

ORIGINAL

Decision No. 68378

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the matter of a
proposed sale and transfer by
DYKE WATER COMPANY, a corporation,
of a portion of its property to
the City of Anaheim.)

Case No. 7586

SECOND SUPPLEMENTAL ORDER AUTHORIZING
DISBURSEMENT OF FUNDS FROM ADVANCES TRUST

The Commission, by Decision No. 65860, issued August 6, 1963, authorized Dyke Water Company to transfer a portion of its properties to the City of Anaheim, subject to certain conditions. On August 27, 1963 the Commission, by supplemental order (Decision No. 65929), approved specified escrow instructions for such transfer. The instructions provide that they may not be changed without Commission consent. On September 18, 1963 (Decision No. 66041) and December 10, 1963 (Decision No. 66431) the Commission issued further supplemental orders authorizing certain corrections and additions to the escrow instructions.

The escrow instructions, among other things, provide for the deposit of \$200,000 with the Farmers and Merchants Bank of Long Beach, as trustee, for the purpose of paying, from time to time, refunds to subdividers and others pursuant to contracts for construction advances executed by the water company with developers in the Anaheim area. The escrow was closed, the deposit in trust was made and the Commission, by an order dated December 4, 1963 (Decision No. 66425), issued on the written request of the water company, authorized disbursement of the sum of \$78,883.73 from the trust fund to pay a number of designated persons entitled to refunds in 1963, as shown in Appendix "A" attached to the order.

The company, on October 21, 1964, filed a similar written request for authority instructing the Farmers and Merchants Bank of Long Beach, as trustee, to disburse additional funds in the amount of \$68,073.83 from the so-called "Advances Trust", for payment of refunds due and payable in 1964 on construction contracts relating to properties included in the Anaheim transfer, as indicated in an exhibit (Exhibit "A") attached to the request.

The staff, as it did in connection with the former request, has reviewed the proposed payments. It will be necessary to modify the authority requested, as follows:

- a. Authorization for 1964 refund payments on certain Lansdale family contracts, now expired, which were assigned on February 15, 1963 to Santana, Inc., Trustee, for loans made to one of the utility's officers, will be withheld pending computation by the utility and its advice to the Commission showing revenues collected under these agreements and the amount of refunds due and payable thereunder as of the dates of expiration of the agreements. The agreements referred to, listed on page 1 of Exhibit "A" of the company's request are as follows:

<u>Tract No.</u>	<u>1964 Refund Request</u>	<u>Contract Expiration Date</u>
1569	\$2,611.00	May 2, 1962
1633	735.20	May 2, 1962
1919	2,870.77	January 28, 1964
1951	2,554.97	September 20, 1964

Payments on the above contracts will not be authorized from the "Advances Trust", in any event, in excess of the refunds due and payable as of the respective expiration dates of the contracts.

- b. The amounts herein authorized to be disbursed from the "Advances Trust" will not include the requested payments to Howard Morf for Tracts 3029, 3104 and 3124 totaling \$2,114.63, as shown on Page 7 of Exhibit "A" attached to the company's request. Those tracts, located in the Anaheim area, are subject to advance contracts for which payment of balances due, totaling \$17,401.43 (which sum includes the 1964 refund payments requested by the company herein),

have already been provided for in a recent decision authorizing the company to transfer the major portion of its properties to the City of Garden Grove Water Corporation (Decision No. 68272, dated November 25, 1964, Application No. 46889, as amended). The company may renew its request for authority to pay the 1964 refunds due and payable on those agreements if the Garden Grove transfer is not consummated.

Good cause appearing, IT IS ORDERED that, as modified above, this Commission consents to the disbursements shown on Appendix A, attached hereto, and Farmers and Merchants Bank of Long Beach as said trustee is hereby authorized and instructed to withdraw from the Advances Trust the amount of \$57,187.26 and to place said amount in a separate commercial account, so that the payments listed on said Appendix A may be paid from said account by checks drawn to said payees. Without further order of this Commission, no payments from said separate commercial account may be made except by checks drawn in the amounts shown, and in favor of the persons listed on said Appendix A.

The Secretary is directed to deliver to Farmers and Merchants Bank of Long Beach a certified copy of this order.

Dated at San Francisco, California, this 22nd day of DECEMBER, 1964.

Frederick B. Hallock
President

George J. Trover

Commissioners

Commissioner Peter E. Mitchell
present but not voting.

*I dissent to the action herein as beyond our jurisdiction. Very respectfully submitted
Ed. Sparingly dated
William L. Bland*

APPENDIX A
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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
1446	Mr. Robert D. Moore, Jr. P. O. Box 1227 Santa Ana, California	\$ 391.94
1567	Anaheim Terrace 444 No. Camden Drive Beverly Hills, California	675.30
1567	William Lyon, Agent 905 N. Euclid Avenue Anaheim, California	610.22
1781	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	1,019.24
1851	Mr. H. L. Bryan, Sr. 146 E. Orangethorpe Anaheim, California	539.90
1931	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	850.82
2013	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	653.78
2015	Miles Thomas Company 1314 Circle Way Laguna Beach, California	873.54
2062	Mr. Aubrey Reynolds 12132 - B. Haster Street Garden Grove, California	688.51
2080	Elmer E. & Lillian B. Wright 1509 No. Towner Santa Ana, California	268.46
2081	Financial Placements 444 No. La Brea Los Angeles 36, California	1,192.36
2111	Dale E. and Frances R. Turner 1011 Merry Oak Lane Arcadia, California	2,221.46
2116	Mr. Joseph L. Terrell 1627 Bluff Road Montebello, California	1,646.14

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
2145	Robertson Investment Company 117 North Robertson Blvd. Los Angeles 48, California	\$ 924.45
2159	Elmer E. Wright and Lillian B. Wright 1509 N. Towner Street Santa Ana, California	733.16
2176	Mr. Robert D. Moore, Jr. P.O. Box 1227 Santa Ana, California	349.83
2177	Mr. Robert H. Grant 1665 So. Brookhurst Anaheim, California	348.67
2180	Mr. Ernest A. Wilson 307 B Street San Mateo, California	582.57
2181	Mr. Ernest A. Wilson 307 B Street San Mateo, California	1,460.26
2183	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	1,085.41
2210	Joan C. Bryan-50% H. L. Bryan, Jr.-50% 146 E. Orangethorpe Anaheim, California	476.83
2217	Mr. Robert H. Grant 1665 South Brookhurst Anaheim, California	197.90
2228	Vandruff Homes, Inc. 2973 W. Rome Avenue Anaheim, California	2,241.14
2243	Gilbert Land Corporation 12132 - B. Haster Garden Grove, California	270.94
2271	William Lyon and Jack Rosenberg, Trustees 905 N. Euclid Avenue Anaheim, California	424.29

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
2272	William Lyon and Jack Rosenberg, Trustees 905 N. Euclid Avenue Anaheim, California	\$ 426.67
2273	William Lyon and Jack Rosenberg, Trustees 905 N. Euclid Avenue Anaheim, California	686.17
2274	William Lyon and Jack Rosenberg, Trustees 905 N. Euclid Avenue Anaheim, California	548.50
2275	William Lyon and Jack Rosenberg, Trustees 905 N. Euclid Avenue Anaheim, California	517.63
2294	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	475.18
2295	Mr. Robert D. Moore, Jr. P.O. Box 1227 Santa Ana, California	616.85
2309	Sunny Homes, Inc. - 67½% P.O. Box 509 Santa Ana, California (C. B. Robertson - 32½%)	1,874.80
2319	The Gamble Company 9772 Katella Avenue Anaheim, California	936.58
2342	Mr. Robert D. Moore, Jr. P.O. Box 1227 Santa Ana, California	147.74
2379	Jack Rosenberg and William Lyon, Trustees 905 N. Euclid Avenue Anaheim, California	485.10
2400	Irving and Sylvia Cassell c/o Raymond E. Levy, Atty. 211 Sutter Street San Francisco 8, California	1,245.12
2410	Al Barker 672 So. LaFayette Park Place Los Angeles 57, California	96.20

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
2410	Harold Grimes, Jr. 1243 So. Main Street Santa Ana, California	\$ 48.10
2410	Fritz Goossens 12501 Euclid Avenue Garden Grove, California	37.41
2410	Russ Boorey 13431 Simmons Orange, California	37.41
2410	Sunny Homes, Inc. P.O. Box 509 Santa Ana, California	849.77
2418	Robertson Investment Company 117 North Robertson Blvd. Los Angeles 48, California	276.73
2470	Mr. Al Barker 672 So. LaFayette Park Place Los Angeles 57, California	98.49
2470	Mr. Harold Grimes, Jr. 1243 So. Main Street Santa Ana, California	49.25
2470	Mr. Fritz Goossens 12501 Euclid Avenue Garden Grove, California	38.30
2470	Mr. Russ Boorey 13431 Simmons Orange, California	38.30
2470	Sunny Homes, Inc. P.O. Box 509 Santa Ana, California	870.03
2473	Jack Rosenberg and William Lyon, Trustees 905 No. Euclid Avenue Anaheim, California	152.84
2520	Harbor Homes 620 Vance Street Santa Ana, California	1,201.89

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
2527	Jack Rosenberg and William Lyon, Trustees 905 N. Euclid Avenue Anaheim, California	\$ 460.85
2529	Mr. Aubrey Reynolds 12132 - B Haster Garden Grove, California	916.73
2563	Moore Built Homes #10 1665 So. Brookhurst Street Anaheim, California	298.23
2563	Gil - Ball Corporation 1665 So. Brookhurst Street Anaheim, California	66.15
2563	Mr. Robert D. Moore, Jr. P.O. Box 1227 Santa Ana, California	492.81
2563	Grove View Corporation 1665 So. Brookhurst Street Anaheim, California	281.76
2611	Irving and Sylvia Cassell c/o Raymond H. Levy, Atty. 211 Sutter Street San Francisco 8, California	2,668.05
2653	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	2,190.67
2654	Mr. Howard Morf 1770 E. Valley Road Santa Barbara, California	2,573.52
2689	Mr. Robert D. Moore, Jr. P.O. Box 1227 Santa Ana, California	503.84
2691	Mr. Homer Toberman Room 204, 1717 No. Highland Hollywood 28, California	332.75
2705	Stanley E. Nash 7331 Woodrow Wilson Drive Los Angeles 46, California	263.50

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
2715	Moore Built Homes #18 and #20, Inc 1665 So. Brookhurst Street Anaheim, California	\$ 520.44
2722	Mr. Robert H. Grant 1665 So. Brookhurst Street Anaheim, California	702.29
2737	Moore Built Homes #11, Inc. 1665 So. Brookhurst Street Anaheim, California	326.75
2738	Mr. Robert H. Grant 1665 So. Brookhurst Street Anaheim, California	330.79
2742	Mr. Robert D. Moore, Jr. P.O. Box 1227 Santa Ana, California	368.79
2748	Mr. Vernon Stuewe 1117 Redwood St. Corona, California	149.00
2766	L. H. Perry Inc. 2025 Victoria Santa Ana, California	322.59
2773	Lawrence Homes, Inc. and Hamden Homes, Inc. 10401 Magnolia Avenue Anaheim, California	569.72
2794	Mr. A. F. Barker 672 S. LaFayette Park Place Los Angeles 57, California	508.48
2833	Van Druff Builders, Inc. 8021 E. Rome Avenue Anaheim, California	1,113.70
2839	Van Druff Builders, Inc. 2973 W. Rome Avenue Anaheim, California	1,745.67
2841	Van Druff Builders, Inc. 2973 W. Rome Avenue Anaheim, California	748.44

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
2849	Royal C. Marten and Louise H. Marten 9761 Western Anaheim, California	\$ 81.77
2864	Doyle and Shields Construction Co. 831 South Manchester Avenue Anaheim, California	322.59
2874	Van Druff Developments, Inc. 2973 W. Rome Avenue Anaheim, California	1,024.95
2875	Van Druff Developments, Inc. 2973 W. Rome Avenue Anaheim, California	650.38
2876	Van Druff Developments, Inc. 2973 W. Rome Avenue Anaheim, California	516.63
2937	Alert Builders, Inc. c/o Mr. Ray Swentek P.O. Box 176 Dana Point, California	238.14
3016	Alert Builders, Inc. c/o Mr. Ray Swentek P.O. Box 176 Dana Point, California	158.35
3147	Sunny Homes, Inc. P.O. Box 509 Santa Ana, California	344.77
3148	Moore Built Homes #13, Inc. 1665 So. Brookhurst Street Anaheim, California	463.62
3178	Harbor Homes P.O. Box 509 Santa Ana, California	151.42
3247	Moore Built Homes #10, and Moore Construction Company 1665 So. Brookhurst Street Anaheim, California	576.58

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<u>TRACT NO.</u>	<u>NAME AND ADDRESS</u>	<u>AMOUNT</u>
3349	Moore Built Homes #11, Inc. Moore Built Homes #13, Inc. Moore Built Homes #15, Inc. 1665 So. Brookhurst Street Anaheim, California	\$ 378.38
3177	G. A. Condra and Lillian Condra 1619 So. Euclid Avenue Anaheim, California	40.89
2116	Mr. Joseph L. Terrell 1627 Bluff Road Montebello, California	1,301.09

I dissent.

This order is illustrative of the error made by the Commission in presuming to mediate money claims between the Dyke Water Company and its creditors. The list of creditors to whom payment has been directed contains assignees of subdividers some of whom will be unexpectedly but nonetheless delighted recipients of money payments they neither expected nor claimed. And the staff of this Commission which is overseeing the disbursing of these funds is doing so admittedly unmindful of any claims thereto and simply because those named in the appendix attached to the order herein are contained upon the books of the Dyke Water Company. I have consistently pointed out that the action of the Commission as illustrated by today's order is beyond our jurisdiction and while there are sufficient monies available can be indulged in as a matter of sheer power although in my judgment not according to law. What action is the Commission going to take when there are competing claimants and the original trust monies become dissipated. When that eventuality arises the Commission will clearly have to act as some type of a trustee or referee totally contrary to what was prohibited by the Supreme Court of this State Walter J. Hempy v. Public Utilities Commission 56 Cal. 2d 214.


WILLIAM M. BENNETT
Commissioner

San Francisco, California
December 22, 1964