

ORIGINAL

Decision No. 55353

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Dyke Water Company, a corporation;)
for authority to extend its water)
service to additional territory in)
the vicinity of Garden Grove, in)
unincorporated territory, County of)
Orange, under Section 1001, Public)
Utilities Code of the State of)
California.)

Application No. 37161
First Supplemental

Glenn A. Lane and Arlyne Lansdale, attorneys, for applicant.
Moss, Lyon, and Dunn, attorneys, by George C. Lyon, for Pacific Water Co., protestant.
James G. Shields and Richard R. Entwistle for the Commission staff.

O P I N I O N

Dyke Water Company, a corporation, hereinafter called Dyke, by the above-entitled First Supplemental Application, ^{1/} filed March 18, 1957, seeks authority to extend its water system to serve tentative Tracts Nos. 3208, 3156, and 3214 located at the northwest corner of Hazard Avenue and Taft Street, and Tracts Nos. 2880, 3010, and 3043, the Ferguson School grounds, and three domestic water consumers being furnished water service from applicant's well No. 14, located at the southwest corner of Westminster Avenue and Wright Street, in unincorporated territory of Orange County. The areas

^{1/} By its Second Supplemental Application No. 37161, filed June 4, 1957, applicant seeks authority to extend its water system to Tract No. 2524, and a tract of land known as the Tibbets Tract or Tract No. 1040; the Bolsa School; and numerous commercial establishments and home owners in the territory bounded by Cannery Street on the west, Ward Street on the east, Hazard Avenue on the north, and Sugar Avenue on the south, in unincorporated territory of Orange County. Original hearing on this matter is pending.

requested to be certificated are delineated by a black pencil line on the map, Exhibit "E", attached to the instant application.

Public hearings on this matter were held before Examiner Stewart C. Warner on May 15, 16, and 17, 1957, at Santa Ana. The matter was consolidated for hearing with applicant's Second Supplemental Application No. 37097. The only protest to the granting of the application was entered by Pacific Water Co., a public utility water corporation hereinafter called Pacific, which subjected applicant's witness to extensive cross-examination, and submitted considerable testimony and evidence in support of its protest. The matter was submitted for decision after closing arguments by counsels for applicant and protestant.

Exhibit No. 1 is a colored reproduction of the map, Appendix A, attached to Decisions Nos. 53858 and 53862 *infra*. Said decisions delineated in the Opinion thereof and by the map, Appendix A attached thereto, the boundaries of spheres of operations for applicant and Pacific and other parties to the proceedings on the original Applications Nos. 37097 and 37161 of applicant, and 36592 of Pacific, and 37172 of Southern California Water Company. The areas certificated to applicant are shown on Exhibit No. 1, (*supra*), in solid red and solid orange. The areas so certificated to Pacific are shown on said exhibit in solid blue and solid brown. Areas south of Garden Grove Avenue, which the Commission found in Decisions Nos. 53858 and 53862 (*supra*) were being served by applicant within Pacific's sphere of operations, and which the Commission found

to have been unlawful extensions by applicant of its water system, are shown on Exhibit No. 1, (supra), in orange lines, left-diagonal, superimposed on Pacific's brown areas. Also shown on Exhibit No. 1 in purple is the area, generally, for which applicant has applied for a certificate in the instant-captioned application. Said purple area includes, but does not delineate, the tentative and recorded tracts enumerated hereinbefore.

Tentative Tracts Nos. 3208, 3156, and 3214

The record shows that applicant on April 2, 1957, executed an agreement, Exhibit No. 9, with Lou Laramore Construction Co. to install a water system in tentative Tract No. 3208 consisting of 181 homes. Said tract has not been recorded and no water system has been installed therein. Said agreement contains no mention of a monetary consideration therefor, but contains certain provisions of refund of any advances by Lou Laramore Construction Co. out of 22 percent of the gross revenues derived by applicant from the sale of water to consumers over a twenty-year period. Said agreement provides that it shall be subject at all times to such changes or modifications by this Commission as it may from time to time direct in the exercise of its jurisdiction. Applicant's president testified that this agreement, and other agreements with other parties, submitted as Exhibits Nos. 10, 11, and 12, were only tentative.

The record shows that a similar agreement dated April 2, 1957, copy of which was submitted as Exhibit No. 10,

has been executed by applicant with Empire Homes, a limited partnership, signed by Dorolo Homes, Inc., general partner, and Lou Laramore, president. Said agreement provides for the installation of a water system by applicant in tentative Tracts Nos. 3156 and 3214, consisting of 268 homes; for the refund of any advances made to applicant by the subdivider on the basis of 22 percent of the gross revenues derived by applicant from sales of water in the subdivision over a twenty-year period; and that it shall be subject to changes or modifications by the Commission. No monetary consideration is mentioned therein. The record shows that said tracts have not been recorded nor has a water system been installed in either.

Exhibit "E", (supra), of the instant application shows that tentative Tract No. 3156 is contiguous to applicant's certificated area ^{2/} across Westminster Avenue on the south-side thereof and that tentative Tracts Nos. 3214 and 3208 are contiguous to said Tract No. 3156 on the south and east thereof.

The nearest well, owned by applicant, is applicant's Well No. 96 located in Tract No. 2433 ^{3/} in the northeast corner of Westminster Avenue and Taft Street as shown on Exhibit "E". Certain other wells, the use of which applicant alleged would be available to serve the areas proposed in the

^{2/} Per Decision No. 50041, dated May 11, 1954, in Application No. 35205.

^{3/} Tract No. 2433 was certificated to applicant by Decision No. 53858 (supra).

Instant application, viz., Wells Nos. 43, 44, 130, 131 and 132, are not owned by applicant, and one of them has been condemned by the State Division of Highways for a freeway which will traverse applicant's presently certificated area, certificated by Decision No. 50041 (supra).

Tracts Nos. 2880, 3010, and 3043

Exhibit No. 11 is a copy of an agreement, dated April 19, 1957, between applicant and Grove Terrace, a partnership, signed by C. W. Hester and C. G. Ward, partners. Said agreement provides for the construction and installation, by said partnership, of a water system in and to serve Tracts Nos. 3010 and 3043 consisting of 52 homes and 38 homes, respectively. Exhibit No. 12 is a copy of a similar agreement, dated January 25, 1957, between applicant and Westwright Co., Ltd., a limited partnership, signed by Carter Darnell and Herman M. Hale, general partners, for the Hale Company, covering the installation by said limited partnership of a water system in Tract No. 2880 consisting of 127 homes.

Exhibits Nos. 11 and 12 provide that the respective subdividers disclaim in favor of applicant all right, title, and interest in and to, the water mains installed by them, and that they transfer and assign to applicant all right, title, and interest, either joint or several, in and to the water mains and appurtenances thereto, and that title to the water systems in said Tracts Nos. 2880, 3010, and 3043 shall remain the sole and exclusive property of applicant at all times. The agreements recite no monetary considerations; they provide

for the refund by applicant to the respective partnerships of all monies paid out by said partnerships for the water installations outlined therein, out of 22 percent of the gross revenues collected by applicant from consumers in said tracts over a period of twenty years. The agreements further provide that they shall be subject to such changes or modifications by this Commission as it may from time to time direct in the exercise of its jurisdiction.

Applicant's witness testified that water service for construction purposes, at the rate of 1,000,000 gallons per day, was being furnished by applicant to the subdividers from two fire hydrants located on the south property line of a service station located in the southwest corner of Westminster Avenue and Wright Street, which is served by applicant. The general engineering of the water system was performed by applicant's engineering department, and applicant, on behalf of the subdividers, submitted the water system plans to and secured approval thereof from the Orange County Planning Commission.

Exhibit "E" of the instant application, (supra), shows that Tracts Nos. 2880, 3010, and 3043 are not contiguous to applicant's area certificated by Decision No. 50041 (supra), nor within applicant's sphere of operation according to Decision No. 53858 (supra).^{4/-5/} Said tracts are contiguous

^{4/} Applicant was ordered in paragraph 1 (a) of Decision No. 53858 (supra) not to extend its water system outside its certificated service area boundaries as shown on the map, Appendix A, of said decision, without further order of the Commission.

^{5/} The area included in applicant's First Supplemental Application, herein being considered, was denied to applicant by paragraph 7 of Decision No. 53858 (supra).

to Tracts Nos. 2522 and 2661, on the east thereof, in which applicant is furnishing water service but which the Commission found in Decision No. 53858 (supra) to be unlawfully served by applicant, and which the Commission found to be within Pacific's sphere of operations according to Decisions Nos. 53858 and 53862 (supra).

The record shows that applicant intends to furnish water service to Tracts Nos. 2880, 3010, and 3043 from its Well No. 23 located in Tract No. 2522 (supra) as shown on Exhibit "E" (supra). Tract No. 2522 is a pheasant farm which applicant's president purchased, as an individual, about 2-1/2 years ago. Said Well No. 23 has been "turned over" to applicant, and applicant has been furnishing water service to four model homes in a cul de sac in said Tract No. 2522.

Ferguson School Grounds

The record shows that applicant, for \$1,633, on November 16, 1956, purchased a well adjoining the property of Ferguson School, which is under construction for the Garden Grove School District. Said well has been designated as applicant's Well No. 14, and applicant has refurbished the well with a 30-horsepower motor in order that the well will produce approximately 450 gallons per minute, and has installed a 6-inch main, 200 feet south from the well to 11th Street, thence west 300 feet to the school grounds and to the school building under construction. Applicant is making no charge for water service to the school. At the time applicant acquired Well No. 14, three domestic water consumers were being served

therefrom, and applicant has continued such service.

The map, Exhibit "E", (supra), shows that the well site of Well No. 14, the properties served therefrom, and the Ferguson School grounds are not contiguous to the area certificated to applicant by Decision No. 50041 (supra), and by the map, Exhibit No. 1 (supra), that said properties are not contiguous to any area certificated to applicant by Decision No. 53858 (supra).^{6/} Said map, Exhibit "E", and the map, Exhibit No. 6 filed at the hearing, show that said properties are immediately contiguous to Tract No. 2469, on the east thereof, a tract in which Pacific is furnishing water service in accordance with authority granted by Decision No. 53862 (supra).

General Allegations of Applicant

Applicant alleged, and its president testified, that it was applicant's purpose to interconnect all of its water systems in its red, orange, and orange left-diagonal areas north and south of Garden Grove Boulevard, and in the areas covered by the instant application and to construct a large reservoir at an abandoned quarry site on the north side of Westminster Avenue between Newland Street and Huntington Beach Boulevard. The capacity of this reservoir would be 15,000,000 gallons and would utilize, store, and distribute Metropolitan Water District water proposed by applicant to be obtained from the Metropolitan Water District's large main in Huntington Beach Boulevard. Applicant's president also testified that applicant

^{6/} See footnotes ^{4/} and ^{5/}.

proposed to develop, operate, and utilize three 5,000,000-gallon reservoirs located on Brookhurst Street between Cerritos and Katella Avenues, (substantially north of Garden Grove Avenue and covered by Application No. 37097 (supra) and the First and Second Supplemental Applications thereto), in order to utilize a proposed connection with Metropolitan Water District facilities at Katella Avenue and Dale Street. In this connection, applicant has been negotiating for a loan based, on applicant's promissory note of \$500,000, from U. S. Life Insurance Co. of New York, and authority was granted for applicant to effect such financing by Decision No. 54537, dated February 19, 1957, in Application No. 38823. As of the date of the May 17, 1957, hearing, applicant had not completed such negotiations.

Applicant's Financial Condition as of
December 31, 1956. (Exhibit No. 2)

Exhibit No. 2 is a copy of a statement of applicant's financial condition as of December 31, 1956. A summary statement showing its investments and sources of funds is as follows:

Assets

Current assets	\$ 51,394
Utility plant, less reserve	3,469,537
Other investments	73,771
Total	<u>\$3,594,702</u>

Liabilities and Capital

Current liabilities	\$ 330,995
Long-term debt	116,942
Advances for construction	2,616,289
Contributions	66,806
Capital (common stock and surplus)	463,670
Total	<u>\$3,594,702</u>

The foregoing balance sheet points up an unsound financial condition. Among other things, the statement shows advances for construction in a total amount equivalent to

75 per cent of the net investment in plant. A review of the record in this proceeding shows that the amounts of such advances have been increasing rapidly from \$1,041,736 at February 28, 1955, to \$1,645,348 at August 31, 1955, to \$2,616,289 at December 31, 1956. Of the latter amount, advances of \$81,500 were due at the close of the year. This amount increases the current liabilities to \$412,495 as compared with current assets of only \$51,394. The reported net income in 1956 was \$51,634.

On the basis of the information before us we can only conclude that applicant is not financed properly and, because of the large preponderance of borrowed money in the capital structure, is in a position where it may be unable to meet its obligations and to perform its public utility functions. The wholesale financing of new systems by means of subdividers' advances is a violation of sound and conservative financing principles, the observance of which is necessary to insure adequate service, and is a misapplication of the main extension rule. Such a rule, as its very title suggests, is applicable to the extension of mains from existing operative systems, and is not intended to provide the major source of capital funds, as is the practice of applicant.

It seems clear to us that with applicant's unbalanced structure the situation could well develop where the obligation to make refund payments, by their very size, would threaten the impairment of the solvency of the company. Good business practice dictates a larger investment of proprietary capital than is the case here.

Our views on applicant's financial condition are not new. In Decision No. 53858, dated October 1, 1956, the Commission said:

"The Commission is greatly concerned with Dyke's violation of Commission orders, its unauthorized extensions and contracts, its improper, incorrect and incomplete accounting records, and its inadequate financial condition which is hereby found to be insufficient to support its present and future operations."

As will be noted from the recitation, hereinbefore, of the applicant's financial condition as of December 31, 1956, there has been no appreciable nor sufficient improvement therein over that as shown in said Decision No. 53858.

The record shows that applicant's capital for expanding its water systems comes from three main sources: (1) consumer's advances for construction, (2) internally created funds, such as depreciation reserve, and (3) investments in the form of long or short-term liabilities by the Lansdale family. Applicant's president is L. D. Lansdale, Jr., its vice-presidents are L. D. Lansdale, and William M. Lansdale, and its secretary-treasurer is Arlyne Lansdale.

Although applicant's president testified that the Lansdale family stood at all times ready, willing, and able to advance sums of money for applicant's construction program or operations, he testified that the agreement for the advancing of such funds was verbal, only, and without any set limitation as to amount, or provision for interest or repayment. No financial statement of the Lansdale family is of record in this proceeding, and, although applicant's president indicated

for the record that applicant intends to issue common stock to the Lansdale family, no request for authority to issue such stock has been filed with or granted by the Commission.

The record does show that applicant is in the process of bringing its Books of Accounts into accord with the Uniform Classification of Accounts for Water Utilities Prescribed by the Commission, in compliance with paragraph 1.(f) of the order in Decision No. 53858 (supra). Compliance with said paragraph has not been effected, and by its Order Extending Time, dated March 12, 1957, the Commission granted, among other things, a request by applicant for an extension of time to June 30, 1957, to comply with said paragraph.

Protest of Pacific

Pacific Water Co., a public utility water corporation, operating in the southwestern portion of Orange County shown on the map, Exhibit No. 1 (supra), protested the instant-captioned application on the grounds that it, Pacific, was furnishing water service to Tract No. 2469, its so-called "Bowles Tract", in accordance with authority granted by Decision No. 53862 (supra); that on April 26, 1957, it had filed Application No. 39031^{7/} for a certificate of public convenience and necessity to serve the area delineated by the red line on the map, Exhibit No. 13, filed in the instant proceeding; that said Tract No. 2469 was immediately adjacent to the Ferguson School grounds on the west thereof; that it was furnishing water service to 167 customers in Tract No. 2469 at the present time; that its well No. 19, located in said

^{7/} By its Application No. 39225, filed July 10, 1957, Pacific seeks authority to extend its water system in an area generally south of Bolsa Avenue, east of Cannery Street, north of Smeltzer Avenue, and west of Verano Street. Original hearing on this matter is pending.

tract as shown on the map, Exhibit No. 13 (supra), had been equipped with a 75-horsepower electric motor and pump which were producing 1,069 gallons per minute and, according to a well driller's report, would produce 1,500 gallons per minute; that Pacific owned some 29 wells in Orange County, 26 of which were in operation, and 17 of which were located in Pacific's eastern certificated area as shown on the map, Exhibit No. 1 (supra); that, prior to Decision No. 53862 (supra), Pacific had planned, engineered, and intended to import and utilize Metropolitan Water District water from a connection with said District's facilities at approximately Lampson Avenue and Lewis Street just south of the County Farm and Hospital, or just outside its most northeasterly portion of its eastern certificated area as shown on the map, Exhibit No. 1 (supra); that it had planned to construct a master grid pipeline system to transmit and distribute Metropolitan Water District water throughout both its eastern and western certificated areas as shown on Exhibit No. 1 (supra); that Decision No. 53862 (supra) had separated its proposed operations and had severed its certificated areas; that because of such separation and severance, the importation and utilization of Metropolitan Water District water had appeared not to be feasible and had appeared to be uneconomical; that Pacific had, therefore, abandoned such plans and engineering, at least temporarily; that if Dyke's instant application were granted, Pacific's plans for the use of Metropolitan Water District water would have to be abandoned permanently because the granting of the

instant application would, physically, effect a split of Pacific's two operating and certificated areas as shown on Exhibit No. 1 (supra); that Pacific stood ready, willing, and able to furnish water service, not only to tentative Tracts Nos. 3208, 3156, and 3214, from its eastern certificated area, and to Tracts Nos. 2880, 3010, and 3043, the Ferguson School grounds, and the three domestic water consumers being furnished water service from Dyke's well No. 14 from Tract No. 2469 in its western certificated area, but that it also stood ready, willing, and able and intended to furnish water service to Tracts Nos. 2661, 2522, and 2690 as shown on Exhibit No. 1 (supra), and all other orange left-diagonally delineated areas as shown on the map, Exhibit No. 1 (supra), each of which represents an area or areas in which the applicant herein was found to be unlawfully furnishing water service by Decisions Nos. 53858 and 53862 (supra).

Pacific submitted a financial statement as of December 31, 1956, as shown in Exhibit No. 15, and a witness for Pacific testified that it was attempting to improve its financial condition by having applied to the Commission, for increases in rates in all of its systems in Orange County,^{8/} and in all of its systems in other counties, including Kern, Los Angeles, and San Bernardino counties, except its Victorville and Orangewood systems.

^{8/} Application No. 38402, filed September 11, 1956, as amended March 23, 1957, original hearing on which was held on July 24, 1957.

Findings and Conclusions

From a review of the record, the Commission is of the opinion and finds and concludes that public convenience and necessity do not require that Dyke Water Company, a corporation, be granted authority to extend its water system to serve tentative Tracts Nos. 3208, 3156, and 3214, and Tracts Nos. 2880, 3010, and 3043, the Ferguson School grounds, and the three domestic water consumers being furnished water service from its well No. 14 in unincorporated territory of Orange County.

The Commission finds as a fact and concludes that the preliminary statement of Dyke's financial condition, as of December 31, 1956, Exhibit No. 2 (supra), discloses that Dyke is in an insufficient and inadequate financial condition to serve the customers it is now serving, and that, therefore, it would be adverse to the public interest to grant the instant application, whereby Dyke seeks to serve additional customers.

The Commission finds and concludes that the protest of Pacific Water Co. against the granting of the instant application has merit; that to permit Dyke to drive a wedge between and permanently separate Pacific's spheres of operations, thereby placing Pacific in an uneconomical position to import and utilize Metropolitan Water District water and to conserve ground water supplies, and to grow and expand logically and economically in this southwestern portion of Orange County, would be contrary to the public interest.

The Commission finds and concludes that this First Supplemental Application of Dyke Water Company should be denied, and the order which follows will so provide.

The Commission further finds as a fact and concludes that Dyke has unlawfully, deliberately and knowingly flouted the laws of the State of California, and the Commission's authority and orders, particularly Section 1001 of the Public Utilities Code, and the restriction contained in paragraph 1.(a) of Decision No. 53856 by (1) extending its water system into Tracts 2880, 3010 and 3043; (2) serving the Ferguson School grounds; and (3) providing service to three customers from its well No. 14. None of such tracts, grounds, nor the property of such consumers is contiguous to any area certificated to Dyke or lawfully being served by it. By a decision being issued concurrently herewith in Application No. 39031 of Pacific Water Co., to serve an area south of Trask Avenue to Wright Street, and south of Westminster Avenue to Verano Street, north of Bolsa Avenue and generally east of Yockey Street, to Trask Avenue, including the aforementioned specific tracts, and other tracts not included in the instant-captioned application, Pacific is authorized to extend its water system into the area covered by this application.

Since the record shows that construction water is being furnished by Dyke in Tracts Nos. 2880, 3010, and 3043, to the Ferguson School grounds, and to three consumers from its well No. 14, located in the vicinity of said school grounds, and, since it would be adverse to the public interest to cut off said construction and domestic service without providing a substitute therefor, Dyke will be ordered hereinafter to continue to furnish water service to said tracts, school

grounds, and consumers, at its present rates, until such time as Pacific has provided substitute services. The Order in Application No. 39031 of Pacific provides that it shall certify to the Commission in writing, over the signature of a responsible executive, the exact date it is ready to and will serve water users in said tracts, the school grounds, and other consumers. Upon the receipt of such certification, not earlier, however, than the effective date of this order, the Commission will issue its supplemental order or orders herein.

O R D E R

First Supplemental 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 the application of Dyke Water Company, a corporation, for authority to extend its water service to additional territory in the vicinity of Garden Grove, in unincorporated territory of Orange County, including tentative Tracts Nos. 3208, 3156, and 3214, and Tracts Nos. 2880, 3010, 3043, the Ferguson School grounds, and three consumers from its well No. 14, all as shown on the map Exhibit "E" attached to the First Supplemental Application and as delineated thereon by a black pencil line, be and it is denied.

2. That pending further order of the Commission, Dyke Water Company shall continue to furnish water services for

construction and domestic purposes in Tracts nos. 2880, 3010, and 3043, the Ferguson School grounds and the water consumers being served from applicant's well No. 14, at its present rates. That when Pacific Water Co. shall be ready to and will serve all consumers in Tracts Nos. 2880, 3010, and 3043, the Ferguson School grounds, and the water consumers being served from applicant's well No. 14, or from any other sources of water supply; and when Pacific Water Co. shall fix the exact time for the substitution of its services for those of applicant, as aforesaid; and when Pacific Water Co. shall have certified to the Commission in writing, over the signature of a responsible executive, that it is ready to and will serve the said consumers, and fix the exact time for the substitution of its services for those of applicant, the Commission will issue its supplemental order or orders herein.

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

Dated at San Francisco, California, this 5th day of August, 1957.

John E. Mitchell
President

W. H. ...

R. E. ...

...

Commissioners

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.