

ORIGINAL

Decision No. 54560

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CITY WATER COMPANY OF BANNING,)
a public utility, for (1) an order)
authorizing the consolidation of)
said utility with BANNING WATER)
COMPANY, a mutual water company;)
and (2) an order authorizing an)
increase in rates for said)
Consolidated Corporation.)

Application No. 37504
(Amended)

Clayson, Stark & Rothrock, attorneys, by Donald D. Stark and George G. Grover, for applicant.
Jonathan M. Bissell, Thomas N. Walters, Isadore Singer, and Gerald McAuley, in propria personao, protestants.

Mrs. John C. Luther, Mrs. Lucille B. Boyer, and Harold Goldwasser, in propria personao, interested parties.

William R. Roche, Charles W. Drake, and Richard R. Entwistle, for the Commission staff.

O P I N I O N

City Water Company of Banning,¹ a corporation, by the above-entitled application, filed November 18, 1955, seeks authority, (1) to consolidate with Banning Water Company,² a mutual water company, and (2) to increase rates for water service by said consolidated corporation in and in the vicinity of the City of Banning, Riverside County. By an amendment to the application, filed December 31, 1956, the terms of consolidation were amended.

Public hearings on this matter were held before Commissioner Ray E. Untereiner and Examiner Stewart C. Warner on November 8, 9, 14, 15, and 16, 1956, at Banning. Although notices

¹ Hereinafter referred to as applicant, or the utility.

² Hereinafter referred to as the mutual.

were published and each consumer was notified, only three domestic consumers, and one commercial consumer, protested the application. Others who appeared were holders of trustee's certificates of ownership of the utility's stock. They were interested in what disposition of their certificates might be made as a result of the application to consolidate. They did not protest the application.

General Information

Applicant, a California corporation, was organized February 18, 1913, by the stockholders of the mutual for the purpose of providing public utility water service to domestic consumers in Banning and its vicinity. The mutual was organized and incorporated in 1884 by Banning Land Company, and in 1888 the mutual acquired a quit claim deed to all water and water rights then owned by said land company. The mutual has maintained ownership of the source of water supply, and applicant has obtained its water through ownership of stock in the mutual. The stock of applicant is held by a trustee for the nonutility stockholders of the mutual. The officers and directors of the utility and the mutual are identical.

Bases of Application

Applicant based its application for consolidation of the utility and the mutual on the following:

1. The difficulties inherent in the application of the applicant's rates while the mutual's operations are unregulated.
2. The service areas of applicant and the mutual, although originally devoted to agriculture, are rapidly being converted to light industrial and domestic use since irrigated agriculture has become less profitable in the area.
3. To obtain the water rights of the mutual for use when the area is fully developed for domestic, municipal, and industrial use.

The application for a rate increase is based on data in the application purporting to show that applicant's present rates do not and will not produce a fair rate of return.

Consolidation of Applicant and Mutual

Applicant proposes to consolidate with the mutual under the corporate title and name of Banning Water Company, a public utility water company, in accordance with the consolidation agreement, Exhibit "A", attached to the application as originally filed and as amended. It was proposed in the original application to issue one share of stock of the consolidated corporation for each share of the stock of the constituent corporations. This proposal was amended on the record at the hearing, and has been amended by the amendment to the application filed in December, 1956 (supra), to issue twenty shares of the capital stock of Banning Water Company, the consolidated corporation, of a par value of \$5 per share, for each share of stock of City Water Company of Banning, and to retire the outstanding shares of stock of City Water Company of Banning and of Banning Water Company, the present mutual corporation. According to the terms of said Exhibit "A", as amended, the consolidated corporation will be authorized to issue 200,000 shares of one class of stock, only, of a par value of \$5 per share and of an aggregate par value of \$1,000,000.

It is also proposed in the consolidation agreement that Banning Water Company, the consolidated corporation, issue "extra water allotment certificates" to former shareholders of the mutual. Said certificates would constitute an equitable right to water supplies of the consolidated corporation in excess of said corporation's domestic, municipal, and industrial requirements.

The first officers and directors of the consolidated corporation will be the same as those of the utility and the mutual.

History of Regulation

By various decisions, applicant has been granted authority, from time to time since 1914, to issue shares of common stock and bonds to acquire stock of the mutual to ensure applicant's water entitlement. The last authority was granted by Decision No. 44024,

dated April 11, 1950, in Application No. 30866. Said decision authorized applicant to issue and sell \$350,000 first mortgage and collateral trust bonds for the purchase of 1,174.035 shares of mutual stock.

Applicant was granted authority to increase its rates for water service by Decision No. 9007, dated May 26, 1921, in Application No. 6154, and again by Decision No. 44844, dated September 26, 1950, in Application No. 31452. A request to increase rates in Application No. 34804 was dismissed as to an interim rate increase by Decision No. 50477, dated August 31, 1954, and finally by Decision No. 50900, dated December 28, 1954. Said latter application was dismissed upon the written withdrawal of the application when applicant found it difficult to prepare and make an adequate showing of the cost of water purchased by applicant from the mutual. Said dismissal has resulted in the instant-captioned application.

Operations

The sources of water supply to the consolidated corporation will be the mutual's present sources of supply which are threefold: (1) surplus water from the Whitewater River which has been diverted by California Electric Power Company for power usage, (2) surface and pumped water from Banning Canyon, and (3) water from two wells located in the San Geronio Pass area.

Surface and pumped water in the Banning Canyon area is obtained from four basins, viz: watershed, upper, middle, and lower, under overlying water rights in Banning Canyon owned by the mutual since 1888. Surface water in the upper basin flows by gravity down the canyon, and is used by the mutual to operate hydraulic turbine pumps in wells Nos. 1 and 6. The pump in well No. 8 is electrically driven, and the pump in well No. 1 may be operated either by hydraulic or electric power. Wells Nos. 6, 3, 4,

and 5 are located at various elevations lower in the canyon, and the turbines driving the pumps therein are hydraulically operated. This is a water pumping system that is unique in the United States.

The pumps in the wells in the San Geronio Pass are driven by an electric motor, at C-1 well, and by a gas engine at C-2 well.

Water is stored in a one-million-gallon reservoir at the highest elevation of the distribution system at the northern portion thereof. A 200,000-gallon storage tank, near the west end of the system, is approximately 90 feet lower in elevation than the one-million-gallon tank. Said 200,000-gallon tank was constructed, the record shows, for emergency purposes at a time when the land on which it is located was available for its construction, and this tank is not useful in the normal operation of the water system.

A considerable portion of the present distribution system is in poor condition and needs replacement. Applicant's consulting engineer submitted, as Exhibit No. 10, an estimate of improvements to the distribution system which would cost approximately \$475,000, of which the sum of approximately \$104,420 constitutes the estimated cost of the proposed immediate or priority main installations for the utility's distribution system. Said engineer also submitted, as Exhibit No. 11, a report on the proposed improvements to the water development facilities of the mutual which would cost at least \$250,000, of which the sum of \$74,000 was considered by him to be an immediately necessary expenditure.

The record shows that water service was being furnished by applicant to an average of 2,622 domestic customers during the year 1955, and that between 350 and 400 acres of land around the City of Banning were being irrigated. The recorded sales of water

during 1955 were approximately 41 percent to domestic and 59 percent to irrigation, out of total sales of 2,061,061-hundred cubic feet.

Rates

As noted hereinbefore, applicant's last rate increase was granted in 1950, and the rates established at that time are applicant's present rates.

At the proposed rates, applicant estimated that its gross revenues would increase by about \$75,400 during the year 1957, or an increase of approximately 44 percent. However, the proposed rates would increase estimated domestic and commercial revenues for 1957 by 59.7 percent over such revenues at present rates. Under the proposed rates, the monthly charge for irrigation service would be reduced from an average of \$11 per acre-foot to \$10 per acre-foot.

Applicant urged the rate reduction for irrigation service on the grounds that agriculturalists should be encouraged to continue to use irrigation water, thus preserving the utility's water rights in Banning Canyon. Such water rights, applicant urged, would inure to the benefit of domestic water users if and when agricultural property were subdivided. The record shows that agricultural property in and in the vicinity of Banning is being subdivided at an increasing rate due to the changing economic character of the San Geronio Pass area.

The record shows that the mutual owns and would transfer to the consolidated corporation 1,862 acres of water-bearing lands and 1,200 acres of watershed lands, together with the water rights appurtenant thereto, in Banning Canyon.

Banning Canyon, a tributary of the Whitewater River, is part of the Coachella Valley water basin. Said canyon has been adjudicated, and the mutual's entitlement, which has been fixed by court order, amounts to a right to divert and use 14,000 acre-feet of water in any year.

The record shows that no other sources of water supply are available to applicant within economic reason. Applicant's consulting engineering witness submitted, as Exhibit No. 6, estimates of the cost of importing Colorado River water from Metropolitan Water District facilities through a connection at either the Lawrence Adit, the Potrero Shaft, or the East Portal of the San Jacinto tunnel. These estimates varied from \$4,294,000 to \$4,737,100 for capitalized investment, and a capitalized cost of from \$9,650 per miner's inch to \$10,600 per miner's inch, assuming an annual requirement of 445 Southern California miner's inches. He also submitted an estimate of the capitalized cost of Feather River water at Banning, not including the cost of the distribution line to Banning, of \$7,300 per miner's inch.

The following tabulation compares applicant's present and proposed rates for general metered service with the rates for such service authorized hereinafter:

COMPARISON OF PRESENT, PROPOSED
AND AUTHORIZED RATES
GENERAL METERED SERVICE

	<u>Per Meter Per Month</u>		
	<u>Present</u>	<u>Proposed</u>	<u>Authorized</u>
<u>Quantity Rates:</u>			
First 1,000 cu. ft. or less	\$2.00		
Next 1,000 cu. ft., per 100 cu. ft.	.12		
Next 8,000 cu. ft., per 100 cu. ft.	.10		
Next 10,000 cu. ft., per 100 cu. ft.	.08		
Over 20,000 cu. ft., per 100 cu. ft.	.06		
First 700 cu. ft. or less		\$2.25	
Next 1,300 cu. ft., per 100 cu. ft.		.25	
Next 3,000 cu. ft., per 100 cu. ft.		.20	
Next 5,000 cu. ft., per 100 cu. ft.		.15	
Over 10,000 cu. ft., per 100 cu. ft.		.10	
First 900 cu. ft. or less			\$2.25
Next 1,100 cu. ft., per 100 cu. ft.			.21
Next 8,000 cu. ft., per 100 cu. ft.			.15
Next 10,000 cu. ft., per 100 cu. ft.			.11
Over 20,000 cu. ft., per 100 cu. ft.			.07

At the present rates, the charge for a consumption of 2,000 cubic feet is \$3.20 per meter per month; at the proposed rates, said charge would be \$5.50 or an increase of 71.9 percent. Under the rates authorized hereinafter this charge would be \$4.56, an increase of 42.5 percent.

Earnings

A comparison of the earnings of the consolidated corporation, at the present and proposed rates for the year 1957, estimated, between those set forth in applicant's Exhibit No. 12 and those set forth in the staff Exhibit No. 13 is shown as follows:

SUMMARY OF EARNINGS Pro-Forma Consolidated Basis

<u>Item</u>	<u>Year 1957 Estimated</u>			
	<u>At Present Rates</u>		<u>At Proposed Rates</u>	
	<u>Per Co. Ex. 12</u>	<u>Per PUC Ex. 13</u>	<u>Per Co. Ex. 12</u>	<u>Per PUC Ex. 13</u>
Operating Revenues	\$170,073	\$167,425	\$245,429	\$238,455
Operating Expenses	97,245	82,800	97,245	82,800
Depreciation	26,362	26,823	26,362	26,823
Amortiz'n. of Appraisal	1,112	1,110	1,112	1,110
Trustee's Fee	175		175	
Taxes	15,745	20,129	52,387	57,294
Total Operating Expenses	<u>\$140,639</u>	<u>\$130,862</u>	<u>\$177,281</u>	<u>\$168,027</u>
Net Operating Revenue	29,434	36,563	68,148	70,428
Rate Base	1,309,808	1,106,495	1,309,808	1,106,495
Rate of Return	2.25%	3.3%	5.2%	6.4%

Analysis of the record indicates that, whereas the staff estimated lower revenues at the proposed rates, it likewise estimated substantially lower operating expenses. After taking into account the effect on income taxes, the staff estimate of net operating revenue at the proposed rates is about \$2,300 in excess of applicant's estimated net operating revenue for the year 1957. While there are differences between the staff's and applicant's estimated operating expenses throughout, the major differences are

in maintenance of reservoirs, meter reading, administrative and general salaries, and regulatory Commission expenses. Both the staff's and applicant's estimates of operating expenses reflected, on a pro-forma consolidated basis, the salary increases for employees voted by the board of directors to become effective in January, 1957. However, total management salaries of \$12,000 were included by the staff, as contrasted to an estimate of \$24,000 for such salaries submitted by applicant. The staff estimate of revenues and expenses, including taxes and depreciation, is hereby found to be reasonable and will be adopted for this proceeding. } /

In Exhibit No. 12, applicant included in its rate base for the year 1957, an amount of \$532,548.54 for land and land rights. This amount represents applicant's book figures for land and water rights in Banning Canyon after such items had been revalued on its books of account starting in 1914. A staff accounting witness testified the mutual company had revalued its water rights and other properties according to an appraisal by its board of directors on May 17, 1911, and prior thereto on other bases, to write up the value of water rights by substantial amounts. The mutual company was not, of course, a regulated water public utility and was not required to conform to any prescribed system of accounts.

A Commission staff engineering witness testified that, for rate making purposes, the staff had adjusted the rate base by reducing the amounts shown on the mutual's books for land and water rights by \$259,549 to reflect the staff's estimated original cost of land and water rights.

At the hearings, the applicant and the staff submitted evidence that substantiated an amount of \$273,000 for the estimated historical cost of land and water rights. This figure will be adopted for this proceeding.

Further, the applicant included in its rate base estimated net capital additions for the years 1956 and 1957 amounting to approximately \$237,000, whereas the staff included in its estimated rate base for the year 1957 an amount of \$196,220 for estimated net capital additions for the years 1956 and 1957.

The staff rate base of \$1,106,495 for the year 1957, estimated, is hereby found to be reasonable and will be adopted for this proceeding.

Findings and Conclusions

It is evident from the record before us that it would not be adverse to the public interest to grant the application for consolidation of the utility and the mutual into a consolidated public utility company, and the Commission so finds and concludes. We are informed that at a later date the consolidated corporation will file a new application for authorization to issue shares of stock to complete the transaction. No authorization to issue stock is granted in this decision.

The record does not support applicant's proposal to issue "extra water allotment certificates" to former shareholders of the mutual company, and the Commission finds and concludes that to grant said proposal as contained in paragraph 3 of the contract (Exhibit "A") attached to the application would constitute a form of discrimination in applicant's tariff for irrigation water service, and would therefore be adverse to the public interest. This proposal is disapproved.

It is further evident that the present rates of the utility under the consolidated operations for the year 1957, estimated, would not produce a fair rate of return, and that applicant is in need of financial relief. The rates proposed

by applicant would produce a rate of return of 6.4 percent on the rate base of \$1,106,495. Such a return might be reasonable, considering applicant's need for a strong financial picture to assure the availability of funds for the rehabilitation of its water system, were the revenues to be collected on an equitable basis as between the domestic and the irrigation customers. Applicant is convinced, however, and the record shows, that charges against the irrigation customers commensurate with the costs to serve them would make irrigated agriculture in the area uneconomical and lead to conversion of much of the irrigated acreage to dry farming. Applicant strongly urges, therefore, a low rate for irrigation water to encourage its use while it is available and thus to preserve the water rights against the future when the entire supply may be needed for domestic and commercial use.

Applicant's position in this regard is a reasonable one, and we have no desire to insist on irrigation rates which, while justified from a cost standpoint, would be unduly burdensome from the standpoint of the value of the water to the irrigation users. Our sanctioning of low rates for irrigation water would, however, cast an unfair burden on the domestic users were we to allow applicant an over-all return of 6.4 percent by setting domestic and commercial rates at a level high enough to compensate for the depressed rates for irrigation water. While the whole area and all its residents may ultimately gain from it, a substantial part of the benefit from the continued use of water for irrigation and the preservation of water rights will inure to the applicant, and its stockholders should bear a fair share of the present burden of accomplishing future benefits.

We shall, therefore, authorize rates which, for the entire operation, will yield a rate of return of 5 percent for the year

1957 on the rate base hereinabove adopted. We find that such a return will provide applicant with earnings adequate for the servicing of its financial obligations. And, in view of the fact that the low return results from applicant's desire to maintain low irrigation rates for the reasons stated, we find a 5 percent rate of return, for this company and under the circumstances of this case, to be just and reasonable.

Such a rate of return will result from the rates set forth as "Authorized" on page 7 of this opinion, supra. Applicant will be authorized to file such schedule of rates. It is estimated that they will produce gross annual revenues of \$205,820, or an increase of \$38,395 over 1957 estimated revenues at present rates; an increase of 22.9 percent.

The Commission finds as a fact that the increases in rates and charges authorized herein are justified and that present rates insofar as they differ from those herein prescribed will for the future be unjust and unreasonable.

Staff Recommendations

The record supports certain of the staff's recommendations contained in paragraphs 3 and 4 of Chapter 11 of Exhibit 13. The order which follows will provide that the consolidated corporation take steps (1) to make the water system improvements for which amounts of money have been included hereinbefore in the rate base and (2) to make a study of the existing arrangement for delivery of surplus water from the Whitewater River including submission of a report on such study to the Commission.

O R D E R

Amended application as above entitled having been filed, public hearings having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED as follows:

1. That City Water Company of Banning, a corporation, be, and it is, authorized to consolidate with Banning Water Company, in accordance with the terms of the consolidation agreement, Exhibit "A", attached to the original application, as amended in the sixth and seventh paragraphs thereof by amendment to the application filed December 31, 1956, and thereupon to become and be known as Banning Water Company, a public utility water company, except that the proposal to issue "extra water allotment certificates" as contained in paragraph 3 of said Exhibit "A" is disapproved.
2. That Banning Water Company, the consolidated corporation, shall file with the Commission a certified copy of its Articles of Incorporation filed with and accepted by the Secretary of State of the State of California.
3. That upon the filing of the certified copy of its Articles of Incorporation as required in the preceding paragraph of this order, but not before such filing, Banning Water Company, the consolidated corporation, be and it is, authorized and directed to file in quadruplicate with the Commission the schedules of rates shown in Appendix A attached hereto, together with rules and a tariff service area map acceptable to this Commission, in accordance with the requirements of General Order No. 96. Such rates, rules and tariff service area map shall become effective on not less than five days' notice to the Commission and to the public after filing as hereinabove provided.
4. That the consolidated corporation shall file within forty days after the rates and rules authorized herein become effective, four copies of a comprehensive map drawn to an indicated scale not smaller than 1,200 feet to the inch, delineating by appropriate markings the various tracts of land and territory served, the principal water production, storage, and distribution facilities, and the location of various properties of the consolidated corporation.
5. That the consolidated corporation shall review annually the accruals to depreciation reserve which shall be determined for each primary plant account by dividing the original cost of plant less estimated future net salvage less depreciation reserve by the estimated remaining life of the surviving plant of the account; and the results of the reviews shall be submitted annually to the Commission.

6. That within thirty days after the filing of the certified copy of its Articles of Incorporation, as hereinabove ordered, and every sixty days thereafter for the next two years unless concluded by it earlier, Banning Water Company, the consolidated corporation, shall report to the Commission in writing its plans and steps taken for making the water system improvements for which amounts of money have been included hereinbefore in the rate base. Such report shall contain, in addition to any other pertinent information, the costs and nature of the improvements planned to be made or made and shall include details as to the size, capacity and location of the principal facilities.
7. That Banning Water Company, the consolidated corporation, shall make a study of the existing arrangement for delivery of surplus water from the Whitewater River as contemplated in the recommendation hereinabove referred to and shall submit the result of said study to this Commission in writing within 180 days after the date on which it shall have filed the certified copy of its Articles of Incorporation as hereinabove ordered.
8. That the authority herein granted will expire if not exercised within one year from the date hereof.

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

Dated at San Francisco, California, this 19th day of February, 1957.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
Page 1 of 4

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all general metered service.

TERRITORY

City of Banning and vicinity, Riverside County.

RATES

	<u>Per Meter per Month</u>
Quantity Rates:	
First 900 cu.ft. or less	\$2.25
Next 1,100 cu.ft., per 100 cu.ft.....	.21
Next 8,000 cu.ft., per 100 cu.ft.....	.15
Next 10,000 cu.ft., per 100 cu.ft.....	.11
Over 20,000 cu.ft., per 100 cu.ft.....	.07
Minimum Charge:	
For 5/8 x 3/4-inch meter	\$ 2.25
For 3/4-inch meter	3.50
For 1-inch meter	5.00
For 1-1/2-inch meter	7.50
For 2-inch meter	10.00
For 3-inch meter	15.00
For 4-inch meter	20.00

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

Schedule No. 3

MEASURED IRRIGATION SERVICE

APPLICABILITY

Applicable to all irrigation water service furnished on a measured basis.

TERRITORY

City of Benning and vicinity, Riverside County.

RATE

	<u>Per Service Connection</u>
Quantity Rate:	
For each minor's inch day	\$.40
Minimum Charge:	
For each irrigation delivery	2.50

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rate.

SPECIAL CONDITIONS

1. Advance notice of 48 hours must be given to utility each time water is to be used.
2. A minor's inch day is defined as a continuous flow equal to one-fiftieth of a cubic foot of water per second for a 24-hour period.

Schedule No. 4

PRIVATE FIRE PROTECTION SERVICE

APPLICABILITY

Applicable to all water service furnished for privately owned fire protection systems.

TERRITORY

City of Banning and vicinity, Riverside County.

RATE

	<u>For Service For Month</u>
For each inch of diameter of service	\$1.00

SPECIAL CONDITIONS

1. The customer will pay, without refund, the entire cost of installing the fire protection service, including detector check motor.
2. The minimum diameter for fire protection service will be four inches and the maximum diameter will be not more than the diameter of the main to which the service is connected.
3. The customer's installation must be such as to effectively separate the fire protection system from that of the customer's regular water service. As a part of the fire protection service installation there shall be a detector check or other similar device acceptable to the utility which will indicate the use of water. Any unauthorized use will be charged for at the regular established rates for General Metered Service, and may be grounds for the utility to discontinue the fire protection service without liability to the utility.
4. There shall be no cross-connection between the fire protection system supplied by water through the utility's fire protection service to any other source of supply without the specific written approval of the utility. This specific written approval will require, at the customer's expense, a special double check valve installation or other device acceptable to the utility. Any such unauthorized cross-connection may be grounds for the utility to immediately discontinue the fire protection service without liability to the utility.
5. The utility will supply only such water at such pressure as may be available from time to time as a result of its normal operation of the system.

Schedule No. 5

PUBLIC FIRE HYDRANT SERVICE

APPLICABILITY

Applicable to fire hydrant service furnished to municipalities, duly organized or incorporated fire districts or other political subdivisions of the State.

TERRITORY

City of Banning and vicinity, Riverside County.

RATE

	<u>Per Month</u>
For each fire hydrant	\$1.00

SPECIAL CONDITIONS

1. The utility will supply only such water at such pressure as may be available from time to time as a result of its normal operation of the system.
2. Fire hydrants will be installed and maintained at the expense of the fire protection agency.