

Decision 93795 DEC - 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN JOSE WATER)
WORKS, a corporation, to issue an)
additional amount of its common)
stock pursuant to its Dividend)
Reinvestment Plan.)

Application 61019
(Filed October 30, 1981)

O P I N I O N

San Jose Water Works (San Jose Water) requests authority under Public Utilities (PU) Code Section 818 to issue and sell up to 235,000 shares of its authorized but unissued Common Stock, \$6.25 par value, in accordance with the company's new Dividend Reinvestment Plan (Plan) to become effective January 1, 1982.

Notice of the filing of the application appeared on the Commission's Daily Calendar of November 2, 1981. No protests have been received.

San Jose Water, a California corporation, is a public water utility under the jurisdiction of this Commission. San Jose Water provides water service to its customers in Santa Clara County.

For the 12 months ended June 30, 1981, San Jose Water reports it generated total operating revenues of \$35,710,669 and net income of \$6,539,451 shown in the application as part of Exhibit A.

San Jose Water's Balance Sheet as of June 30, 1981 also shown as part of Exhibit A is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$115,206,330
Other Physical Property	579
Current Assets	6,618,651
Deferred Charges	<u>288,188</u>
Total	\$122,113,748
 <u>Liabilities and Equity</u>	
Common Equity	\$ 39,435,262
Preferred Stock	6,282,200
Long-Term Debt	38,227,186
Current Liabilities	5,234,376
Advances and Contributions	32,886,096
Miscellaneous Reserves	<u>48,628</u>
Total	\$122,113,748

In its application, San Jose Water alleges that the Economic Recovery Act of 1981 (Act) under Section 321 provided for an amendment to Internal Revenue Code Section 305(e) which becomes effective January 1, 1982. Under this amendment, provision is made to provide a substantial tax advantage to those shareholders of a qualified public utility who elect to receive the dividends on their stock in additional shares of common stock rather than to receive them in cash. Under the provisions of the Act, stock issued under Section 305(e) will not be taxed as a dividend when received, but will be taxed on a capital gains basis if the shares are sold after one year.

San Jose Water states that it wishes to permit its common shareholders to realize the benefits of this change in the federal income tax law by instituting the Plan thereby satisfying the requirements of Act Section 305(e).

The proposed Plan applies to all common shareholders regardless of whether or not they qualify for the tax benefits under Act Section 305(e). Under the Plan, a common shareholder may elect to receive dividends in cash or in the form of common stock issued by San Jose Water. The shareholder may apply all or part of his dividend to purchase stock.

The portion of a share payable on each share of common stock will be determined by dividing the amount of the cash dividend for each participating shareholder by the average high and low sale prices for San Jose Water's common stock listed on the American Stock Exchange for five trading days ending with the payment date. No commission or service charge will be payable by the participants in connection with the issuance of shares under the Plan attached to the application as Exhibit B.

San Jose Water states that it believes shares issued under the Plan need not be registered with the Securities and Exchange Commission under the Securities Act Of 1933 because their

issue will not involve a "sale" within the meaning of Act Section 2(3). San Jose Water has requested a letter from the Securities and Exchange Commission to the effect that it will take no jurisdiction over this stock sale.

San Jose Water has reserved 235,000 of its authorized but unissued common stock for issuance under the Plan during the period January 1, 1982 through December 31, 1985. It proposes to issue up to 235,000 shares of its Common Stock, \$6.25 par value, during the above period, under the provisions of the Plan.

The purposes for which the common shares will be issued are stated as follows:

1. To satisfy San Jose Water's obligation to those common shareholders who, under the Plan, elect to receive dividends in common shares in lieu of cash dividends and
2. To use the proceeds to defer other types of financing or to reduce future financings as bonds, notes, etc. to be issued for construction expenditures budgeted and estimated to be \$4,600,000 in 1982.

San Jose Water's capital ratios of June 30, 1981 adjusted to give effect to the proposed issuance and sale of 58,750 shares of Common Stock, \$6.25 par value, estimated to produce net proceeds up to \$1,334,800 at an average estimated sale price of \$22.72 per share, are as follows:

	<u>June 30, 1981</u>	<u>Pro Forma</u>
Long-Term Debt	45.5%	44.8%
Preferred Stock	7.5	7.4
Common Equity	47.0	47.8*
	<u>100.0%</u>	<u>100.0%</u>

* An assumption was used that San Jose Water will sell only one-fourth, or 58,750 shares of the proposed 235,000 common stock, each year for the next four years under the Plan. Only those estimated to be sold in 1982 are included above.

The Commission's Revenue Requirements Division has reviewed the application and has concluded that the proposed sale and issuance of San Jose Water's authorized but unissued common stock under the Plan is appropriate. At the company's request, authority should be expedited so that those participating under the Plan will not lose their first-quarter dividends under the new Act which becomes effective on January 1, 1982.

Findings of Fact

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

2. The proposed issuance and sale of up to 235,000 shares of San Jose Water's Common Stock, \$6.25 par value, under the company's new Plan would be for proper purposes.

3. The issuance and sale of up to 235,000 shares of San Jose Water's common stock to satisfy the company's obligation to those of its common shareholders who have elected to receive stock dividends in lieu of cash dividends are for proper purposes.

4. The money, property, or labor to be procured or paid for by the proposed sale of common stock under the Plan is reasonably required for the purposes specified in the application.

5. There is no known opposition and there is 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 proposed common stock issue is for lawful purposes and the money, property, or labor to be obtained by it is required for these purposes. Proceeds from the common stock issue may not be charged to operating expenses or income.

The number of shares outstanding, the total par (stated) value of the shares, and the dividends paid do not determine allowable return on plant investment. This authorization is not a finding of the value of the utility's stock, or property, nor does it indicate the amounts to be included in ratesetting procedures.

The following order should be effective on the date of signature to enable San Jose Water to issue its common shares expeditiously providing the utility has paid the fee set in the order which follows.

O R D E R

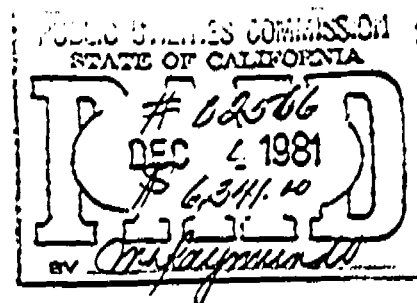
IT IS ORDERED that:

1. On or after January 1, 1982 and on or before December 31, 1985, San Jose Water Works may issue and sell up to 235,000 shares of its authorized and unissued Common Stock, \$6.25 par value, under its Dividend Reinvestment Plan.
2. San Jose Water Works shall apply the gross proceeds from the sale of its common stock to the purpose set forth in the application.
3. San Jose Water Works shall file the reports required by General Order Series 24.

4. The authority granted by this order to issue common stock will become effective when San Jose Water Works pays \$6,341, the fee set by PU Code 1904.1.

Dated DEC 1 1981, at San Francisco, California.

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



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

[Signature]
Joseph E. Bodovitz, Executive Director