

**ORIGINAL**Decision No. 69695

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JOHN HOWARD, for	)	
approval of sale of MORROW WATER	)	
COMPANY, together with all franchise,	)	
permits and operative rights thereto,	)	Application No. 47640
to the CITY OF CERES, a California	)	(Filed June 4, 1965)
municipal corporation, which joins in	)	
said application.	)	

OPINION AND ORDER

John Howard (seller), an individual doing business as Morrow Water Company, seeks authority to transfer his water system to the City of Ceres (buyer), and to discontinue service. Buyer joins in the application.

Seller serves about 440 customers in and adjacent to the City of Ceres, Stanislaus County. The map attached to the purchase agreement shows that about four square blocks of seller's service area are outside of buyer's city limits.

On May 27, 1965, seller and buyer entered into an agreement, a copy of which is attached to the application, providing for the sale of the water system. The agreed purchase price is \$150,000, with payments on principal to be made in 17 annual installments commencing four years after the date of closing, and with annual interest payments of 4½ percent to be made on the unpaid balance of principal.

Seller's annual report to this Commission for the year 1964, hereby incorporated as a part of the record by reference, shows, as of the end of that year, utility plant in the amount of \$122,064, a depreciation reserve of \$42,383, no advances for construction and \$5,512 contributions in aid of construction.

Buyer and seller allege that it is in the interests of and for the benefit of the public, and more particularly seller's customers, that the water system be sold and transferred to buyer for the following reasons:

(a) The water production facilities of seller will be interconnected with other facilities presently owned by buyer so as to provide an interchange of water when, where, and as necessary, to provide additional standby and emergency facilities with resultant improvement to standards of fire protection in seller's service area and other areas served by buyer.

(b) By its acquisition of said water system and the interconnection of facilities, buyer will be enabled to standardize water rates and maintain uniform pressure and service to consumers within the City of Ceres.

(c) Under the terms of the agreement, buyer will continue to operate a water distribution system and to provide uninterrupted water service to all customers within the service area to which seller is presently certificated by the Public Utilities Commission.

(d) The purchase price is a fair and reasonable price and has been negotiated subsequent to, and as a result of, the passage by the City Council of buyer of a resolution authorizing and directing the City Attorney of buyer to take the necessary legal proceedings for condemnation of seller's water system.

(e) Buyer is prepared to take over and to operate all water system facilities of seller upon approval of this application and to operate the same and to provide public utility service to seller's service area without any interruption of service.

Although the agreed purchase price is about double seller's rate base as indicated in his 1964 annual report, the 4½ percent interest rate is quite low, the long-term method of payments will permit buyer to purchase the system from water revenues rather than with bonded indebtedness, the obligation is secured only by a lien against net water revenues, and buyer will benefit from integrating its present system with the system to be acquired from seller.

Inasmuch as seller's dedicated area of service is not entirely within the city boundaries of buyer, the transfer authorized herein will be conditioned upon the filing of certain stipulations by buyer to protect the interests of customers outside the city boundaries.

The Commission finds that, upon filing of a stipulation by buyer regarding service obligations and absence of discrimination between customers inside and outside buyer's city boundaries, the proposed transfer will not be adverse to the public interest.

The Commission concludes that the proposed transfer should be authorized subject to the conditions set forth in the order to follow.

The action taken herein is not to be construed as a finding of the value of the properties to be transferred. A public hearing is not necessary.

IT IS ORDERED that:

1. Within one year after the effective date hereof, John Howard, doing business as Morrow Water Company (seller), may transfer to the City of Ceres (buyer) the public utility water system described herein, substantially in accordance with the terms of the agreement, a copy of which is attached to the application, and subject to the conditions hereinafter imposed.

2. The foregoing authority is conditioned upon the filing in this proceeding of a stipulation by buyer that:

- (a) Buyer will be subject to all legal claims for water service which might have been enforced against seller, including such claims as may exist in territory outside of buyer's boundaries.
- (b) As to the rates, rules and conditions of service which buyer will apply in the service area of the system herein authorized to be transferred, it will not discriminate between service rendered outside its city boundaries and service rendered inside said boundaries, except insofar as it may adjust such outside rates and charges to offset any reasonable tax burden sustained by water users within the city in subsidizing the operation of the city's water system.

3. On or before the date of actual transfer, seller shall refund all customer deposits for the establishment of credit and all advances for construction.

4. Within ten days after the date of actual transfer, seller shall file in this proceeding written notification of the refunding of all deposits and advances, the date of transfer, and the date upon which buyer shall have assumed operation of the water system authorized herein to be transferred. A true copy of the instrument or instruments of transfer shall be attached to the written notification.

5. Upon compliance with the conditions of this order, seller shall stand relieved of all of his public utility obligations in the

area served by the transferred system, and may discontinue service concurrently with the commencement of service by buyer.

The effective date of this order shall be established by supplemental order herein, after buyer shall have complied fully with the requirements of ordering paragraph 2.

Dated at San Francisco, California, this 21<sup>st</sup> day of SEPTEMBER, 1965.

Frederick B. Hallock  
President  
[Signature]  
Attorney

[Signature]  
Commissioners

DISSENTING OPINION OF COMMISSIONER GROVER

The price here is unusually high, amounting to approximately double the rate base by which water rates are presently determined. Although (as explained in the majority opinion) some convenience to the public will result from this transfer, I do not believe it is enough to justify so high a price. In particular, I am not persuaded that the 4-1/2% interest rate should be given any special consideration; the interest payments to the seller will be tax exempt and therefore, in actual fact, will be worth much more than 4-1/2%. In effect, the Commission is permitting the city to pass on to the seller the benefits of the city's tax exempt status, contrary to the underlying objective of our tax law.

*George H. Grover*

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Commissioner