

ORIGINAL

Decision No. 73949

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, rules, regulations, operations, contracts, practices, services, facilities, equipment, securities, finances, and financial transactions of Vallecito Water Company, Suburban Water Systems, Calfin, Victoria Mutual Water Company, and San Gabriel Valley Water Company, corporations; and into certain transactions between said corporations and Camille A. Garnier, C. H. Dietz, Walker Hannon, R. H. Nicholson, Frederick R. Schumacher, William J. Hickey, Toll & Co., Security First National Bank, a corporation, (Whittier Branch), and Bank of America National Trust and Savings Association, a corporation.

Case No. 8086
(Instituted December 15,
1964)

(For Appearances see Decision No. 71795)

FINAL OPINION

By Decision No. 71795,^{1/} dated December 30, 1966, which is an Interim Opinion and Interim Order, Vallecito's transfer of 18,003 shares of its common stock to Calfin Co. and Toll & Co. and to William J. Hickey was found to be null and void and of no effect and Vallecito was ordered, within ten days, to reverse its stock transfer records and cancel the transfers of such shares of stock and report to the Commission, within five days thereafter, its compliance.

^{1/} March 25, 1968 - In The Supreme Court of the United States, October Term, 1967, No. 1161, Vallecito Water Company, Petitioner, vs. Public Utilities Commission of the State of California, Respondent - Cert. Den.

In its Interim Opinion, the Commission concluded that further findings with respect to the lawfulness of the acquisition by other respondents of shares of Vallecito stock and further conclusions thereupon would be the subject of a separate decision. That is the purpose herein.

Commencing on page 8 of the mimeographed edition of the Interim Opinion in Decision No. 71795 and continuing through next to the last paragraph on page 9 thereof, the circumstances surrounding the acquisition of 11,118^{2/} shares of Vallecito's common stock by R. H. Nicholson, San Gabriel's chairman of the board, and the circumstances surrounding the acquisition of 760 shares of Vallecito's common stock by Utility Investment Company, both Nicholson's shares and those of Utility Investment Company having been sold to San Gabriel pursuant to authorization contained in Decision No. 66140, are outlined.

Findings

With respect to the lawfulness of the acquisition by other respondents of shares of Vallecito stock, the Commission finds as follows:

1. a. The circumstances surrounding the acquisition of Vallecito stock by R. H. Nicholson, chairman of San Gabriel Valley Water Company's board of directors and principal stockholder either by himself or a Nicholson family trust administered by him, and respondents other than Suburban and Calfin have been investigated. Nicholson's personal financial records were made available to and reviewed by counsel for Calfin. He and his tax, legal and financial advisers and his bankers were examined and cross-examined.

2/ Should be 11,122 shares.

San Gabriel's records were reviewed by the staff, and were made available to all parties to this proceeding. San Gabriel's officers and bankers were examined and cross-examined.

b. The record shows that Nicholson was not financed by San Gabriel; he was not San Gabriel's alter ego or agent; he was not a public utility; and he did not violate Section 852 of the Public Utilities Code in his acquisition of 11,122 shares of Vallecito stock. Nicholson acted as an individual with personal funds, secured by \$500,000 of his Santa Anita Turf Club stock as collateral, to acquire Vallecito's stock. Calfin Co.'s holdings of Vallecito stock were acquired with public utility (Suburban's) funds. Decision No. 71795 (supra) found Calfin Co. to be Suburban's alter ego, and Hickey to be an agent for the management and operation of Vallecito by Suburban. Section 852 is explicit as to the acquisition and purchase of the stock of one public utility by another public utility.

c. No circumstance or circumstances are revealed on this record which would cause the Commission not to reaffirm Decision No. 64305, dated September 25, 1962, in Case No. 7422 of R. H. Nicholson vs. Vallecito Water Company. Said decision, as noted in Decision No. 71795 (supra), dismissed for lack of jurisdiction over Nicholson as an individual, his complaint against Vallecito for the latter's refusal, in fear of violating Section 852, to transfer the shares of Vallecito stock he had acquired or to permit him to vote said shares.

d. The record on the results of this investigation reaffirms Decision No. 64305 (supra).

2. a. San Gabriel Valley Water Company, a public utility water corporation under the jurisdiction of this Commission and therefore subject to the provisions of Section 852 of the Public Utilities Code, formed Utility Investment Company, on April 17, 1963, for the purpose of acquiring stock of Vallecito Water Company, also a public utility water corporation under the jurisdiction of this Commission and therefore subject to the provisions of Section 852 of the Public Utilities Code. Such formation was for no other purpose.

b. San Gabriel financed Utility Investment's purchase of 760 shares of Vallecito stock, which were later sold to San Gabriel ostensibly pursuant to authorization contained in Decision No. 66140, dated October 15, 1963, in Application No. 45443.^{3/} ✓

c. Utility Investment was the alter ego of San Gabriel in the acquisition of 760 shares of Vallecito stock.

d. Since no Commission authority had been sought by or granted to San Gabriel prior to the purchase of Vallecito stock by Utility Investment, the acquisition by the San Gabriel-Utility Investment alignment was in violation of Section 852 of the Public Utilities Code. Such acquisition was and is null and void and of no effect.

^{3/} Decision No. 73801, dated March 5, 1968, renewed the authority granted by Decision No. 66140, and extended the time, during which San Gabriel is authorized to acquire all the outstanding shares of Vallecito, for five years. ✓

3. a. When San Gabriel was authorized by Decision No. 66140 to purchase all of Vallecito's available stock, the Commission did not know of the unlawful purchase of 760 shares of such stock by the San Gabriel-Utility Investment alignment; such knowledge was not disclosed until the proceedings in the instant investigation.

b. The authorization granted by Decision No. 66140 could not have applied to the unlawful acquisition of 760 shares of Vallecito stock by Utility Investment and later San Gabriel; nor does or could the renewal of the authority which was granted by Decision No. 66140, as such renewal was granted by Decision No. 73801, be exercised for such purchase.

4. It may be that San Gabriel-Utility Investment could, under the provisions of Section 853 of the Public Utilities Code, be exempted by the Commission from the provisions of Section 852, but consistency with Decision No. 71795 (regarding the Suburban-Calvin-Toll & Co. purchase of 18,003 shares of Vallecito stock) precludes such exemption.

The Commission concludes that Vallecito should be ordered to reverse its stock transfer records and cancel all transfers of stock to Utility Investment Company and the subsequent transfer thereof to San Gabriel Valley Water Company.

The investigation should be discontinued.

FINAL ORDER

IT IS ORDERED that:

1. The transfers of 760 shares of its common stock by Vallecito Water Company to Utility Investment Company and of

those shares to San Gabriel Valley Water Company were and are null and void and of no effect.

2. Vallecito shall, within ten days after the effective date hereof, reverse its stock transfer records to Utility Investment Company, and subsequent transfer of this stock to San Gabriel Valley Water Company, and shall, within five days thereafter, report in writing to the Commission its compliance herewith.

3. This investigation is discontinued.

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

Dated at San Francisco, California, this 9th day of APRIL, 1968.

[Signature]
President

[Signature]

[Signature]

Commissioners

Commissioner E. F. CATOV

Present but not participating.

Commissioner Fred T. Morrissey

Present but not participating.