

ORIGINAL

Decision No. 68217

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SUBURBAN WATER SYSTEMS, a California corporation, for authority to acquire certain of the outstanding capital stock of Vallecito Water Company.

Application No. 46841
(Filed July 24, 1964)

In the Matter of the Application of VALLECITO WATER COMPANY, to sell its water system and assets (other than cash and accounts receivable), to SUBURBAN WATER SYSTEMS, and

Application No. 45688

In the Matter of the Application of SUBURBAN WATER SYSTEMS, to purchase Vallecito Water Company's water system and assets, and to render water service under the Vallecito Water Company rate schedules in the area served and presently certificated to Vallecito Water Company.

Petition of San Gabriel Valley Water Company for Order Restraining Further Transfer of Certain Shares and Share Certificates of Vallecito Water Company.
(Filed August 17, 1964)

Appearances in Application No.46841

Arthur D. Guy, Jr., and Walker Hannon, for applicant.
Brobeck, Phleger & Harrison, by Robert N. Lowry, and Richard Entwistle, for San Gabriel Valley Water Company, interested party.
Raymond E. Heytens, for the Commission staff.

O P I N I O N

Suburban Water Systems seeks authority under Section 852 of the Public Utilities Code to purchase 18,003 shares of Vallecito Water Company stock equitably held by Calfin and registered in the name of Toll & Co., for a consideration not to exceed \$16.10 per share.

Public hearing was held before Examiner Warner on

September 16, 1964, at Los Angeles. The record in Application No. 45688 of Vallecito Water Company and applicant for Vallecito to sell and applicant to buy Vallecito's assets was incorporated herein by reference.

By Decision No. 67261, dated May 26, 1964, in Application No. 45688 which was denied by said Decision and rehearing denied by Decision No. 67638, dated August 4, 1964, applicant and Calfin were ordered to report to the Commission within ten days in writing their action regarding their unlawful acquisition or their causing of the unlawful acquisition of Vallecito's stock; the Commission having found that Calfin was Suburban's alter ego and that Suburban's acquisition of Vallecito's stock was in violation of Section 852 of the Public Utilities Code. It is that stock which applicant now seeks authority to acquire.

Applicant alleges that authority has been obtained from its bondholders to permit Calfin to borrow directly the funds sufficient to repay the loans previously made to it by applicant. The record shows that Calfin has on its own credit retired the approximate \$280,000 which it borrowed from applicant to purchase Vallecito's stock and that applicant has, in turn, retired its indebtedness to Security First National Bank-Whittier Branch, in the same amount, which it incurred to finance Calfin's unlawful purchase.

The Commission finds as follows:

1. There has been no change in the facts found in Decision No. 67261, even though the debt to Security First National Bank has been shifted.
2. Vallecito stock held by Calfin was acquired unlawfully.
3. It would be adverse to the public interest to authorize Suburban to acquire Vallecito stock from Calfin.

It is concluded that the application should be denied.

Petitioner, San Gabriel Valley Water Company, asserts that until such time as the unlawful stock transfers have been cancelled on Vallecito's books and the stock certificates held by Toll & Co., as nominee for Calfin, returned to the stockholders of record prior to such unlawful transfers, there remains the possibility that, by further transfers of said certificates, third parties may be enabled to invoke the protective provisions of Corporations Code 2470(b)(1) and thus render ineffectual the Commission's findings and order in Decision No. 67261.

San Gabriel requests the Commission to enjoin the transfer of any of the Vallecito stock unlawfully held by Suburban, Calfin or their agent pending further order of the Commission.

The Commission finds that San Gabriel's petition should be granted.

O R D E R

IT IS ORDERED that the application is denied.

IT IS FURTHER ORDERED that neither Suburban Water Systems, Calfin, nor Vallecito Water Company shall sell or otherwise dispose of, or transfer, or cause to be transferred, any of the stock held by any of them or any agent of theirs to any other or others than

those from whom such shares were originally acquired and found by Decision No. 67261 to be unlawfully acquired.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 10th day of NOVEMBER, 1964.

Fredrick B. Hallock
 President

George H. Brown

George H. Brown

Commissioners

My views shall be set forth in a separate opinion.

William B. Duncanson

I will file a separate opinion
E. J. Mitchell

Separate Opinion by Peter E. Mitchell:

Section 852 of the Public Utilities Code makes it illegal for one public utility to acquire or hold shares in another.

Assuming that Calfin or Suburban have received any interests at all in this transaction, the effect of this order authorizes Calfin and Suburban to continue to hold the 18,003 shares of Vallecito stock. The Commission has traditionally held that it has no power to retroactively ratify a void stock transaction. San Joaquin L. & P. Corp. 4 C.R.C. 1036, West Warehouses 61 Cal. P.U.C. 683.

The order in question is based on the Commission's concern apparently that a further transfer by Suburban or Calfin would "render ineffectual the Commission's findings and order in Decision No. 67261." However, the order does just the opposite; by forbidding Calfin and Suburban to sell to strangers, the order ratifies at least on a temporary basis an acquisition declared by Decision 67261 to be illegal and void. On the other hand, if Suburban and Calfin were to transfer the stock to truly innocent third parties, the regulatory purpose of Decision No. 67261 and of Section 852 would be accomplished, not frustrated; if such a transfer were to be made, the stock of the public utility would no longer be held by another public utility without Commission authority. Beyond that the Commission has no interest; the mere fact that San Gabriel has been authorized to purchase the same stock gives it no claim superior to other prospective purchasers.

My interest transcends the immediate transaction involved herein. The most important issue is the present condition of the Vallecito Water Company.

The ability of the Vallecito Water Company to serve in its certificated area is hampered by additional demands on its system brought on by growth in population and industry, and by a lack of

needed funds to modernize.¹ The Commission should, simultaneously with this decision, issue an Order Instituting Investigation to determine what action, if any, should be taken by the Commission to insure that the public in the area served by Vallecito receive good service at reasonable rates. A report by the Commission staff will be helpful in this regard.

It may be that after such investigation, facts will disclose Suburban, San Gabriel, or some other utility is best qualified to take over the operation of Vallecito. It may be too that the Commission will find that Vallecito itself should continue to render service in its certificated area.

Thus far, the operations of Vallecito, at least to my mind, have been obfuscated by the controversy over stock purchases in that utility. Commencing with our Decision No. 64305 in Case No. 7422 and including the instant decision, we have been confronted with attempts made by principal stockholders of two competing utilities (Suburban and San Gabriel) to obtain possible control of Vallecito. This dispute over Vallecito should have been resolved by the parties, not by this Commission. Absent an investigation by this Commission I would not now support either Suburban or San Gabriel assimilating control of Vallecito.


Peter E. Mitchell, Commissioner

San Francisco, California

November 12, 1964

1. Decision No. 67261 dated May 26, 1964

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BENNETT, William M., Commissioner, dissenting opinion:

I cannot concur in that portion of the above order wherein the majority of this Commission grants the request of the San Gabriel Valley Water Company and enjoins the transfer of the stock of the Vallecito Water Company unlawfully held by Suburban, Califn and their agent pending further order of this Commission.

In my opinion, there is no stock so unlawfully held. Section 852 of the Public Utilities Code is quite explicit. It makes such purported transfers as this Commission unanimously found to be unlawful in its Decision No. 67261 "void and of no effect and no such transfer shall be made on the books of any public utility." As a result of this section and the findings

of this Commission, it should be abundantly clear that Vallecito has no alternative but to reverse on its books such transfers back to the original owners. While Suburban, Calfin and their agent may hold certificates, such certificates are, at best, without title. This Commission may not ratify a void transaction, to give a good title to these certificates.

To the extent that this order enjoins the transfer of this particular stock by Suburban, Calfin and their agent, it is an idle act, forbidding that which became impossible ab initio. To the extent that it enjoins Vallecito, the order is patently ambiguous with respect to any subsequent purchasers of this stock from the lawful owners. To the extent that it enjoins a fraudulent sale of the certificates which are indicia of ownership to innocent third parties, it intimates a course of venal conduct that is not supported by the record and should not be presumed.


WILLIAM M. BENNETT
Commissioner

Dated at San Francisco, California, this 13th day of November, 1964.