

ORIGINAL

Decision No. 69716

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 its remaining)
 water service system and utility)
 plant in Orange County, California,)
 to the CITY OF WESTMINSTER, a)
 municipal corporation, under provi-)
 sions of Section 851 of the Public)
 Utilities Code, and for an order of)
 the Commission relieving said Dyke)
 Water Company of its utility)
 obligation for public water service)
 in said Orange County.)

Application No. 47601
 Filed May 20, 1965

Lally & Martin, by Thomas W. Martin, for
 applicant Dyke Water Company.
Charles Carlstroem, for applicant City
 of Westminster.
Cyril Saroyan, with Raymond E. Heytens,
 for the Commission staff.

O P I N I O N

By Decision No. 69444, issued in this matter on July 27, 1965, Dyke Water Company was authorized to sell and transfer its Westminster water system to the City of Westminster, and public hearing was set for the purpose of receiving (1) evidence respecting conditions to be imposed as to the disposition of the proceeds of the sale and (2) any other information pertinent to said sale.

After due notice, public hearing was held before Examiner Emerson on August 10, 1965, at Los Angeles. Only one protest has been brought to the Commission's attention; the protesting person objecting to approval of the transfer until such time as Dyke Water

Company shall have refunded "overpayments" made by its customers.¹
The matter is submitted and is now ready for decision.

The authorization to transfer the Westminster system, Decision No. 69444, was conditioned upon the refunding of customers' deposits and upon the placing of the full amount of the proceeds of sale in escrow with the disbursal thereof depending upon further order of this Commission. At the time said decision was issued, the parties contemplated transfer of the system on August 1, 1965. As of the date of hearing, the transfer had not occurred and it now appears that October 1, 1965 will be the date the city takes over operation of the system.

An examination of Dyke's accounts by an accountant on the Commission staff, made with the full cooperation of Dyke, shows that there are seven main-extension contracts which are subject to future refunding. Dyke and the staff are in agreement as to the details of these contracts and as to provisions for refunding them. The future refund balances of these contracts, as of June 24, 1965, totaled \$69,594.58. Estimated normal payment of refunds due during July 1965 reduce such total by \$7,128.60. Of the remainder, it is estimated that approximately \$16,862 will not be subject to future refunding because of normal expiration of certain of the contracts, thus leaving a future refunding requirement of about \$45,600. A trust fund of \$38,414 at 4 percent interest should adequately provide for such future refunding.

The record shows that Dyke has paid in full its replenishment assessment (pumping tax) to the Orange County Water District

¹ The "overpayments" referred to are those monies collected by Dyke in excess of those for which its tariffs provide and are treated in this Commission's decisions and orders respecting Application No. 39303 and Cases Nos. 5841 and 7586; namely, Decisions Nos. 59828, 65266, 65860, 67497 and decisions and orders supplemental thereto. Said "overpayments", aggregating \$266,342, have been ordered to be refunded.

to June 30, 1965. Further payment to the district will depend upon the actual date of transfer of the water system. Dyke will make provisions for payment of the same through its escrow instructions.

Based on the evidence, the Commission finds, in addition to the finding set forth in Decision No. 69444 in this matter, that:

1. The public interest requires that an interest bearing trust fund be established in the amount of \$38,414 for the future refunding of construction advances in accordance with the terms of contracts pertaining thereto and presently in effect on the Westminster system.

2. Farmers and Merchants Trust Company of Long Beach is an acceptable trustee for said fund.

3. Ordering paragraph 4 of Decision No. 69444, issued in this matter on July 27, 1965, should be amended to provide for the establishment of said trust fund and to permit the balance of the proceeds of sale to be disbursed as desired by Dyke.

O R D E R

IT IS ORDERED that:

1. Ordering paragraph 4 of Decision No. 69444, issued July 27, 1965, is hereby amended to read as follows:

"4. Dyke Water Company and the City of Westminster shall jointly file in this proceeding a true copy of instructions to escrow, together with a statement of acceptance thereof by the escrow holder, which escrow instructions shall provide, among other things, that out of the proceeds of sale there shall be established with Farmers and Merchants Trust Company of Long Beach, as trustee thereof, an interest-bearing trust fund in the total amount of \$38,414, said fund to be devoted only to the refunding of construction advances made for the tracts and by the contract holders listed herein and in accordance with the terms and conditions of the contracts applicable thereto:

<u>Tract No.</u>	<u>Contract Holder</u>	<u>Expiration Date</u>
2447	Trask Land Co., Inc.	1-31-76
2542	Pamela Enterprises, Inc.	8-31-65
2536	Guardian Finance Co.	2-22-76
2690	Thomas C. Bowles	9-30-75
3038/3157	Alco Construction Co.	9-21-76
3114	Evans Building Co.	9-25-76
3243	Lowell Investment Co.	10-15-78

"Dyke Water Company shall file in this proceeding a true copy of the trust agreement for implementation of the foregoing."

2. In all other respects said Decision No. 69444 shall remain in full force and effect.

3. Upon compliance with the foregoing and with Decision No. 69444 and the assumption of operation of the system by the City of Westminster, Dyke Water Company shall stand relieved of its public utility obligation to provide service to or by means of said Westminster water system.

The Secretary is directed to mail to Farmers and Merchants Trust Company of Long Beach a certified copy of this decision and a certified copy of Decision No. 69444.

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

Dated at San Francisco, California, this 21st day of SEPTEMBER, 1965.

*Myors will be
sent forth separately.
William J. ...*

Fredrick B. Holcroft

President

George J. ...


Commissioners

A. 47601

DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

Today's order is at least consistent - in my opinion consistently wrong as have other orders herein which precede today's decision. The claims of creditors upon the Dyke Water Company are matters properly to be adjudicated in the courts. I would grant the authority and transfer without conditions as is usually done here. I do so having come to the conclusion that such a transfer is not adverse to the public interest and that the conditions here imposed are beyond the business of this Commission in this proceeding.


WILLIAM M. BENNETT
Commissioner

San Francisco, Calif.
September 22, 1965