

Decision No. 68272

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DYKE WATER COMPANY, a corporation,)
 for an order authorizing it to sell,)
 transfer and convey a major portion)
 of its water service system and)
 utility plant in Orange County,)
 California, to the CITY OF GARDEN)
 GROVE WATER CORPORATION, a non-)
 profit corporation under provisions)
 of Section 581 of the Public Util-)
 ities Code, and for said City of)
 Garden Grove Water Corporation to)
 lease said water system to the City)
 of Garden Grove.)

Application No. 46889
 (Filed August 14, 1964)
 (Amended Sept. 23 and
 October 14, 1964)

Thomas W. Martin, for applicant Dyke Water Company.
Orrick, Dahlquist, Herrington & Sutcliffe, by
Joseph J. Hughes, for applicant City of Garden
 Grove Water Corporation.
Willard R. Pool, for applicant City of Garden Grove.
Milford W. Dahl, for Orange County Water District;
Charles L. Stuart, for Southern California
 Water Co.; R. Randall Stoke, for Howard Morf;
Kindel & Anderson, by Bruce W. Sumner, for Sunny
 Homes, Inc., et al., interested parties.
Cyril M. Saroyan, with James F. Haley and Kenji
Tomita, for the Commission staff.

O P I N I O N

By this application, as amended, Dyke Water Company (Dyke), a public utility water corporation operating in portions of Orange County, seeks authority (1) to sell and transfer a major portion of its system to City of Garden Grove Water Corporation, a non-profit corporation, (2) to establish an "Advances Trust" for the refunding of contract obligations in connection with advances for construction, and (3) to stand relieved of its public utility obligations pertaining to the system to be transferred. The City of Garden Grove Water Corporation and the City of Garden Grove have joined in the application. Public hearing in the matter was held before

Examiner Emerson on October 14, 1964, at Los Angeles. The last of three late-filed exhibits¹ was received on October 26, 1964, and statements of counsel were received on October 28, 1964. The matter is submitted and is ready for decision.

The portion of Dyke Water Company's system to be transferred is the same property involved in the just compensation proceedings of Application No. 44634, filed by the City of Garden Grove on July 12, 1962. This portion involves about 73 percent of Dyke's present system and 11,800 service connections, about 2,000 of which lie outside of the city limits of Garden Grove. Generally speaking, the portion of the system to be transferred is located within the area south of Cerritos Avenue, north of Edinger Avenue, east of Bolsa Chica Road and west of Placentia Avenue and the Santa Ana River, Orange County.

City of Garden Grove Water Corporation is a non-profit corporation, without capital stock, organized for the primary purpose of acquiring the subject water facilities and leasing the same to the City of Garden Grove. This corporation will issue bonds in the principal amount of \$3,750,000 and upon their sale will acquire the Dyke properties for the same amount of cash. Rental payments to be made to the corporation will come from water revenues collected by the City of Garden Grove, which city will operate the water system, in conjunction with its existing municipal water department, under lease for a term ending March 15, 1995. Upon completion of the term of the lease, title to the properties will vest in the city, in accordance with the Articles of Incorporation which provide that "upon any liquidation, dissolution or winding up of the Corporation, after paying or adequately providing for the debts and obligations of the Corporation, the directors shall

¹ Exhibits Nos. 17, 22 and 23.

distribute and transfer all remaining assets of the Corporation to the City of Garden Grove."

The terms and conditions of the transfer are contained in a "Memorandum Agreement" entered into on August 12, 1964² and in an "Administrative Agreement" dated October 6, 1964,³ concerning service to tracts 2042, 3043 and 3010 located within the City of Westminster.

The sale is to be made free and clear of consumers' advances for construction. Agreements covering such advances constitute contingent or unmatured obligations of the utility.⁴ The amounts of repayment, in most instances, depend upon the revenues derived from the various extensions for which the utility received construction advances.⁵ As of June 30, 1964, the unpaid agreement balances pertaining to the Garden Grove portion of the Dyke Water system totaled \$732,918.61. Past-due main extension refunds (some of which were due in the years 1961 through June 30, 1964) together with payments falling due at time of sale, total \$234,682.77. The amounts of future payback over the years to 1979 (the year in which the latest agreement terminates), as well as the amounts of advances which will not pay out at maturity, depend in

² Exhibit No. 3.

³ Inter-Department Memorandum, contained in Exhibit No. 19.

⁴ It should be particularly noted that each and every construction advance agreement has heretofore been authorized and that Dyke has been directed to carry out the terms thereof. (See Decision No. 61642, ordering paragraph 10, Application No. 42454.)

⁵ In this respect, the order herein will provide that the City of Garden Grove, following transfer of the system and as operator of the system, must initiate and maintain, until each refund agreement has run its course, such records as will permit ready determination of the revenues actually received from each extension in accordance with the terms of each of the agreements pertaining thereto.

great measure upon the future revenues to be collected by the City of Garden Grove under the metered water rates of that city. Since the Dyke system is presently a flat-rate system and the city operated system will be metered, the revenues to be received and the resulting payouts cannot be forecast with certainty. A total of \$81,580.42 of advances were covered by contracts which had expired as of June 30, 1964. While the evidence contains an estimate that some \$102,817 of advances may not in the future pay out at maturity, such estimate assumes that flat rates will continue into the future, a condition which is not expected to prevail under the City's operations, except for a limited period of time. This estimate is not reliable, in view of the evidence respecting water rates. A more realistic estimate, in the judgment of the Commission, is that only approximately \$80,000 of advances will not pay out in the future. Thus, a reasonable estimate of future refunds payable becomes approximately \$336,655. Dyke proposes to set up a trust fund of only \$175,000 for repayment of these obligations.⁶

The \$732,918.61 of unpaid agreement balances hereinabove referred to does not include unpaid balances on contracts relating to the portion of the system earlier sold to the City of Anaheim pursuant to Decision No. 65860 in Case No. 7586. (We hereby take official notice of said decision and of decisions supplemental thereto.) Said Decision No. 65860 provided for the establishment of an "Advances Trust" of \$200,000 for payments on Anaheim refund contracts, but that amount, by itself, will not be sufficient for that purpose. With the sale of the Garden Grove portion of the company's system, the principal other source of revenue for refund payments on the Anaheim contracts will be lost to the company. It is therefore fair and reasonable that the trust fund required herein for refund payments on contracts relating to the Garden Grove portion

⁶ See proposed Agency Agreement, Exhibit No. 23.

of the system be made subject also to refund obligations relating to the portion of the system sold to the City of Anaheim. The order herein will so provide.

By action of the City Council of the City of Garden Grove,⁷ the city will charge the same water rate to customers of the Dyke system as it charges its own customers irrespective of whether or not the Dyke system customers are within or without the city limits.⁸ The City's basic water rates are for metered service. As the City takes over unmetered service areas, its flat rates will be applied until such time as water meters are installed. The City's basic residential rates are presently 150 percent of Dyke's charges.

Dyke Water Company's account with the Orange County Water District shows unpaid replenishment assessments (commonly called pumping taxes) for the period July 1, 1963 to October 1, 1964, with interest thereon of a total of \$128,081.49. These unpaid assessments, plus current assessments, are to be paid from the proceeds of the sale of the Dyke system to the City of Garden Grove Water Corporation.⁹

By an earlier decision¹⁰ pertaining to the Dyke water system, in which were included the properties herein under consideration, Dyke Water Company was ordered to repay certain contributions¹¹ which had been unlawfully exacted from various persons. The

7 Resolution No. 2818-64, passed October 6, 1964; Exhibit No. 14 in this proceeding.

8 Exhibit No. 7, as modified by Exhibit No. 14.

9 Exhibit No. 18.

10 Decision No. 61642 issued March 13, 1961 in Application No. 42454, of which the Commission takes official notice.

11 Ordering paragraph 4 of Decision No. 61642 and Appendix A to said decision.

specified repayments to be made totaled \$39,946.77. The Commission takes notice that none of the ordered payments have in fact been made. By the same decision, Dyke Water Company was ordered to enter into written agreements with certain persons with whom the utility should have theretofore, but had not, executed refund agreements.¹² The prospective refunds involved, totaled \$22,934.60 as of March 13, 1961. The Commission takes notice of the fact that Dyke has not filed the agreements as ordered.

Proposed Escrow Instructions and a proposed "Agency Agreement," the latter pertaining to trust funds, together with statements of counsel and certain agreements respecting refunding of advances, are in evidence.¹³ Among other things, Dyke's proposal to enter into an "agency agreement" rather than a trust agreement for the refunding of construction advances is inappropriate. So, also, is the proposal to permit Dyke's stockholders to convert personally-acquired refund contracts for the entire balances thereof, because such an arrangement would create an unreasonable discrimination as between contract holders.

Among the duties of this Commission, when public utility properties are to be transferred, is that of assuring that the transfer will not be adverse to the public interest and, in cases like the present where a partial disposition of operating properties is proposed, that the utility's application of funds received from the disposition are made in such a manner as to appropriately discharge its public utility obligations consistent with the utility's continuing obligation to render adequate service to the public with

¹² Ordering paragraph 5 of Decision No. 61642 and Appendix B to said decision.

¹³ Exhibit No. 23.

its remaining properties. Dyke Water Company, after the transfer proposed in this proceeding, will have fewer than 4,500 customers remaining and something less than 19 percent of its original plant.¹⁴ This is of significance in several respects, the most important of which is that the remaining system operations must not be so financially burdened, as the result of partitioning, that the utility may not meet its obligations to its remaining creditors or that its remaining customers will be unreasonably charged or receive less than adequate service. In the authorization hereinafter granted, suitable provisions will be made to assure protection of the public interest in such respects.

The Commission finds as follows:

1. The proposed transfer will not be adverse to the public interest provided that there is full compliance with each of the conditions hereinafter ordered.
2. The public interest requires that a "Construction Advances Trust" be established in the initial minimum amount of \$359,600.¹⁵
3. The action taken herein shall in no manner be construed to be a finding of the value of the property authorized to be transferred.

The Commission concludes that the proposed transfer and lease should be authorized under the terms and conditions set forth in the following order.

¹⁴ Portions of its system have been transferred to the City of Anaheim and to the City of Huntington Beach. Upon transfer of the Garden Grove system, only the Westminster system will remain and that remainder is the subject of a just compensation action, presently before the Commission, by the City of Westminster.

¹⁵ This total is a rounded amount, made up of the two basic amounts of \$336,655 for future refunds and \$22,935 for refunding agreements heretofore ordered by Decision No. 61642.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order and on or before March 31, 1965, Dyke Water Company may transfer and sell to City of Garden Grove Water Corporation and the latter may lease to the City of Garden Grove, that portion of its public utility water system described in the application herein and generally known as its Garden Grove system, in accordance with the terms and conditions contained in the following documents:

- a. "Memorandum Agreement" dated August 12, 1964, as said agreement appears in Exhibit No. 3 in this proceeding, except that said "Memorandum Agreement" shall be modified by striking from paragraph E (ii) thereof the figures \$250,000", as the same appear on page 6 of said agreement, and substituting therefor the figures "\$359,600",
- b. "Administrative Agreement" dated October 6, 1964, as said agreement appears in an "Inter-department Memorandum" of such date in Exhibit No. 19 in this proceeding.
- c. "Lease", undated, as the same appears in Exhibit No. 6b in this proceeding, and
- d. "Declaration of Trust", undated, as the same appears in Exhibit No. 6c in this proceeding.

2. The foregoing authority to transfer and sell, is conditioned upon full compliance with each of the following ordering paragraphs numbered 3 through 7, both inclusive, and said compliance shall be a condition precedent.

3. Dyke Water Company shall have refunded all customers' deposits (in Account 227 and pertaining to the system to be transferred) which customers are entitled to have refunded, with interest thereon computed in accordance with the tariffs thereto pertaining, and shall have filed in the record in this proceeding a verified statement as to the disposition of said account.

4. Provisions for disbursement of the proceeds of the sale herein authorized shall have been made in accord with those set forth in Exhibit No. 23 (revision of Exhibits Nos. 12 and 13) in this proceeding, except that said escrow instructions from Dyke Water Company shall have been modified or amended in such manner as will also assure:

- a. Payment of \$359,600 in cash into an interest bearing trust fund, to be known as the "Construction Advances Trust", with Farmers & Merchants Trust Company of Long Beach as trustee thereof (in lieu of the amount of \$175,000 and the "agency" designation of said trust company specified in paragraph (c) of seller's instructions as they appear in said Exhibit No. 23).
- b. Payment in cash to Howard Morf, 1770 East Valley Road, Montecito, Santa Barbara, California, of the sum of \$98,972.51 and the sum of \$17,401.43 for a total amount of \$116,373.94 representing refunds and balances of advances due upon sale of utility properties to the City of Garden Grove Water Corporation and to the City of Anaheim.
- c. Payment in cash to each designee listed in Appendix A attached to this Commission's Decision No. 61642, issued March 13, 1961, in Application No. 42454, of the sum of money set forth opposite the name of each such designee, to a total of \$39,946.77; and also providing that any of such monies which cannot be so paid shall, on close of escrow, become the property of the State of California and shall be paid into the Treasury of the State of California.
- d. That the sum of "approximately \$230,904.72" referred to in Paragraph (c) of said escrow instructions shall be changed to \$234,682.77.
- e. That the "detailed prepared statements" referred to in Paragraph (e) of said escrow instructions shall not be accepted by the escrow company unless approved in writing by this Commission or by the Chief, or Assistant Chief, of this Commission's Division of Finance and Accounts.

- f. That said "detailed prepared statements" shall not include any payments made or to be made pursuant to Subparagraph b of this Paragraph 4 of this Order.
- g. That any balance of the \$234,682.77 (referred to in Paragraph (e) of said escrow instructions, as modified by Subparagraph d of this Paragraph 4 of this Order) which shall remain after payment pursuant to said "detailed prepared statements" (as approved in accordance with Subparagraph e of this Paragraph 4 of this Order) shall be paid by the escrow company into the "Construction Advances Trust" referred to in Subparagraph a of this Paragraph 4 of this Order, to be thereafter held and disbursed in the same manner as the \$359,600 referred to in said Subparagraph a.
- h. That said "Construction Advances Trust" (referred to in Subparagraphs a and g of this Paragraph 4) *shall be subject* ~~of this Order~~ to payment of any and all refund obligations of Dyke Water Company on the refund contracts applicable to property transferred to the City of Anaheim pursuant to this Commission's Decision No. 65860 (and decisions supplemental thereto) in Case No. 7586; provided that this Subparagraph h shall be operative only after exhaustion of the "Advances Trust" established pursuant to said Decision No. 65860 and decisions supplemental thereto. Following exhaustion of said "Advances Trust", the "Construction Advances Trust" referred to in Subparagraphs a and g of this Paragraph 4 of this Order shall be subject to payments pursuant to this Subparagraph h on an equal basis with payments pursuant to Subparagraphs b and c of Paragraph 1 of Appendix A hereto.

5. Dyke Water Company and City of Garden Grove Water Corporation shall have jointly filed in this proceeding a true copy of such escrow instructions.

6. Dyke Water Company, through its escrow agent as ordered in paragraph 4a hereinabove, shall have established the aforesaid "Construction Advances Trust" by means of an executed trust agreement with Farmers & Merchants Trust Company Of Long Beach as trustee and shall have filed in this proceeding a true copy of the trust agreement as executed.

7. The aforesaid trust agreement and the administration of said trust shall be as set forth in Appendix A attached to this order. Amendment, modification, revocation, cancellation, or

supersedure of said trust agreement may be made only upon the written authorization of this Commission.

8. If the authority to transfer, sell and lease hereinabove specified is exercised, Dyke Water Company shall transfer and deliver to the City of Garden Grove copies of such records, memoranda, contracts, maps and papers as may be necessary or convenient to said city for the purposes of determining statements of revenues collected by tracts, together with such copies of customers' accounts, as will permit ready determination of statements of accounts for each water user at any time served by the system involved in this proceeding. Further, the City of Garden Grove shall file in this proceeding a stipulation that it will keep the same until at least December 31, 1980 and that it will in addition set up and maintain such accounts and records respecting collection of revenues received under its operation of the transferred and leased system as will permit determination of the refund obligations specified in this opinion and order and that it will permit examination of these records by either Dyke or its agent and by this Commission at all reasonable times to and including December 31, 1980. The leasing by the City of Garden Grove of the properties herein concerned shall constitute consent by it to this condition and all other conditions of the decision herein applicable to said city.

9. Within ten days following the date of transfer, Dyke Water Company, City of Garden Grove Water Corporation and the City of Garden Grove shall jointly inform this Commission in writing of the actual date of transfer and of the date upon which the latter

shall have assumed operation of the water system herein authorized to be transferred.

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

Dated at San Francisco, California, this 25th day of November, 1964.

Fredrick B. Holcluff
President
John C. Mitchell
Charles E. Ruge
George T. Grover
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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TRUST AGREEMENT

This agreement, made and entered into this _____ day of _____, by and between Dyke Water Company, a California corporation, hereinafter called "Dyke" and Farmers & Merchants Trust Company Of Long Beach, a California corporation, hereinafter sometimes called "Trustee", at Long Beach, California,

WITNESSETH:

WHEREAS, Dyke has delivered to Farmers & Merchants Trust Company Of Long Beach, as escrow agent, certain escrow instructions directing said agent to disburse the proceeds of the sale of a portion of Dyke's property to the City of Garden Grove Water Corporation, and

WHEREAS, it is contemplated that said Farmers & Merchants Trust Company Of Long Beach shall also act as Trustee for a portion of such proceeds, in the minimum sum of \$359,600, and

WHEREAS, the Public Utilities Commission of the State of California, by Decision No. 68272, issued ~~NOV 25 1964~~ 1964, ordered that Dyke may transfer to the City of Garden Grove Water Corporation, part of its water system as described therein, upon certain conditions, among which is one establishing a trust account in the principal amount of \$359,600 with certain possible additions as provided in said decision and others of which are as follows:

- "6. Dyke Water Company, through its escrow agent as ordered in paragraph 4a hereinabove, shall have established the aforesaid 'Construction Advances Trust' by means of an executed trust agreement with Farmers & Merchants Trust Company Of Long Beach as Trustee and shall have filed in this proceeding a true copy of the trust agreement as executed.
- "7. The aforesaid trust agreement and the administration of said trust shall be as set forth in Appendix A attached to this order. Amendment, modification, revocation, cancellation, or supersedure of said trust agreement may be made only upon the written authorization of this Commission."

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TRUST AGREEMENT

WHEREAS, this agreement is entered into to comply with the above referred to conditions:

NOW THEREFORE, the parties hereto agree and covenant as follows:

1. Trustee agrees to set aside out of said proceeds and to hold the sum of Three Hundred Fifty-Nine Thousand Six Hundred and no/100 dollars (\$359,600), together with any further sum added thereto pursuant to ordering paragraph 4g of the aforesaid decision, as trustee for the following uses and purposes. ✓

a. To invest and reinvest said sums. ✓

b. From said sums and the interest earned thereon, Trustee shall in the month of July each year hereafter, or as soon thereafter as practical, pay to holders and assignees of the construction advance refund contracts listed below, such sums as shall be due thereunder for the preceding twelve months' period, until the amount due under said contracts is paid in full or until the term of each contract expires, whichever occurs first. The sum due under each of said contracts in each year shall be certified to Trustee by Dyke in writing. Upon receipt of said certification, Trustee shall present a true copy of said certification to the Public Utilities Commission of the State of California and upon written instructions respecting the same from said Commission, and not before, Trustee shall make payment in accordance with such written instructions. ✓

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<u>Tract No.</u>	<u>Contract Holder</u>	<u>Original Date of Contract</u>	<u>Terms</u>	<u>Original Amount</u>	<u>Expiration Date</u>	<u>Present Balance after Payment all Refunds thru 6-64</u>
1286	Ralph M. Davis	4-14-55	35% 10 yrs.	\$ 7,015.95	4-14-65	\$ 2,482.34
1425	Virginia Van Skike	12-19-55	22% 20 yrs.	\$15,853.10	12-19-75	\$ 10,906.10
1436	Eureka Homes, Inc.	11-10-55	35% 10 yrs.	6,390.00	11-10-65	\$ 1,892.80
1475	Moore Built Homes	2-23-55	35% 10 yrs.	\$11,779.58	2-23-65	\$ 3,134.04
1698	1st Invest.Serv.Co.	8-30-54	100 pct	\$22,800.00	—	\$ 2,964.89
1830	Banner Invest.Co.	2--2-55	100 pct	\$10,769.55	—	\$ 1,264.62
1868	Moore Built Homes	3-15-55	35% 10 yrs.	\$ 7,269.22	3-15-65	\$ 1,699.61
1892	S.Harrodd-P.Murphy	6--2-55	35% 10 yrs.	\$ 3,838.00	6--2-65	\$ 736.39
2027	1st Invest.Co. Valley View Inv.Co. Columbia Inv. Co.	5--3-55	100 pct	\$22,530.39	—	\$ 6,074.74
2036	Builders Mort. Co.	12- -58	22% 20 yrs.	\$ 7,062.25	12- -78	\$ 5,418.94
2063	Atlantic-Pacific Co.	6--8-55	35% 10 yrs.	\$ 5,200.00	6--8-65	\$ 2,285.34
2083 and 2166	Arleta, Central, Consumers Develop., Columbia, L.A. Accept., 1st Invest. Co.	5--2-55	100 pct	\$25,791.21	—	5,888.35
2091	Stoll Invest. Co	7--2-55	35% 10 yrs.	\$10,250.00	7--2-65	3,019.97
2097	J.Ray Const.Co., Sunny Homes, Inc.	4-14-55	35% 10 yrs.	\$12,334.49	4-14-65	\$ 2,993.38
2100	Atlantic-Pacific Co.	12-14-55	22% 20 yrs.	\$13,300.00	12-14-75	\$ 8,091.13
2142	Land Estates, Inc.	1-20-56	22% 20 yrs.	\$ 3,039.24	1-20-78	\$ 1,875.39
2146	Ernest A. Wilson	5-11-55	35% 10 yrs.	\$10,554.68	5-11-65	\$ 1,727.36
2182	Ajax Palos Verdes Co. Assig.A.J. & N. E. Andrews	4-18-55	35% 10 yrs.	\$16,703.69	4-18-65	\$ 1,794.32
2191	Royal Crest Homes, John E.& Vivian Gordon	2-10-55	35% 10 yrs.	\$12,779.07	2-10-65	\$ 7,587.37
2216	Alex K. Ginsburg	4-11-55	35% 10 yrs.	\$ 4,809.40	4-11-65	\$ 2,052.33

TRUST AGREEMENT

<u>Tract No.</u>	<u>Contract Holder</u>	<u>Original Date of Contract</u>	<u>Terms</u>	<u>Original Amount</u>	<u>Expiration Date</u>	<u>Present Balance after payment all Refunds thru 6-64</u>
2224	G. G. Properties	3-31-55	35% 10 yrs.	\$ 8,741.78	3-31-65	\$ 3,728.31
2232	Aristocrat Homes	6-23-55	35% 10 yrs.	\$ 4,969.00	6-23-65	\$ 1,233.83
2276	Ajax Const. Co. John, June Eastman	1-24-55	35% 10 yrs.	\$ 2,678.75	1-24-65	\$ 198.13
2283	Katella House Dale, Francis Turner	4-5-55	35% 10 yrs.	\$ 4,803.49	4-5-65	\$ 1,815.37
2283	Markey House, Dale, Francis Turner	4-5-55	35% 10 yrs.	\$ 4,803.49	4-5-65	\$ 1,716.74
2289	Robertson Invest.Co.	4-2-55	22% 20 yrs.	\$ 9,857.38	4-2-75	\$ 4,938.09
2311	Casahome, Inc.,	2-28-55	35% 10 yrs.	\$42,551.60	2-28-65	\$ 16,339.28
2328	Moore Built Homes	3-15-55	35% 10 yrs.	\$ 7,979.97	3-15-65	\$ 2,215.29
2352	R. Davis, A. Duff	4-4-55	35% 10 yrs.	\$ 6,988.75	4-4-65	\$ 1,314.06
2376	George, Stanley and J. R. Sandstrom	6-23-55	35% 10 yrs.	\$ 3,102.30	6-23-65	\$ 1,201.24
2383	Roberts Develop. Co.	1- -56	22% 20 yrs.	\$10,629.74	1- -76	\$ 7,657.09
2384	Roberts Develop. Co.	3-18-58	22% 20 yrs.	\$ 955.00	4-18-78	\$ 619.48
2404	Randale One, Inc.	2-17-58	22% 20 yrs.	\$11,852.00	2-17-78	\$ 9,140.90
2419	Ralph B. Robbins	7-28-55	22% 20 yrs.	\$28,505.15	7-28-75	\$ 18,191.20
2420	Builders Mortg. Co.	8-31-55	35% 10 yrs.	\$16,625.00	8-31-65	\$ 5,522.31
2455	Sunny Homes, Inc., C. B. Robertson	2-28-55	35% 10 yrs.	\$11,264.91	2-28-65	\$ 4,711.65
2463	John, Vivian Gordon	7-28-55	35% 10 yrs.	\$13,768.28	7-28-65	\$ 7,903.07
2464	Harold, Winifred Keck	7-30-56	22% 20 yrs.	\$19,163.63	7-30-76	\$ 12,707.26
2465	Harold, Winifred Keck	7-30-56	22% 20 yrs.	\$11,710.00	7-30-76	\$ 6,513.43
2478	S.Herrod, P.Murphy	6-2-55	35% 10 yrs.	\$ 4,475.00	6-2-65	\$ 1,559.61
2485	Dale, Francis Turner	5-6-55	35% 10 yrs.	\$ 5,077.28	5-6-65	\$ 1,019.58
2518	Harold, Winifred Keck	12-19-55	22% 20 yrs.	\$19,495.38	12-19-75	\$ 11,886.67
2519	Ralph B. Robbins	7-28-55	35% 10 yrs.	\$ 4,373.75	7-28-55	\$ 1,619.38
2532	Land Estates, Inc.	4-21-55	35% 10 yrs.	\$ 5,389.26	4-21-65	\$ 2,077.28

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<u>Tract No.</u>	<u>Contract Holder</u>	<u>Original Date of Contract</u>	<u>Terms</u>	<u>Original Amount</u>	<u>Expiration Date</u>	<u>Present Balance after Payment all Refunds thru 6-64</u>
2535	Newhope Terrace	4-9-55	35% 10 yrs.	\$12,077.50	4-9-65	\$ 2,953.33
2545	Randale One, Inc.,	4-29-57	22% 20 yrs.	\$ 5,300.00	4-9-77	\$ 3,792.11
2559	Pacific Const. Co.	7-19-55	22% 20 yrs.	\$16,858.09	7-19-75	\$ 11,284.75
2612	Walco Homes, Inc.	7-8-55	35% 10 yrs.	\$ 4,308.49	7-8-65	\$ 784.55
2621	Atlantic-Pacific	8-4-55	35% 10 yrs.	\$ 4,250.00	8-4-65	\$ 605.86
2622	L.Minor, S.Bartleson	8-29-55	35% 10 yrs.	\$ 5,100.00	8-29-65	\$ 1,640.35
2623	Atlantic-Pacific	9-28-55	35% 10 yrs.	\$ 5,300.00	9-28-65	\$ 1,686.62
2702	Davis, Duff Const.	1-31-56	22% 20 yrs.	\$12,634.25	1-31-76	\$ 7,599.13
2728	Davies,Keusder,Brown	3-29-56	22% 20 yrs.	\$ 8,324.49	3-29-76	\$ 5,204.24
2731	M.C., Jean Pardini	4-20-59	22% 20 yrs.	\$ 5,431.40	4-20-79	\$ 4,638.17
2792	Rainbow Const. Co.	2-27-56	22% 20 yrs.	\$ 1,375.00	2-27-76	\$ 699.04
2801	Pac. Utilities Invest.	10-31-55	22% 20 yrs.	\$18,589.70	10-31-75	\$ 10,992.71
2852	C.R.Nelson, et al.	9-12-56	22% 20 yrs.	\$ 2,735.99	9-12-76	\$ 1,958.15
2880	John, Vivian Gordon	1-25-57	22% 20 yrs.	\$21,786.20	1-25-77	\$ 15,680.19
2923	Elmer E. Everett	2-12-59	22% 20 yrs.	\$ 3,800.00	2-12-79	\$ 2,584.48
2961	M.C., Jean Pardini	4-20-59	22% 20 yrs.	\$10,918.00	4-20-79	\$ 9,631.81
2963	Cedric Roberts	12-3-56	22% 20 yrs.	\$ 7,592.45	12-3-56	\$ 6,579.98
2969	Newhope Terrace	4-25-56	22% 20 yrs.	\$13,005.28	4-25-76	\$ 7,331.01
2987	Atlantic-Pacific	12-14-55	22% 20 yrs.	\$14,000.00	12-14-75	\$ 11,271.16
3002	Stanford Homes, Inc.,	5-3-56	22% 20 yrs.	\$ 6,993.06	12-3-76	\$ 4,347.65
3010	J. Ray et al.	4-19-57	22% 20 yrs.	\$ 7,888.60	4-19-77	\$ 5,412.07
3020	Evans Building Co.	4-2-57	22% 20 yrs.	\$ 1,000.00	4-2-77	\$ 571.44
3026	Roberts Develop.Co.	5-4-56	22% 20 yrs.	\$ 3,542.63	5-4-76	\$ 2,823.36
3040	Downey Heights	1-22-57	22% 20 yrs.	\$ 8,580.00	1-22-77	\$ 7,617.84
3043	J. Ray et al.	4-19-57	22% 20 yrs.	\$12,050.80	4-19-77	\$ 8,982.28
3050	Geo., Berthal Gregory	8-3-56	22% 20 yrs.	\$ 1,383.36	8-3-76	\$ 502.76

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Tract No.	Contract Holder	Original Date of Contract	Terms	Original Amount	Expiration Date	Present Balance after payment all refunds thru 6-64
3206	W.E. Investment Co.	5-7-57	22% 20 yrs.	\$14,716.06	5-7- 57 ⁷⁷	\$ 11,295.71
3221	Dream Homes	6-24-58	22% 20 yrs.	\$ 8,768.40	6-24-78	\$ 6,842.22
3264	Roberts Develop. Co.	12-13-57	22% 20 yrs.	\$16,519.07	12-13-77	\$ 10,003.28
3344	G.M. & Stan Sandstrom	5-27-58	22% 20 yrs.	\$ 1,581.78	5-27-78	\$ 1,243.64

OFFSITE LOCATIONS

14081 Newhope-Sparklett's	1-17-57	22% 20 yrs.	\$ 1,041.85	1-17-77	\$ 939.39
11th-Brookhurst-Harrison	1-18-58	22% 20 yrs.	\$ 4,701.33	1-18-78	\$ 3,650.01
Brookhurst-Chapman Orange Plaza	1-10-58	22% 20 yrs.	\$17,168.02	1-10-78	\$ 12,771.71
Berrydale Church	3-4-58	22% 20 yrs.	\$ 1,007.70	3-4-78	\$ 784.43
Katella-Gilbert-Gacsi	1-19-59	22% 20 yrs.	\$ 1,665.00	1-19-79	\$ 1,256.25
9582 Chapman-Malone	1-31-57	22% 20 yrs.	\$ 2,674.98	1-31-77	\$ 1,864.30
12172 Brookhurst-Novak	8-21-58	22% 20 yrs.	\$ 642.26	8-21-78	\$ 588.98
Vons Market	2-28-57	22% 20 yrs.	\$ 8,611.65	2-28-77	\$ 6,942.57

c. From said sums and the interest earned thereon, Trustee shall in the month of July 1965, or as soon thereafter as practical, pay to the holders of the refunding agreements listed below such sums as shall then be due and past-due thereunder and shall in the month of July in each year thereafter, or as soon thereafter as practical, pay to the holders of said refunding agreements such sums as shall be due thereunder for the preceding twelve months until the amount due under such agreements is paid in full or until the term of each agreement expires, whichever occurs first. The sums due under each of said agreements shall be certified to Trustee by Dyke in

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writing. Upon receipt of said certification, Trustee shall present a true copy of said certification to the Public Utilities Commission of the State of California and upon written instructions respecting the same from said Commission, and not before, Trustee shall make payment in accordance with such written instructions.

In the event that Dyke shall fail to certify any of such refund payments to Trustee, any sums remaining to a total not exceeding \$22,934.60, shall become the property of the State of California and Trustee shall, on July 1, 1980, pay the same into the Treasury of the State of California.

<u>Date</u>	<u>Designee and Description</u>	<u>Amount</u>
<u>1953</u>		
2-28	Bryan & Kraeck Tract #1569	\$ 4,641.00
12-31	Wm. Gutosky Partial system - Tract #1543	3,475.70
	Robert Shannon Partial system - Tract #1594	2,455.00
<u>1954</u>		
2-28	Charles Brunzel Donated system	1,800.00
5-27	Louis Palm - paid by Mrs. A. Hartlett 4" pipe for service re: Rowland Well	1,000.00
<u>1955</u>		
3-31	Thomas J. McCarthy Donated mains	1,140.21
8-31	C. H. Druse Extra work on Tracts #2027 & #1934	700.00
<u>1956</u>		
1-31	Clyde Plumbing Tietz job - Brookhurst & Chapman	910.00
2-28	Richfield Oil Water laterals to meters-Katella & Euclid	531.00
	Rodney V. Jackson	100.00
<u>1958</u>		
2-28	William E. Otis, Jr. 2856 Chapmen S/E corner	1,483.55
	Oscar Milbrat Service station, 13041 Chapman	1,748.00
3-31	Mary Finley Mains - Ball Road	130.19
	Ora J. Range Mains - Ball Road	130.19
	Albert Hallsted Gulik Mains - Ball Road	130.19
	Mrs. J. Mitchell Mains - Ball Road	130.19
6-30	Hubert Kleinendorst Main extension to trailer court	885.38
	Panorama Gardenland #1 Installation	1,544.00
	TOTAL	\$ 22,934.60

TRUST AGREEMENT

d. From said sums and the interest earned thereon, Trustee shall in the month of July each year hereafter, or as soon thereafter as practical, pay to the holders and assignees of the construction advance refund contracts which are covered by the "Advances Trust" established pursuant to said Commission's Decision No. 65860 (and decisions supplemental thereto) in Case No. 7586, such sums as shall be due thereunder for the preceding twelve months' period, until the amount due under said contracts is paid in full or until the term of each contract expires, whichever occurs first; provided that no payment shall be made pursuant to this subparagraph d until said "Advances Trust" is exhausted. The sum due under each of said contracts in each year shall be certified to Trustee by Dyke in writing. Upon receipt of said certification, Trustee shall present a true copy of said certification to the Public Utilities Commission of the State of California and upon written instructions respecting the same from said Commission, and not before, Trustee shall make payment in accordance with such written instructions.

2. In the event that Dyke may own or hereafter acquire by assignment or otherwise any of the construction advance refund contracts listed in paragraph 1b above, Dyke may, with the written approval of the Commission, at any time deliver and surrender such contract to Trustee, and Trustee thereupon pay from the funds in its possession to Dyke the then present worth of the remaining balance of such contract, said present worth being that corresponding to an interest rate of 6 percent per annum as applied to said remaining balance.

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TRUST AGREEMENT

3. Any funds remaining at the termination of this agreement, except those sums which may have escheated as provided in paragraph 1c hereinabove, shall be delivered to Dyke, less the reasonable fees and expenses of Trustee. This trust agreement shall terminate on December 31, 1980.

4. Neither this agreement nor the trust created hereby may be amended, modified, revoked, cancelled, or superseded without the written authorization of the California Public Utilities Commission.

5. Trustee may resign hereunder upon 90 days' written notice to Dyke and to the Public Utilities Commission of the State of California and Dyke shall, with the written consent of said Commission, forthwith appoint another trustee as successor trustee hereunder, and Trustee shall transfer to such successor all funds in its possession.

6. Trustee shall furnish Dyke annually, and shall present to the Public Utilities Commission a copy thereof, a statement of receipts and disbursements. Dyke and said Public Utilities Commission may inspect Trustee's books and records pertaining to this trust agreement at any reasonable time.

TRUST AGREEMENT

7. Trustee shall receive compensation as follows, said compensation to be paid by Dyke and not to be a charge against this trust fund except as provided in paragraph 3 hereof:

- a. An acceptance fee of \$500.
- b. An annual fee, not in excess of \$495, computed on the basis of \$5 per annum per contract.
- c. Such reasonable compensation for extraordinary services as may be approved by the Public Utilities Commission.

IN WITNESS THEREOF, the parties hereto have executed this written agreement on the day and year first hereinabove written.

DYKE WATER COMPANY

By _____

Title _____

By _____

Title _____

FARMERS & MERCHANTS TRUST COMPANY
OF LONG BEACH, CALIFORNIA

By _____

Title _____

By _____

Title _____

Decision No. 68272

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DYKE WATER COMPANY, a corporation,)
 for an order authorizing it to sell,)
 transfer and convey a major portion)
 of its water service system and)
 utility plant in Orange County,)
 California, to the CITY OF GARDEN)
 GROVE WATER CORPORATION, a non-)
 profit corporation under provisions)
 of Section 581 of the Public Util-)
 ities Code, and for said City of)
 Garden Grove Water Corporation to)
 lease said water system to the City)
 of Garden Grove.)

Application No. 46889
 (Filed August 14, 1964)
 (Amended Sept. 23 and
 October 14, 1964)

BENNETT, William M., Commissioner; dissenting opinion:

I dissent to the decision herein with the conditions attendant thereon. This is a proceeding seeking Commission authorization for the transfer and sale of public utility property pursuant to Section 851 of the Public Utilities Code. Under that Section it is our function to determine whether or not such property is "necessary or useful in the performance of its duties to the public." This order goes far beyond that.

The Commission has determined the precise liability of the Dyke Water Company to numerous contractors, most of whom are, I am sure, home builders. The absolute order to pay the precise amounts set forth in Appendix A is made regardless of any valid defenses to such contracts and is granting a windfall to some of those contractors who no doubt have already recouped their investment by virtue of selling the houses in the tracts herein involved.

Our great concern with the welfare of subdividers is not supported by any authority in the Code. Our obligation is toward

ratepayers and it does not include protection of the creditors of a public utility in a proceeding such as this. This is public utility property, title to which is vested in the applicant. The courts of this state are quite competent to dispose of any legitimate claims applied against the proceeds from the sale of such property. Furthermore, the action of the Commission presumes an unwillingness upon the part of this applicant to meet its lawful obligations and further decides conclusively that these are, in fact, lawful obligations unmindful of any defenses that might exist thereto. The legitimate question arises as to how this special treatment of sub-dividers apart from other creditors -- and there must be some -- is justified and how in any way it benefits the ratepayers of this public utility water corporation.

It is startling to note that this order relating to the so-called Garden Grove portion of the system directs that there be paid from the property devoted to serving the public in this system moneys for contracts relating to the Anaheim portion of the system. The Anaheim proceeding is past and not now before us and yet the Commission arbitrarily makes such an order.

Typical of the cavalier treatment unsupported by authority or reason is the directive in the Trust Agreement (Appendix A, page 7 of 10) that "any sums remaining to a total not exceeding \$22,934.60, shall become the property of the State of California and Trustee shall, on July 1, 1980, pay the same into the Treasury of the State of California."

Here we are passing title to moneys with no authority so to do in my judgment, and simply upon the wish that the applicant should not retain such dollars. The basis upon which the passing of such funds to the State of California is made is on the theory of

"escheat." It is noted in Appendix A on page 9 of 10, that reference is made to those sums "which may have escheated as provided in paragraph 1c hereinabove." There is no provision in law which provides for the escheat of moneys of this nature despite the belief that this Commission can sweep in such moneys under some vague but unspecified escheat law.

These conditions are especially onerous because they accompany an order which is permissive in nature given to an applicant anxious for Commission authority to make a sale and so undoubtedly in a most reluctant position to challenge conditions which are clearly unlawful. And simply because such conditions are not tested does not make them right. It merely makes them go unchallenged.

The Commission is now embarking upon a role far beyond its authority.

Dated at San Francisco, California, this 4th day of December, 1964.


WILLIAM M. BENNETT, Commissioner