

ORIGINAL

Decision 82 09 034 SEP 22 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN JOSE WATER)
WORKS, a corporation, to issue and)
sell \$6,000,000 principal amount)
of its First Mortgage 16% Bonds,)
Series X, and to execute and)
deliver a Supplemental Mortgage of)
Chattels and Trust Indenture.)

Application 82-07-52
(Filed July 26, 1982;
amended August 20, 1982)

O P I N I O N

San Jose Water Works (San Jose Water) seeks authority to issue and sell by private sale not to exceed \$6,000,000 aggregate principal amount of its First Mortgage Bonds, Series X (New Bonds), exempt from the Commission's competitive bidding rule and to execute and deliver a proposed Twenty-Eighth Supplemental Mortgage of Chattels and Trust Indenture (Supplemental Indenture).

This authority is sought under Public Utilities (PU) Code Sections 818 and 851. Notice of the filing of the application and amendment were published on the Commission's Daily Calendar of July 30 and August 24, 1982. No protests have been received.

San Jose Water is a California corporation providing public utility water service in Santa Clara County. For the 12 months ended June 30, 1982, the utility reported operating revenues of \$40,412,490 and net income of \$5,439,197. Exhibit A, attached

to the application, contains a balance sheet dated June 30, 1982 which is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$119,640,830
Current Assets	6,600,800
Deferred Charges	<u>304,632</u>
Total	\$126,546,262
 <u>Liabilities and Capital</u> 	
Long-Term Debt	\$ 37,850,571
Preferred Stock	3,654,700
Common Equity	42,753,472
Advances for Construction	24,762,053
Contributions in Aid of Construction	8,645,962
Current Liabilities	8,712,086
Miscellaneous Reserves	51,318
Deferred Income Taxes	<u>116,100</u>
Total	\$126,546,262

San Jose Water proposes to issue and sell on a private placement basis \$6,000,000 aggregate principal amount of its New Bonds. The New Bonds would be secured by an existing indenture as previously supplemented and amended by the proposed Supplemental Indenture which would create a new series of bonds and further secure payment of principal on all bonds outstanding. A form of the proposed Supplemental Indenture is attached to the application as Exhibit C. By letter dated September 20, 1982 counsel for San Jose Water noted certain corrections to the voluntary redemption

premiums set forth on page 14 of Exhibit C. Those premiums are as follows during the 12 months beginning October 15: 1987 - 7.11%, 1988 - 5.33%, 1989 - 3.56% and 1980 - 1.77%. ✓

San Jose Water has not yet entered into any contract for the disposition of the New Bonds, but has a tentative commitment from an institutional investor, Teachers Insurance & Annuity Association. The proposed principal terms are as follows: Interest rate on the proposed bonds will be 16%. They will be dated October 15, 1982 and mature October 15, 1992. They will have an average life of 8 years and a 10-year restricted redemption provision. The sales price will be 100% of the principal amount. San Jose Water will not execute any underwriting agreement relating to the New Bonds, but proposes to pay a reasonable commission (estimated not to exceed \$45,000) to Dean Witter Reynolds Inc. for its services in negotiating the sale.

San Jose Water also requests an exemption of the New Bonds from the Commission's competitive bidding rule established by Decision (D.) 38614 in Case 4761 as amended by D.49941, D.75556 and D.81908. The utility believes that the sale of the New Bonds through a private offering will enable it to obtain money at a cost at least as low as, if not lower than, the cost obtainable if the New Bonds were sold through competitive bidding for the following reasons:

1. The offering is not sufficiently large to develop underwriting interest.

2. Large institutional investors are the principal potential outlet for an offering such as this. A negotiated offering permits a more orderly timing of their investment programs.
3. Comparing the sales of five previous offerings by private placement of San Jose Water with public offerings of "A" rated issues (based on the graph on Exhibit F attached to the application) private placement has resulted in comparable or lower interest cost to San Jose Water.
4. San Jose Water has had no recent exposure to the public underwriting market place.

In D.91984 dated July 2, 1980 for the San Diego Gas & Electric Company, Application 59633, we discussed the granting of exemptions from the competitive bidding rule, and we clarified the nature of the compelling showing that must be made to warrant an exemption from the rule. We served notice that assertions regarding the volatility of the market, the flexibility provided by a negotiated sale, and the importance of maximizing the effectiveness of underwriting groups will not serve as compelling reasons, individually or collectively, for granting an exemption from the competitive bidding rule.

Because the proposed New Bonds will be sold by private placement on terms which will be executed after the issuance of the decision and because of the Revenue Requirements Division's conclusion and belief that the New Bonds will be sold at a cost as

low as, if not lower than, would prevail if they were to be sold at competitive bidding, we are of the opinion that applying, in this proceeding, the Commission's competitive bidding requirements and conditions set forth in D.91984, would not be in the best interests of San Jose Water or its ratepayers. The rule would not operate in a manner so as to allow San Jose Water's sale of the New Bonds at the most favorable cost of money. However, we will also grant San Jose Water the authority to issue the proposed New Bonds by means of a competitive offering.

San Jose Water is put on notice that in its next general rate proceeding before the Commission, the reasonableness of the resulting interest rate and cost of money to the company will be closely scrutinized and may result in a disallowance of interest expense if it is determined that the cost of money incurred was not the most prudent at the time of the financing. We will also require San Jose Water to provide us with a showing that the resulting interest rate and cost of money were the most advantageous to the company and its ratepayers. We will require this showing within a reasonable period after the issuance and sale of the proposed securities.

Unreimbursed capital expenditures reported by San Jose Water as of June 30, 1982 totaled \$23,354,953. Excluding projects to be financed by advances for construction and contributions in aid of construction, the utility estimates that gross construction

outlays for 1982 and 1983 will be \$4,600,000 and \$5,000,000, respectively, of which approximately 63% and 60% will be financed by internally generated funds.

San Jose Water would use the proceeds from the issue and sale of the New Bonds to reimburse its treasury for a portion of the moneys actually expended prior to June 30, 1982 for capital improvements.

San Jose Water's recorded capital ratios as of June 30, 1982 and as adjusted on a pro forma basis to give effect to the proposed New Bonds are summarized as follows:

	<u>Recorded</u>	<u>Pro Forma</u>
First Mortgage Bonds	44.6%	48.3%
Preferred Stock	4.3	4.0
Common Equity	<u>51.1</u>	<u>47.7</u>
Total	100.0%	100.0%

The Revenue Requirements Division has reviewed the application and has concluded that the proceeds from the proposed sale of bonds are needed for the purpose specified in the application and has no objection to the proposed security issue. The Division reserves the right, however, to reconsider the reasonableness of any specific construction expenditure in future rate proceedings.

Findings of Fact

1. San Jose Water, a California corporation, operates as a public water utility under the jurisdiction of this Commission.

2. The proposed issuance of bonds would be for proper purposes.

3. San Jose Water has need for external funds for purposes set forth in the application.

4. The proposed restricted redemption provision is reasonable under current market conditions.

5. The terms and conditions of the proposed Supplemental Indenture are reasonable and not adverse to the public interest.

6. The terms and conditions of the proposed contract for the disposition of the New Bonds are reasonable and not adverse to the public interest.

7. The money, property, or labor to be procured or paid for by the proposed bonds is reasonably required for the purpose specified in the application. Proceeds from the security issue may not be charged to operating expenses or to income.

8. The sale of the proposed bonds should not be required to be through competitive bidding.

9. There is no known opposition to the application and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted to the extent set forth in the order which follows.

The authorization granted is for the purpose of this proceeding only, and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

The following order will be effective on the date of signature and payment of the fee set by PU Code Section 1904(b) to enable San Jose Water to proceed with its financing expeditiously.

O R D E R

IT IS ORDERED that:

1. San Jose Water Works (San Jose Water), on or after the effective date of this order and on or before March 31, 1983, may issue, sell, and deliver its First Mortgage Bonds, Series X (New Bonds), in an aggregate principal amount not to exceed \$6,000,000, exempt from the Commission's competitive bidding rule and in accordance with the terms and conditions to be negotiated as described in the application, as amended, or may issue, sell, and deliver these bonds by means of a competitive offering.

2. San Jose Water may execute and deliver a Twenty-Eighth Supplemental Mortgage of Chattels and Trust Indenture in substantially the same form as Exhibit C attached to the application, as amended, and as corrected in the manner set forth by letter of counsel for San Jose Water Works to the Commission dated September 20, 1982. ✓

3. San Jose Water shall apply the proceeds of the sale of the New Bonds to the purposes specified in the application, as amended.

4. The proposed sale of New Bonds is exempted from the Commission's competitive bidding rule set forth in D.38614, dated January 15, 1946 in Case 4761, as amended.

5. Promptly, after executing the contract of sale of its New Bonds, San Jose Water shall file a copy of the contract and a written report with the Commission, showing the interest rate and the cost of money to the company based on such price and interest rate.

6. If the New Bonds are sold on a private placement basis, within 30 days after the issuance and sale of the New Bonds, San Jose Water shall file with the Commission a report showing why the resulting interest rate and cost of money were the most advantageous to the company and its ratepayers.

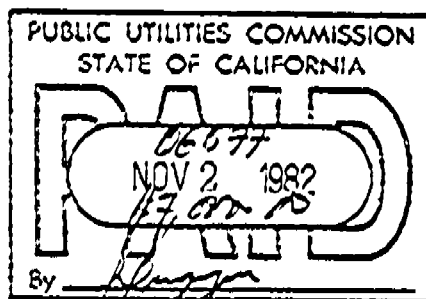
7. In the event San Jose Water utilizes competitive bidding, in lieu of the notification required by Ordering Paragraph 5, it shall file with the Commission a written report showing for each bid received, the name of the bidders, the price, the interest rate, the cost of money to it based upon the price and interest rate, and as soon as available shall file with the Commission three copies of the prospectus pertaining to the bonds sold.

8. San Jose Water shall file the reports required by General Order Series 24.

9. The authority granted by this order to issue New Bonds will become effective when San Jose Water pays \$7,000, the fee set by PU Code Section 1904(b).

Dated SEP 22 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners



I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

[Signature]
Joseph E. Bodovitz, Executive Director