

ORIGINALDecision No. 73555

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HAPPY VALLEY WATER COMPANY, a pub-)
 lic utility water corporation, to)
 sell and J. H. TRISDALE (also known)
 as John Trisdale), an individual,)
 to buy utility property and operat-)
 ing certificate.)

Application No. 49764
 (Filed October 31, 1967)

Marvin Handler, of Handler, Baker & Greene,
 for Happy Valley Water Co., applicant.

Frank W. Shuman, for John H. Trisdale,
 applicant.

Henry Saunders, of Leep & Saunders, for
 Clear Creek Community Services Dis-
 trict; Jack Halpin, for Igo-Ono Community
 Services District, protestants.

Robert A. Rehberg, County Counsel, for
 County of Shasta, interested party.

John D. Reader, for the Commission staff.

O P I N I O N

Happy Valley Water Company, a corporation that since 1925 and until recently has provided public utility ditch side water service, chiefly for irrigation, in Divisions 1, 2 and 3 of its system in and near the communities of Ono, Igo and Olinda, Shasta County, pursuant to a certificate of public convenience and necessity granted by this Commission (Decision No. 15417, September 19, 1925, Application No. 11646-27 CRC 55), has requested authority to transfer its certificate and the water storage and distribution works located and serving some 27 irrigation customers in the Ono and Igo areas (Divisions 1 and 2), to John H. Trisdale, who has joined in the application.

The transfer application and a related, long-standing service and rate case (Case No. 6679, Application No. 43326,

consolidated) were submitted for decision at the conclusion of a public hearing held, after due notice and on a consolidated record, on November 28 and 29, 1967 at Redding, before Examiner Gregory.

The service and rate cases currently involve a petition, filed by the utility on June 14, 1967: (a) to continue temporary suspension of utility water service in the Olinda area (Division 3), authorized in 1966 (Interim Decision No. 70573, April 15, 1966) pending construction and operation by Clear Creek Community Services District of an underground system for distribution of Bureau of Reclamation water from Whiskeytown Dam (the underground system became operative about June 1, 1967), and (b) to revoke a so-called "tie order" (Second Interim Decision No. 62429, August 18, 1961, Case No. 6679) requiring prior Commission authority for sale of the company's lands.

The lands, now totaling some 7,360 acres, lie chiefly (about 6,000 acres) in the Olinda area, within and outside the Clear Creek District boundaries, and on three streams in the general area of the company's main storage and diversion works: North Fork Cottonwood Creek (location of Messelbeck Dam and Rainbow Lake), about 1,000 acres; Moon Fork, approximately 120 acres and Hoover Creek, about 240 acres. Decision No. 70573, supra, abrogated the "tie order" with respect to about 423 acres of land in Division 3, then undergoing subdivision development. Counsel for the company and the Clear Creek District stipulated, at the recent hearing, that if the transfer were authorized the company would agree to, and furnish necessary documents for, the release of certain assessment liens (see Decision No. 15417, supra) on its lands in Division 3, in exchange for an agreement by the affected landowners, with supporting documents, to waive their claims to receive shares of the

company's Class B stock, thus facilitating future development of those lands by the present owners of the company, Frank Magaldi and his associates, who are primarily land developers. As a result, if the transfer is authorized and the Happy Valley Water Company is, in consequence, relieved of its utility obligations in Division 3, no necessity then would appear to exist for further operation of the "tie order."

The relief sought by the company's petition, mentioned above, was foreshadowed by the 1966 Interim Decision No. 70573, supra, which noted both the increasing sums (presently totaling some \$80,000) committed by the company for system repairs and maintenance since 1964, when the present owners acquired control, and the probable consequences of cutting off Division 3 from the utility's service area upon inauguration of the Clear Creek District's underground distribution system.

Although, because of the intimate connection between them, the service and rate proceeding was heard on a consolidated record with the transfer application, disposition of the petition filed June 14, 1967 and final disposition of Case No. 6679 and Application No. 43326 may more appropriately be accomplished, in light of the current record, by a brief, separate decision in those matters, to be issued contemporaneously with the decision in the transfer application.

We now pass to a summary of the transfer arrangements disclosed by the application and related agreements, as developed at the recent hearing. The two basic written agreements that embody the terms of the transfer are: (a) an agreement and addendum thereto, dated September 6, 1967 (Application, Exhibit A); (b) a supplemental agreement, concerning a dam or reservoir site on Hoover Creek, dated December 8, 1967 and filed December 11, 1967, that

incorporates, in specific terms, an oral understanding reached by Happy Valley and Trisdale at the hearing.

The agreements, together with evidence developed at the hearing, contemplate, in substance, that Trisdale will acquire Happy Valley's certificate and operating facilities, including Messelbeck Dam, in Divisions 1 and 2, and provide ditch side utility water service to customers in the Ono and Igo areas under present rates and rules, subject to reservation of certain water diversion and flow rights by Happy Valley, totaling 300 miner's inches, for use on its lands in Division 3 after present and future demands of Igo-Ono area customers are met. Trisdale proposes to use whatever water is available, after meeting utility service demands in Divisions 1 and 2 and the contractual obligation to Happy Valley, by a diversion into Dry Creek below the last downstream utility customer in Division 2, near Igo, for irrigation of portions of a 4,500-acre ranch owned by Trisdale and a Nevada corporation controlled by him and located on Dry Creek adjacent to and southwest of Happy Valley's lands in Division 3.

Trisdale has also agreed to maintain the water level at Messelbeck Dam "at a point not lower than 10 feet of its maximum carrying capacity", and to maintain the dam and reservoir in perpetuity, "unless orders to the contrary are given by the Public Utilities Commission or Bureau of Dams, or other State or Federal authority." (Agreement of September 6, 1967, page 2.) The dam, long in need of substantial rehabilitation (estimated, in 1966, to cost between \$65,000 and \$112,000), for the last few years has been operated under stringent restrictions imposed by the Division of Dam Safety, Department of Water Resources.

Trisdale, the evidence shows, has been in consultation with the Division of Dam Safety regarding specifications for the rehabilitation project. He proposes to put the dam in condition to comply with the terms of his agreement, although the evidence shows that, in the absence of severe drought or substantially increased demands that possibly may occur at some unspecified future time, the present capacity of the ditch system, when cleaning and repair work now being done by Trisdale has been completed, is adequate, in a normal water year, to supply both utility water service and other water uses contemplated by present agreements without resorting to the Rainbow Lake storage.

The record shows that John Trisdale, a licensed contractor, and the corporation he controls have had more than 30 years continuous experience on important dam and highway construction projects in California and other western states; that he is familiar with the Happy Valley water system and its problems, and has adequate financial resources and a variety of construction equipment with which to rehabilitate the system's facilities and to carry out the plan of operation proposed in this proceeding.

The present record, as well as the Commission's past regulatory experience with Happy Valley Water Company, makes plain the necessity, at this stage in the area's development, for taking responsible and energetic measures to rehabilitate and operate the remaining properties, not only to supply priority utility service demands in Divisions 1 and 2, but as an important nucleus for other beneficial uses, now or later, of the locally produced water supply. The latter point was stressed, at the hearing, by counsel for the County of Shasta and the two public districts (Igo-Ono and Clear Creek), who directed the Commission's attention to the possibility

of developments in the area, within the next few decades, that might require not only full exploitation of the presently available local water resources but even a supplemental supply of imported water. The record, however, does not reveal either the nature or extent of any such anticipated developments.

The complexities of financing and operating the Happy Valley utility system, under past and present ownerships, have been noted in numerous formal Commission proceedings. The record shows that, with inauguration of a public water supply in its major service area, Division 3, the company is no longer in a position to undertake the substantial financial obligations required for further repairs to the upstream storage and distribution facilities, without which full utilization of the supply has been, and would, for the future, be impossible.

A question raised at the hearing concerns the ownership and operation of the so-called "Igo Ditch", about one-half mile in length and partially piped, through which water from the main canal is transported to individual distribution facilities of about a dozen users in and near Igo. The company, although it has maintained the ditch and charged for the water, took the position, at the hearing, that either it does not own the ditch or is uncertain as to who may have title to it. There is some indication from evidence presented by one of the adjacent landowners, that the main canal was constructed years ago by the utility in easements granted by the adjacent landowners, in exchange for delivery of various amounts of water.

Trisdale, at the hearing, testified that, in any event, he would continue to serve water to the Igo Ditch users. The question, however, of who may have title to the Igo Ditch presents a

legal issue upon which we expressly refrain from passing judgment.

This record is highly persuasive that the proposed plan for rehabilitation and operation of the water system serving Divisions 1 and 2 of Happy Valley Water Company, represents what may well be a major turn for the better in the provision of utility and other uses of water in the area. Significantly, no customer of the utility came forward to object to the proposal; moreover, though the Igo-Ono and Clear Creek Districts appeared as "protestants", it is clear, from the record, that their concern lay more in conjectured adverse effects the transfer might exert on possible long-range developments in the area, rather than in the merits of the proposal itself. If any such adverse developments subsequently should occur, appropriate remedial measures, presumably, would be available. It is enough to say that no such issue is now before us.

The record presents no controversial factual or legal issue material to this decision and order, other than the general issue of whether or not the proposed transfer is adverse to the public interest.

The Commission, therefore, finds that the transfer herein proposed by Happy Valley Water Company, a corporation, to John H. Trisdale of its certificate of public convenience and necessity heretofore issued by Decision No. 15417, dated September 19, 1925, in Application No. 11646, together with its water distribution system, including Messelbeck Dam, located in Divisions 1 and 2 of said system in and near the communities of Ono and Igo, Shasta County, California, is not adverse to the public interest.

The Commission, accordingly, concludes that the application herein should be granted, as provided by the following order,

and that the parties should promptly be authorized to carry out their agreements, in view of the urgent necessity shown by this record for early completion of repairs to Messelbeck Dam and the distribution system in Divisions 1 and 2.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Happy Valley Water Company, a corporation, on or within one year after the effective date of this order, is authorized to transfer to John H. Trisdale its certificate of public convenience and necessity, heretofore issued to said corporation by the Commission's Decision No. 15417, dated September 19, 1925, in Application No. 11646, and to carry out the terms and conditions of an agreement, dated September 6, 1967 (Application, Exhibit A) and a supplemental agreement, of record herein, dated December 8, 1967, with Trisdale, providing for acquisition, repair and operation by Trisdale, subject to the terms and conditions of said agreements and to the continuing jurisdiction of this Commission, of the water storage and distribution system including Messelbeck Dam, located in Divisions 1 and 2 of said Happy Valley water system, as described in the foregoing opinion, together with the water and diversion rights of said corporation connected with and necessary for operation of the properties herein authorized to be transferred.

2. Within thirty days after the date of actual transfer of said certificate and properties, applicant Trisdale shall file with the Commission two copies of the instrument, or instruments, of transfer, and shall also, within said thirty-day period and on not

less than five days' notice to the Commission and the public, adopt and thereafter observe, until further order of the Commission, the effective tariff schedules of Happy Valley Water Company as now filed.

3. Applicant J. H. Trisdale, on or before June 30, 1968, shall prepare a study showing the original cost, estimated if not known, of the remaining water system properties and related depreciation reserve requirement as of December 31, 1967, applicable to and used and useful in rendering service to the areas which will continue to be served by the utility, and shall submit such study to the Commission within ten days of completion. Thereafter, applicant Trisdale shall adjust his utility plant in service and related depreciation reserve accounts to reflect the balances for those accounts approved by the Commission, and shall submit the adjusting entries to the Commission within thirty days after being notified of Commission approval of the account balances.

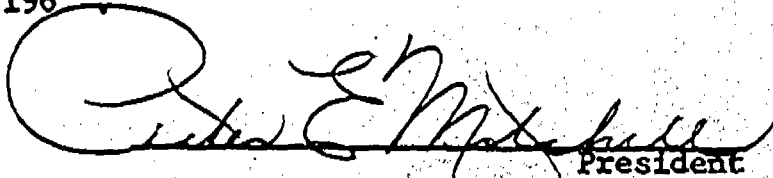
4. On or before the end of the third month after the date of actual transfer buyer shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of the seller for the period commencing with the first day of the current year to and including the effective date of transfer.

5. Applicant, Happy Valley Water Company, a corporation, upon acquisition by applicant Trisdale of the operating certificate and water system herein authorized to be transferred, and the adoption by Trisdale of its tariff schedules, as herein provided, may concurrently withdraw from public utility water service in all three of its service divisions, namely, Divisions 1, 2 and 3, and shall

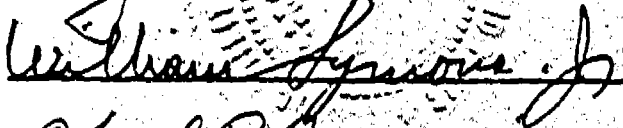
thereafter stand relieved of any public utility obligations with respect to any property of said corporation.

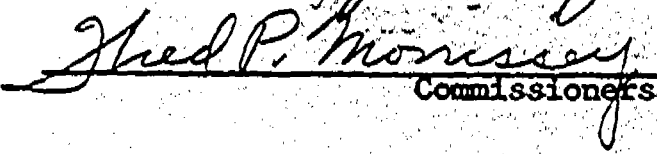
This order shall become effective ten days after the date hereof.

Dated at San Francisco, California, this 27th day of December, 1966


President






Commissioners

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