purpose, shall be required before this Corporation shall pay any dividends or make any other distribution of assets on the Common Shares, or purchase or otherwise acquire any of the Common Shares for a consideration in money or property, unless, after giving effect to such payment, distribution, purchase or acquisition, at least one of the following requirements is fulfilled:

(i) the aggregate of the current assets of this Corporation, determined in accordance with accepted accounting practice, but excluding from current liabilities all liabilities incurred or accrued on customers' deposits, shall be at least equal to 125% of the aggregate of the current liabilities of this Corporation determined as aforesaid; or

(ii) the aggregate of the net current assets of this Corporation, determined in accordance with accepted accounting practice (but, in the computation of liabilities, excluding liabilities incurred or accrued on account of customers' deposits), shall be at least equal to the aggregate of (a) the annual interest requirements on all interest-bearing obligations of this Corporation then outstanding and (b) the annual dividend requirements on all then outstanding shares of this Corporation ranking prior to the Common Shares."

It is applicant's practice to finance itself temporarily with bank borrowings and from time to time to refinance the amounts through the issue of bonds or stock. The unpaid bank balances become current liabilities, within the meaning of said paragraph (7), 12 months prior to their maturity date and hence may prevent applicant from maintaining the prescribed relationship between current assets and liabilities which, in turn, would threaten the maintenance of the regular common stock dividend as it is not considered practical, because of the large number of holders of the preferred shares, to obtain their consent to the payment of dividends under the provisions of said paragraph (7).

Applicant accordingly proposes to eliminate said paragraph (7) from its articles of incorporation. It has made arrangements to

submit the matter to the vote of its shareholders at their annual meeting to be held on March 1, 1955. If the matter should be approved it does not intend, however, to issue new certificates representing shares of stock. It asserts that the filing of the certificate of amendment of the articles with the Secretary of State would effect the changes thereby made in the outstanding shares without the issue of new stock certificates to evidence the transaction.

All the outstanding shares of stock were issued under authorization granted by the Commission. At the times the Commission entered its orders the shares were subject to the terms and conditions which were specified in the articles of incorporation then in effect. The making of the proposed amendment will constitute a change in the rights of the outstanding shares and hence would result in a modification of the basis upon which the Commission predicated its decisions. We have considered this matter and are of the opinion that the Commission's approval is necessary for the changes in the terms of the outstanding shares of stock but that it is not necessary to restate the finding referred to in Section 818 of the Public Utilities Code with respect to the reasonableness of the issues of such shares.

O R D E R

The Commission having considered the above entitled matter, and being of the opinion that a public hearing is not necessary and that the application should be granted, as herein provided; therefore,

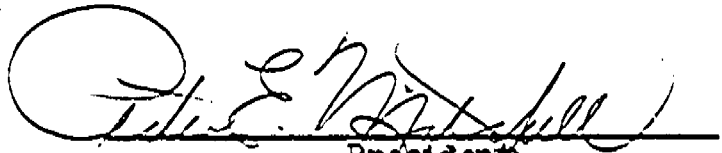
IT IS HEREBY ORDERED as follows:

1. The Commission hereby approves the proposed amendment of the articles of incorporation of Southern California Water Company and the resulting changes in the terms, conditions and provisions of applicant's outstanding shares of stock.

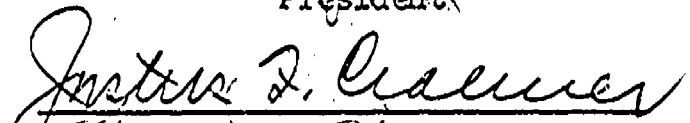
2. Within 30 days after filing the certificate of amendment with the Secretary of State, applicant shall file a certified copy of the same with this Commission.


3. This order will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 23rd day of February, 1955.



President





Commissioners