

ORIGINAL

Decision No. **88470** FEBRUARY 7 1978  
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of **EMMA RUTH ROWLAND**,  
Executrix of the Estate of **RUSSELL**  
**FAY ROWLAND**, deceased, for the  
division of the Rowland Water  
Company. Application No. **57455**  
(Filed July 18, 1977)

OBJECTION

This application of Emma Ruth Rowland, Executrix of the Estate of Russell Fay Rowland, deceased, requests the physical partition of the Rowland Water Company in accordance with the respective ownership interests as they were found to exist in the water company by an Interlocutory Judgment issued by the Tulare County Superior Court (Superior Court No. 76963) in connection with a suit to dissolve a partnership and for an accounting. The filing of the application was prompted by an admonition contained in a decision (5 Civil No. 23135) of the Court of Appeal, Fifth Appellate District, which denied a Petition for Writ of Prohibition taken from the Interlocutory Judgment. The admonition states:

To the extent it is grounded upon the agreement dated November 1, 1967 [property settlement agreement entered into between Russell Fay Rowland and Leona Rowland at the time of their divorce], it appears that a judgment which directly or indirectly vests title to the assets of the Rowland Water Company in any person or entity other than the franchise holder should be conditioned upon the approval of the California Public Utilities Commission irrespective of whether such assets remain dedicated to public use. (Public Utilities Code, Section 851; see also

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Transport Clearings-Bay Area v. Simmonds (1964) 226 Cal. App. 2d 405, 421.) However, respondent court has not yet entered such a final judgment.

The Interlocutory Judgment found that Rowland Water Company is owned as follows:

System No. 1  
 24.92% ownership in Russell Fay Rowland, decedent.  
 75.08% ownership in Leona Rowland, decedent's first wife now known as Leona Blaylock.

System No. 2

100% interest in Benny Neal Rowland, son of Russell Fay Rowland.

The Commission's records show that Russell Fay Rowland and Leona Rowland were issued a certificate to construct a water system by Decision No. 52572 dated February 7, 1956 and that no applications for approval of the transfer of the system or any part thereof have been filed with the Commission and that no approval of any transfer has been given by the Commission as required by Section 851 of the Public Utilities Code. The water company services approximately 722 residential customers in Tract No. 127 of Pioneer Land Company's First Addition and Tract No. 128 in Valley Garden's Tract in the area of the city of Porterville. The Commission's records show that the system is comprised of four separate unconnected units, each with its own independent source of water. The largest and smallest units are what applicant refers to collectively as System No. 1. On November 1, 1967 Russell Fay Rowland and Leona Rowland entered into a property settlement agreement, in connection with their divorce, in which their respective interests in the water system were revised and in which Benny Neal Rowland was ostensibly given a share in the partnership.

Leona Blaylock opposes the application on the grounds (1) that it is premature until the appraisal of System No. 1 directed by the Court has been made and filed and the Court has determined that a partition of the physical properties of System No. 1 is the only

means by which the interest of the estate in System No. 1 may be distributed to it, and (2) that a physical partition of the assets of System No. 1 is not in the public interest as the wells, well sites, and pumping plants are owned by Leona Blaylock; and the mains, service connections, and other miscellaneous items are owned by the decedent, Russell Fay Rowland. None of the parties claim that there has been a physical division of the system as a whole.

### Discussion

While Section 851 of the Public Utilities Code voids as a matter of law any transfer of utility property attempted without Commission approval, the Commission may, under Section 853, exempt a utility from the operation of Section 851 where the Commission finds that the application of Section 851 "is not necessary in the public interest." While we do not have before us the property settlement agreement of November 1, 1967, the parties state that there has never been a physical partition of the system in accordance with any claimed interests in the system; and it has been represented to us that the Superior Court entertained the case as one involving the dissolution of a partnership and for an accounting, so we will treat the November 1, 1967 agreement as the parties have treated it, namely, as a change of partnership interests and the addition of a new partner, in which case, while there has been a technical violation of Section 851 in not securing our prior approval of the transaction, we find that the application of Section 851 to the transaction is not necessary in the public interest; and we exempt Rowland Water Company from the application of Section 851 respecting such transaction.

Authorizing the physical partitioning of the total system would mean that, in lieu of one small residential water company, there would be three even smaller residential water companies, which runs counter to the Commission's policy against the proliferation of small water companies. No evidence has been submitted concerning what the

financial depth of each of the proposed separate companies would be, which is the touchstone for determining the degree of probability that a small water company will, or will not, be able to maintain satisfactory service to its customers, who, when service deteriorates or ceases, have no one else to turn to. No showing has been made what the financial resources of each of the separate companies would be. Therefore, we will disapprove the partition of Rowland Water Company.

Findings

1. Rowland Water Company services approximately 722 residential customers.
2. Prior to November 1, 1967 Rowland Water Company, a public utility, was owned in partnership by Russell Fay Rowland and his wife, at the time, Leona Rowland.
3. On November 1, 1967 Russell Fay Rowland and Leona Rowland entered into an agreement admitting Benny Neal Rowland as a partner.
4. Subsequently, Russell Fay Rowland died.
5. Parties to the agreement of November 1, 1967 did not secure Commission approval to enter into the transaction.
6. Our approval of the November 1, 1967 transaction is not necessary in the public interest.
7. The partition of the Rowland Water Company would not be in the public interest.

The parties request a decision on the pleadings without a hearing.

Conclusions

1. Rowland Water Company should be exempted from the operation of Section 851 of the Public Utilities Code respecting the revision and transfer of partnership interests in the water system under that certain agreement dated November 1, 1967 entered into between Russell Fay Rowland and Leona Rowland.

2. The application, insofar as it requests the partition of the Rowland Water Company, should be denied.

O R D E R

IT IS ORDERED that:

1. Rowland Water Company is exempted from the operation of Section 851 of the Public Utilities Code respecting the revision of partnership interests and the admission of Benny Neal Rowland as a partner under that certain agreement dated November 1, 1967 entered into between Russell Fay Rowland and Leona Rowland.

2. The application, insofar as it requests the partition of the Rowland Water Company, is denied.

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

Dated at San Francisco, California, this 7th day of FEBRUARY, 1978.

Robert Batemanich  
President

William Squires Jr.

Vernon L. Sturgeon

Richard D. Gwede

Charles L. Debrist  
Commissioners