

**ORIGINAL**Decision No. 71671

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ALVIN J. HOFFMAN, dba PAN TERRA WATER COMPANY, for an order under Sections 851-853 of the Public Utilities Code authorizing the sale, disposition and assignment to the City of Morgan Hill, a municipal corporation, of the water system, permits, franchises and assets necessary and useful in the performance of duties of said corporation in providing water service to the public.

Application No. 48912  
(Filed October 31, 1966)

O P I N I O N

Alvin J. Hoffman and the City of Morgan Hill join in an application for authority to transfer all assets of Pan Terra Water Company, except cash and effective insurance policies, to the City, pursuant to an "Agreement for Purchase and Sale of Water System", dated September 19, 1966, as amended by an agreement dated September 21, 1966 (Application, Exhibit "B").

The company was authorized, in 1963, to provide public utility water service in Unit 1 of the Holiday Lake Estates development, about four miles east of Morgan Hill (Decision No. 65102, dated March 19, 1963 and Decision No. 66042, dated September 24, 1963, in Application No. 44403). There is pending an application by the utility to extend service to the adjoining Unit 2 of the development, located within the company's certificated service area. (Application No. 48706, filed August 12, 1966.)

Applicants allege that the City is annexing the territory included within the company's service area and desires to provide water service to all of that area; that the City now wishes to

exercise an option, held since August 29, 1962, to purchase the Pan Terra system for the sum of \$250,000, alleged to be the agreed value of the water system; that all matters respecting the sale have been agreed upon, including assumption by the City of the utility's refund obligations for main extensions in Unit 1 and the utility's responsibility for refunding customers' deposits to guarantee payment of water bills.

The agreement (Exhibit "B", Art. II) provides for payment of the purchase price as follows: \$15,000 on account by warrant of the City given at the time of execution of the agreement and \$15,000 on or before September 1, 1967, plus interest at 4% per annum from the date of the agreement until the date of payment; a promissory note from purchaser to seller for \$70,000 with interest at 6% per annum, the note payable at the rate of 22% of the gross revenue derived from sales of water from any facilities installed within the utility's certificated area, which obligation will continue for 20 years or until payment of the total amount of the note; seller, subject to a market value appraisal of the utility's facilities, rights and interest, will execute a deed of gift to purchaser as remission of the purchase price to the extent of \$125,000, plus any excess of the appraised market value over the agreed purchase price; the balance of the purchase price, amounting to \$25,000, will be represented by the City's assumption of seller's long-term obligation to supply water to the golf course located in the utility's certificated area, which obligation, the parties have agreed and determined, has a market valuation of \$25,000 in reference to the purchase of the water system.

The agreement states that the City has undertaken to distribute water to all consumers served by the utility as of the closing date of the transfer, and to assume as of that date:

"any and all public service obligations now resting upon the Company's Water System, subject, however, to the right of the City to fix rates and determine conditions of water service as a public corporation engaged in the public supply of water, provided only that the rates to be charged throughout the certificated area in which Company now operates shall always remain uniform" (Exhibit B, Art. XIII).

The agreement further provides (Art. XIV):

"(2) That in the event the Public Utilities Commission imposes conditions on such authorization City and Company agree to abide by said conditions, provided such conditions shall not impair or conflict with the powers and authority of the City as a municipal corporation."

The Commission, upon consideration of the application and the exhibits annexed thereto, finds that:

1. The proposed transfer will not be adverse to the public interest.

2. The City of Morgan Hill has the financial resources to acquire and operate the Pan Terra water system.

3. Upon completion of the purchase by the City of the Pan Terra water system, as authorized herein, the application of Alvin J. Hoffman to extend water service to Unit 2 of the Holiday Lake Estates development, referred to above, will have become moot.

The application should be granted as provided by the following order. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order, Alvin J. Hoffman (seller) may sell and transfer to the City of

Morgan Hill (purchaser) the water system referred to herein, substantially in accordance with the terms set forth in the agreement, as amended, attached to the application herein as Exhibit "B".

2. On or before the date of actual transfer seller shall refund all customers' deposits, if any, for establishment of credit.

3. Within five days after the date of actual transfer seller and purchaser jointly shall file in this proceeding a written statement showing:

- a. The date of transfer, together with a true copy of the instrument of transfer.
- b. The date of compliance with the foregoing ordering paragraph 2.

4. Upon compliance with all of the conditions of this order, seller shall stand relieved of his public utility obligations in the area served by the transferred system and may discontinue service concurrently with the commencement of service by purchaser.

5. The foregoing authority is conditioned upon the filing in this proceeding of a stipulation by purchaser that: (a) purchaser 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 the boundaries of purchaser; and (b) as to the rates, rules and conditions of service which purchaser will apply within the service area of the system herein authorized to be transferred, it will not discriminate between service rendered outside of the city 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 boundaries in subsidizing the operation of purchaser's water system.

The effective date of this order shall be established by supplemental order herein after compliance with paragraphs 3 and 5 of this order. Contemporaneously with the issuance of such supplemental order, the Commission will also issue an order dismissing Application No. 48706, referred to in the foregoing opinion.

Dated at San Francisco, California, this 6<sup>th</sup> day of DECEMBER, 1966.

*John E. Mitchell*  
President

*Frederick B. Holliff*

*Howard*

*William W. Bevin*  
Commissioners

Commissioner George G. Grover did not participate in the disposition of this proceeding.