

ORIGINALDecision No. 65864

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CRYSTAL SPRINGS WATER CO., a)
 California corporation, for a)
 certificate of public convenience)
 and necessity to operate a public)
 utility water system, establish)
 rates for service rendered and for)
 an order authorizing it to issue)
 and sell \$15,000.00 of \$10.00 par)
 value common stock.)

Application No. 45358
 (Filed April 18, 1963)

Richard E. Saulque, for applicant.

Ernest N. Kettenhofen, for Quail Lake Water Company;
Wm. G. Haste and Earl B. Marr, for Tahoe Cedars
 Water Co.; Peggy L. McElligott, for McKinney
 Water District and for Palo Alto Investment
 Company, protestants.

W. B. Stradley and Sidney J. Webb, for the
 Commission staff.

OPINION AND ORDER

After due notice, public hearing in this matter was held before Examiner Emerson on June 6 and 7, 1963, at Sacramento. The matter was submitted on receipt of an exhibit late-filed on June 11, 1963, and is now ready for decision.

Crystal Springs Water Co. executed its Articles of Incorporation on February 1, 1963, and filed the same with the Secretary of State on February 18, 1963. Its primary purpose is to engage in the diversion, appropriation, purchase and use of water for general sale and distribution to customers as a public utility. Its initial directors are six in number. It is authorized to issue only one class of stock to a total of 2,500 shares at \$10 par value per

share. In this application, Crystal Springs seeks a certificate of public convenience and necessity to acquire and operate a public utility water system in an area in Placer and El Dorado Counties generally known as Kailua Park and Westlake Village, and authority to issue common stock to a total of \$15,000.

The over-all area which Crystal Springs proposes to serve encompasses approximately 488 acres. At the present time there are six houses in the area and one under construction. Included in the area are several relatively new subdivision units of Westlake Village and the older subdivision of Kailua Park. The remainder of the area is undeveloped forest land.

Of major interest, in this proceeding, is the water serving arrangement for the Westlake Village Subdivision. According to applicant's evidence, Units 3 and 8 of such subdivision contain a water system, formed as Westlake Village Assessment District No. 1, sold by the County of El Dorado to Westlake Village Mutual Water Company for \$1.00. Unit 4 contains a water system similarly formed as Assessment District No. 2 and also sold to the Mutual for \$1.00. Unit 5 will have a water system installed as Assessment District No. 3 and it is anticipated that Units 6 and 7 will be similarly constructed as Assessment District No. 4. The physical systems involved have been constructed by Westlake Village Company, a limited partnership of which Malerbi Enterprises, a closely held family corporation, is a general partner. Malerbi Enterprises is a general brokerage and development company (which also operates under the fictitious name of M/E Realty) which bought the property of what is now known as Westlake Village Subdivision from Malerbi and Associates Development Company which owned the property and developed

Units 1 and 2 thereof. Nello Peter Malerbi is either an officer or a principal in each of these companies. In addition, he and his wife are two of three officers of the Westlake Village Mutual Water Company and Malerbi Enterprises owns or controls 87 percent of the memberships in said Mutual Water Co. Essentially, applicant herein was formed by Malerbi.

It is proposed that Westlake Village Mutual Water Company, the present owner of the existing systems above-mentioned, will transfer all water system properties to applicant at no cost to applicant. With respect to future construction, the application recites that the costs thereof will be financed by stock issues and main extension advances. The evidence adduced at the hearing, however, makes it plain that future construction in subdivision Units 5, 6 and 7 will follow the past scheme whereby the costs of the systems therein will be met by assessments against the lots involved, the systems then transferred to the Mutual and again transferred to applicant. By such means, normal utility expansion, through the utility main extension rule in force in California, would be applied only to those future subdivision developments not presently controlled by Malerbi.

Protestant McKinney Water District, formed primarily to provide water service to lands known as McKinney Estates, encompasses about 105 acres lying in Placer County and about 96 acres lying in El Dorado County. Of the latter area, approximately 60 acres lie within the boundaries of the service territory for which applicant seeks a certificate. An additional area of about 65 acres, for which McKinney Water District is instituting annexation proceedings, also lies within the area for which a certificate is sought by applicant. This District strenuously opposes any violation of its boundaries by applicant or by any other serving agency.

Protestant Palo Alto Investment Company has been negotiating with McKinney Water District, for more than a year, for inclusion of the aforementioned about 65 acres of its properties within said District. It not only prefers district service but points out that inclusion of its properties within any area certificated to applicant would create the possibility of wasteful duplication of water facilities.

Protestant Quail Lake Water Company is a public utility, under the jurisdiction of this Commission, whose service area abuts the proposed area of applicant at the northwest corner thereof. It stands ready and willing to serve all or any portion of applicant's proposed area in the normal course of business and in conformity with the law and with its filed rules concerning extension of facilities. It has ample supplies of water and can supply the area through a gravity-flow system on an all-year basis. The owner of the Quail Lake Water Company objects to the entry of another small water company into the field, pointing out that in his opinion, the public interest will be better served if fewer and larger agencies provide the Lake Tahoe area with water service rather than the multiplicity of small nonintegrated systems now struggling for their economic existence.

Protestant Tahoe Cedars Water Co., a public utility, opposes the certification of applicant on the ground that applicant's operations would be a direct invasion of an area presently certificated to Tahoe Cedars and in which it is now, and for some time past has been, serving the public. Tahoe Cedars has recently been before this Commission in a formal proceeding involving a portion of the area now sought by applicant herein (Case No. 7477, in which Decision No. 64930 was issued February 13, 1963). The decision therein is

part of this record but will not be repeated herein. It is pertinent to note, however, that said decision recites that Tahoe Cedars is the sole lawful utility operating in Units 1, 2, 3 and 8 of the Westlake Village Subdivision.

It is of record that Tahoe Cedars has been lawfully providing water service to the occupants of four lots in Westlake Village.^{1/} At the close of the 1962 summer season (on or about October 15, 1962) an officer of applicant herein, on verbal instructions of Mr. Malerbi, physically removed a section of pipe on Placer Street and either removed or by-passed two valves at the corner of Elm and Placer Streets, said pipe and valves belonging to and being integral parts of the Tahoe Cedars distribution system, with the result that the Tahoe Cedars water system was completely disconnected from Units 1, 2 and 3 of the Westlake Subdivision. Such removal and disconnection was not authorized by Tahoe Cedars and, indeed, was a deliberate and unwarranted interference with the public utility properties of Tahoe Cedars. From the time of disconnection until discovery and reconnection by Tahoe Cedars during May 1963, the four Westlake Village customers of Tahoe Cedars were connected to and served by the water system of the Westlake Village Mutual Water Company. In this connection, the Commission is constrained to observe that such high-handed actions by the officers of a corporation seeking the certification and resulting protection of this Commission engender no confidence in their abilities to discharge properly the public utility obligations which the laws of California impose on public utilities.

^{1/} The customers are known as: Burrows, Quackenbush, M/E Realty, and Langhorne.

The Malerbi interests desire all-year water service for their real estate tracts. It is available to them from either of two existing utilities upon compliance with the provisions of the main extension rules of those utilities. That they prefer to form their own utility is of no moment insofar as the interests of the public are concerned. In this proceeding, it devolved upon applicant to demonstrate that the present and future public convenience and necessity require or will require that applicant provide public utility water service in the area in question. This it has failed to do. At best, it has demonstrated little more than that its officers would be inconvenienced by the granting of its requests.

In summary, the evidence shows that the certification of applicant would (1) result in duplication of water system facilities, (2) create overlapping and conflicting service areas of two public utilities and one water district, and (3) provide no service which is not presently available to the public. The Commission finds the facts so to be.

In view of the evidence and the above findings the Commission concludes that the application herein should be denied.

IT IS ORDERED that the application herein be and it is hereby denied.

IT IS FURTHER ORDERED that Nello Peter Malerbi, Malerbi Enterprises, Westlake Village Company and Westlake Village Mutual Water Company, and their officers, employees and agents shall cease and desist and permanently refrain from altering, removing,

rearranging, tampering with or disturbing in any manner, the public utility water system properties known as the Tahoe Cedars Water Co.

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

Dated at San Francisco, California, this 13th day of AUGUST, 1963.

William W. Bennett
 President

John E. [unclear]

George W. [unclear]

Frederick B. Hollohoff

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.