

ORIGINAL

Decision No. 73147

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BANK OF AMERICA)
 NATIONAL TRUST AND SAVINGS)
 ASSOCIATION, a national banking)
 association, to transfer assets)
 of KAVANAGH VISTA WATER COMPANY)
 and to encumber said assets by)
 taking a purchase money Deed of)
 Trust and Security Agreement)

Application No. 49625
Filed August 22, 1967

O P I N I O N

This is an application for an order of the Commission (1) authorizing Bank of America National Trust and Savings Association to sell and transfer certain assets of the public utility water system known as Kavanagh Vista Water Company to Francis H. Ferraro, and (2) authorizing Francis H. Ferraro, in acquiring said assets, to execute a Deed of Trust and a Security Agreement and to issue a note in the principal amount of \$82,500.

By Decision No. 43415, dated October 18, 1949, in Application No. 30509, the Commission granted a certificate of public convenience and necessity to D. S. Kavanagh, doing business as Kavanagh Vista Water Company, authorizing him to construct and operate a public utility water system in a portion of Fresno County.

Pursuant to authority granted by Decision No. 63554, dated April 17, 1962, in Application No. 44227, D. S. Kavanagh and Pauline Kavanagh, his wife, transferred the assets of Kavanagh Vista Water Company, except said certificate of public convenience and necessity, to Bank of America National Trust and Savings Association by way of mortgage. The purpose of the transfer was to secure indebtedness of affiliated enterprises in order to avert threatened bankruptcy proceedings. The application shows that default has occurred and that the bank has elected to foreclose its security interest under provisions of the Trust Agreement referred to in said Decision No. 63554.

In this proceeding Bank of America National Trust and Savings Association requests authority to sell and transfer all water system assets, except accounts receivable and cash, to Francis H. Ferraro for the sum of \$110,000. According to the annual report on file for the year 1966, the utility's net investment in plant as of December 31, 1966, amounted to \$101,203 after deducting the depreciation reserve.

Francis H. Ferraro, in acquiring said assets, proposes to pay \$27,500 in cash and to issue a promissory note in the principal amount of \$82,500 repayable over twenty years and bearing interest at the rate of 6-1/4% per annum. The note will be in favor of Bank of America National Trust and Savings Association and repayment will be secured by a Deed of Trust and a Security Agreement.

Information set forth in Exhibit B, attached to the application, indicates that the buyer is financially qualified to undertake the obligation of operating the system.

The Commission has considered this matter and finds that: (1) Bank of America National Trust and Savings Association has acquired the water system known as Kavanagh Vista Water Company pursuant to the Trust Agreement authorized by Decision No. 63554; (2) the proposed transactions will not be adverse to the public interest; (3) the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required for the purpose specified herein; and (4) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that the application should be granted. The action taken herein shall not be construed as a finding of the value of the properties herein authorized to be transferred nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. On or after the effective date hereof and on or before December 31, 1967, Bank of America National Trust and Savings Association may sell and transfer, and Francis H.

Ferraro may purchase and acquire, the public utility water properties and related assets referred to in this proceeding.

2. Francis H. Ferraro, on or before December 31, 1967, in acquiring said assets, may issue a promissory note in the principal amount of not exceeding \$82,500 repayable over twenty years and bearing interest at the rate of 6-1/4% per annum.

3. On or before December 31, 1967, Francis H. Ferraro, for the purpose specified in this proceeding, may execute and deliver a Deed of Trust and a Security Agreement in the same form, or in substantially the same form, as those attached to the application.

4. Francis H. Ferraro shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. On or before the date of actual transfer -

- a. Seller shall refund all customers' deposits and all advances for construction, if any, which are due to be refunded at the date of transfer. Any unrefunded deposits and advances shall be transferred to and shall become the obligation for refund of Francis H. Ferraro.
- b. Seller shall transfer and deliver to purchaser all records, memoranda and papers pertaining to the construction and operation of the properties herein authorized to be transferred and purchaser shall receive and preserve the same.

6. Francis H. Ferraro, in recording the acquisition of the water system referred to in this proceeding, shall carry forward the amount shown in the transferor's records as contributions in aid of construction.

7. If the authority herein granted to transfer properties is exercised, Francis H. Ferraro, within thirty days thereafter, shall notify the Commission, in writing, of the date of completion of such transfer.

8. Within sixty days after the consummation of the transfer herein authorized, Francis H. Ferraro shall file with the Commission a copy of each journal entry used to record the transfer on his books of account.

9. After the effective date of this order, and not less than five days before the date of actual transfer, Francis H. Ferraro shall file with the Commission a notice of adoption of the presently filed rates and rules of the water system known as Kavanagh Vista Water Company in accordance with the procedure prescribed by General Order No. 96-A. The effective date of the notice of adoption shall be concurrent with the date of actual transfer.

10. The rates and rules of the water system known as Kavanagh Vista Water Company now on file with the Commission shall be refiled within thirty days after consummation of the transfer in accordance with General Order No. 96-A, showing Francis H. Ferraro as owner. No increases in presently filed rates shall be made unless authorized by this Commission.

11. On or before the end of the third month after the consummation of the transfer as herein authorized, Francis H. Ferraro shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the water system known as Kavanagh Vista Water Company for the period commencing with the first day of the current year to and including the effective date of the transfer.

12. In the event the transfer authorized in Ordering Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to Francis H. Ferraro, authorizing him to construct and operate a public utility for the distribution and sale of water for domestic purposes, within the territory described as Tract No. 1094, Kavanagh Vista, Fresno County, California, located in the NW $\frac{1}{4}$ of the SW $\frac{1}{2}$ of Section 4, T. 13 S., R. 20 E., M.D.B. & M., and consisting of a total area of ten acres, more or less, as delineated upon the map attached to the original Application No. 30509, and in an additional area surrounding said Tract No. 1094 as delineated on the map filed as Exhibit No. 1 in said proceeding.

13. The certificate of public convenience and necessity granted in Ordering Paragraph No. 12 of this order shall supersede the certificate of public convenience and necessity granted to D. S. Kavanagh by Decision No. 43415, which certificate shall be revoked effective concurrently with the effective date of the tariff adoption notice required by Ordering Paragraph No. 9 hereof.

14. Upon compliance with all of the conditions of this order, Bank of America National Trust and Savings Association and D. S. Kavanagh shall stand relieved of all further public utility obligations in connection with the operation of the public utility water system known as Kavanagh Vista Water Company, herein authorized to be transferred.

15. This order shall become effective when Francis H. Ferraro has paid the fee prescribed by Section 1904 (b) of the Public Utilities Code, which fee is \$83.

Dated at Los Angeles, California,
this 2nd day of OCTOBER, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

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

