

ORIGINALDecision No. 69105

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 VALLECITO WATER COMPANY, a Corpor-)
 ation, for authority to sell and)
 issue 10,000 shares of its Series)
 A Preferred Stock.)

Application No. 47094

(Filed November 4, 1964)
(Amended January 22, 1965)

William M. Lassleben, Jr., for applicant.
Brobeck, Phleger & Harrison, by Robert N.
Lowry, and John E. Skelton, for San
Gabriel Valley Water Company; and
W. I. Kennedy, for Union Pacific Rail-
 road, interested parties.
Raymond E. Heytens, Jerry J. Levander,
 and Robert C. Durkin, for the Commission
 staff.

O P I N I O N

Vallecito Water Company, a public utility water corporation under the jurisdiction of this Commission, seeks an order of the Commission authorizing it, subject to first effecting the appropriate amendments to its articles of incorporation, to sell and issue 10,000 shares of its \$50 par value Series A preferred stock for cash at par, and by the amendment to issue not to exceed 50,000 shares of its \$10 par value common stock in exchange for and on the basis of five shares of its common stock for each share of its Series A preferred stock tendered by the holder thereof for conversion into common stock prior to the expiration of the conversion period December 31, 1970.

Public hearings were held before Examiner Warner on January 11, 14, 18, and 22, 1965, at Los Angeles. The matter was consolidated for hearing with Applications Nos. 47052, 47111, and 47138 of Vallecito to deviate from its main extension rule to serve nine tracts and a development, 235 acres known as the Union Pacific Railroad industrial development, and 160 acres outside of its certificated area, respectively; with Vallecito's petition for modification of Decision No. 68077 in Application No. 46658, which directed Vallecito to publish a notice of its financial inability to further extend its water system under its main extension rule because the ratio of advances for construction exceeded 50 per cent of its net utility plant; with San Gabriel Valley Water Company's Application No. 47112 to purchase Vallecito's preferred stock if the latter is authorized herein to issue such stock; and with further hearing on San Gabriel's Application No. 46987 for a certificate to extend its water system to serve the Union Pacific industrial development within Vallecito's certificated service area in the City of Industry. The instant application and the last-named matter were submitted for decision on January 22, 1965; the other matters were continued to a date to be set.

The Commission's Rules of Procedure, in Article 7, Applications to Issue Stock or Evidences of Indebtedness or to Assume Liabilities, Rule 26, Exhibits, provide that with the application shall be filed: (a) Articles of Incorporation and effective amendments. Rule 16, Articles of Incorporation, of Article 4, Applications Generally, requires, among other things,

the filing of a certified copy of articles of incorporation to be annexed to the original of the application. The record shows that no certified copy of the amendment required by the Commission's Rules has been filed herein.

In view of the Commission's finding in Decision No. 67261, dated May 26, 1964, in Vallecito's Application No. 45688, that "No application pursuant to Section 852 of the Public Utilities Code to transfer its stock to either Cal-Fin, the alter ego of Suburban, or Bank, as holder, was made by Vallecito or granted by the Commission," and that pursuant to said Section, such transfer was void and of no effect, and in view of the fact the record herein shows that Vallecito has not reversed its stock transfer records, or caused them to be reversed, to reflect the ownership of its stock prior to its unlawful transfer, no amendment to Vallecito's articles of incorporation can be considered to have been, or about to be, filed.

The Commission finds that Vallecito Water Company has not complied with Rules 26 and 16 of the Commission's Rules of Procedure, and further finds that Vallecito has failed to show that its articles of incorporation could be lawfully amended to provide for the issuance of preferred stock.

Based on the foregoing findings, alone, it is concluded that the application should be denied.

As further grounds for denying the application, the record shows that the proposed issuance of 6% convertible preferred stock is not the best financial proposal available to applicant.

Exhibit No. 104 compares a proposal of San Gabriel Valley Water Company to purchase 12,000 shares of Vallecito's common stock at \$16.10 per share and lend Vallecito \$306,800 on a 5% note, with Vallecito's proposal to issue the 10,000 shares of preferred stock.

Said exhibit shows that due to less annual dividend requirement (\$61,050 for preferred stock versus none for common stock), and due to income tax savings from annual interest expense deductions of \$15,340, Vallecito's annual cash savings of San Gabriel's proposal over Vallecito's proposal would be \$45,710. Vallecito's proposal would produce an unwarranted cash requirement.

The record further shows that Vallecito's proposal to convert its preferred stock to common stock at a ratio of 5 of the latter for one of the former for \$10 per share of common would dilute present common shareholders' equity. Book par value of common stock is \$12.48 per share and San Gabriel has a standing offer to buy Vallecito stock for \$16.10 per share. If San Gabriel were to withdraw its offer, which the record shows it would, the present market for Vallecito stock would be undermined.

Finally, Exhibit No. 120 shows that under Vallecito's proposal to issue preferred stock the per cent earnings on common equity for the estimated year 1965, after including salaries of management made effective January 1, 1965 on January 19, 1965, of \$12,000 annually, would be 1.9 per cent. Under San Gabriel's offer to purchase common stock and issue a note to Vallecito all totalling \$500,000, said per cent earning on common equity would be 6.2 per cent. As a result of the estimated low equity return under Vallecito's proposal there is a greater likelihood that rate relief would be required under Vallecito's proposal than under that proposed by San Gabriel.

The Commission therefore further finds that the granting of this application would be adverse to the public interest, and further concludes that the application should be denied.

ORDER

IT IS ORDERED that this application is denied.

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

Dated at San Francisco, California, this 20th day of May, 1965.

Frederick B. Holcomb
President

George H. Thayer

August

Commissioners

I will file a dissent
Peter S. Mitchell

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COMMISSIONER PETER E. MITCHELL DISSENTING:

The majority opinion generates a plain and very simple maxim in its theme. It perhaps can best be delineated sententiously as: Rely not on the right received from the Commission but on the right of the Commission to change its mind.

I agree with the majority -- such a concept is indeed the most advanced and pragmatic approach yet to utility regulation. I only disagree that it is the proper approach.

The Vallecito Water Company, in February, 1957, was granted a certificate of public convenience and necessity by this Commission to furnish water to the 235 acres of industrial property now at issue. ^{1/} This certificate has never been revoked by the Commission nor does the majority opinion do so. I will not expand on the legal rights and obligations which the Commission creates by the issuance of a certificate for it may be the courts will exercise their independent judgment in this regard.


True enough, along the way, Vallecito Water Company has encountered some financing problems. But then -- is there any major water utility in this State that can claim otherwise? Harken to the comments of the utility and finance divisions of this Commission

^{1/} Decision No. 54523, dated February 11, 1957. Note: In that decision, both San Gabriel and Vallecito filed similar applications to serve the area. The Commission rejected San Gabriel's application and granted Vallecito a certificate. As President of the Commission in 1957, I participated in and signed the decision.

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which state in part: ".... it appears that the proposed issue of preferred stock (Application No. 47094) will definitely strengthen Vallecito's financial position and that it would therefore be able to obtain up to \$600,000 of cash funds through short- or long-term debt financing to finance construction or to pay refunds on advance contracts."^{2/} I endorse these remarks but hasten to add that these are not my words that are not accepted; these are the words of the best qualified and best informed experts in their fields in the State of California.

The effect of the majority action is quite serious. It is an invasion of certificated territory of a public utility to award the said territory to an applicant unsuccessful in 1957. It further creates an atmosphere which must be reflected by the parties and in the attitude of the staff in subsequent affiliated matters before this Commission.^{3/}


Peter E. Mitchell, Commissioner

^{2/} Memorandum dated May 10, 1965.

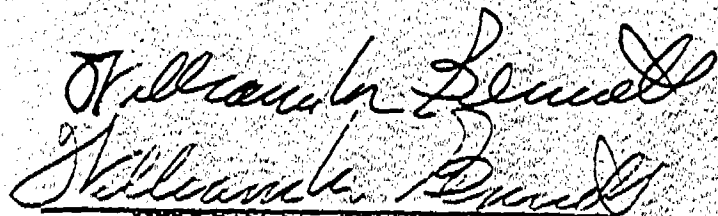
^{3/} Case No. 8086, dated December 15, 1964 (see my dissent, Decision No. 63217, dated November 10, 1964, requesting an investigation). Case No. 8086 has not even been set for hearing.

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DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

It is a serious thing for all the reasons that a basic knowledge of public regulation would indicate to permit one utility to serve in territory already granted to another public utility. Absent the most unusual circumstances, it is neither permitted by law nor is it justified. Accordingly I would grant the authority as requested by Vallecitos Water Company herein.



WILLIAM M. BENNETT
Commissioner

San Francisco, California

May 21, 1965