

Decision No. 74686

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of)
 WELLS WATER SERVICE, a California)
 corporation, for (1) Certificate)
 of public convenience and necessity)
 to acquire and operate a public)
 utility water system in two unincor-)
 porated contiguous areas known as)
 Tahoe Hills Estates and Rubicon)
 Palisades just south of Meeks Bay)
 on Lake Tahoe in El Dorado County,)
 State of California, (2) Establish-)
 ment of rates for the service)
 rendered (3) Authorization for)
 issuance of corporate stock of)
 applicant for property and cash and)
 (4) Authority to bill customers on)
 an annual basis.)

Application No. 50038
 (Filed February 23, 1968,
 Amended May 1, 1968)

Clarence H. Pease, of Pease, Mayhew and Kassis,
 for Wells Water Service, applicant.
Francis X. Driscoll, for Kilbourn Investment,
 Inc.; Melvin T. Norris, for Rubicon Water
 Company; Borah R. Hansen and Thomas E.
 Flower, for Tahoe Hills Properties, Inc.;
Hugh Hart, for Tahoe Hills Mutual Water
 Company; and M. Sherman Bliss for Tal
 Land Corporation, interested parties.
Mrs. Lawrence H. Smith, for West Tahoe Water
 System, protestant.
John J. Gibbons and Tedd F. Marvin, for the
 Commission staff.

O P I N I O N

By this application filed on February 23, 1968, and amended on May 1, 1968, Wells Water Service requests a certificate of public convenience and necessity to acquire a water system and to operate it as a public utility. Applicant proposes to charge an annual flat rate of \$96 for a single-family residence, including the premises, and a monthly rate of \$4.50 for each public fire hydrant. Two unincorporated areas near Meeks Bay, Lake Tahoe, El Dorado County, known as Tahoe Hills Unit No. 1 and Rubicon Palisades

are included in the proposed service area. Applicant also requests authority to issue 40,000 shares having an aggregate par value of \$40,000 for certain properties listed in paragraph 18b of the application.

Public hearings in this matter were held before Examiner Cline at South Lake Tahoe on June 7, 1968, and at Sacramento on June 20, 1968. The matter was taken under submission on June 24, 1968, at which time Exhibit No. 22 previously withdrawn by applicant for the purpose of making copies was returned to the Commission.

Service Area

The area of approximately 129 acres for which a certificate is requested is located on the western shore of Lake Tahoe immediately south of the community of Meeks Bay. The two tracts under development have been subdivided into approximately 250 lots on which are to be constructed single-family residential units primarily as resort, retirement and second home accommodations. The lots are owned by Tal Land Corporation, Tahoe Hills Properties, Inc., the California Division of Highways and individual private parties.

The State Division of Highways has acquired at least 36 of the lots in Rubicon Palisades for the future realignment of State Highway 89. Additional lots are to be purchased by the State for its right of way across the two subdivisions. A considerable portion of the water distribution facilities will need to be relocated when the new highway is constructed. It is anticipated that the final combined subdivisions will contain approximately two hundred lots.

There are presently ten homes constructed or under construction in Tahoe Hills No. 1 and one in Rubicon Palisades. No water service has been available to the lots in Rubicon Palisades.

The Final Subdivision Report on the original subdivision of Tahoe Hills No. 1 issued by the California Division of Real Estate under date of October 14, 1958, Exhibit No. 18, states that the subdivider advised that the Tahoe Hills Mutual Water Company would supply water to the lots in the tract. Copies of the Articles of Incorporation and of the By-laws of said mutual water company were introduced in evidence as Exhibits Nos. 19 and 20, respectively. The evidence shows that the sale and purchase of the lots was made on the basis of the representation that the mutual water company would furnish the water to the lots. Although no stock in the mutual water company was ever issued to the lot purchasers and the water system was not conveyed by the original subdivider or its successor to the mutual water company, the residents of Tahoe Hills No. 1 in the past have operated the water facilities in the name of Tahoe Hills Mutual Water Company and have paid said mutual water company \$5 per month for the water furnished through such facilities.

At the hearing the President of Tahoe Hills Mutual Water Company testified that said company is taking the position that Tahoe Hills Properties, Inc., has no right to sell the water system facilities situated in Tahoe Hills Unit No. 1. The witness for Tahoe Hills Properties, Inc., testified that said company has succeeded to the interests of the original subdivider in the water system facilities situated in Tahoe Hills Unit No. 1, and that any claims Tahoe Hills Mutual Water Company may have had to said water system facilities are now barred by the Statute of Limitations. Exhibits Nos. 6, 7, 8 and 9 attached to the application are copies of the documents by which the water facilities in the two subdivisions purportedly will be transferred to Wells Water Service.

The engineering witness for the staff testified that West Tahoe Water System, owned and operated by Dr. Lawrence H. Smith, now

deceased, and his wife, a protestant in this proceeding, serves three customers as a water utility certificated by this Commission. The Smith certificated area abuts the south boundary of Rubicon Palisades. West Tahoe Water System has an excess supply of water which might be used to supplement the water supply in the two subdivisions proposed to be served by Wells Water Service.

The service area of Rubicon Water Company is southerly of West Tahoe Water System. This utility as of the end of 1966 had 17 metered and 215 flat rate services. If a certificate is granted to Wells Water Service the service areas of Wells Water Service, West Tahoe Water System and Rubicon Water Company will be contiguous. The staff engineer stated that one large utility to serve all three areas would be much more satisfactory to all concerned than the three small utilities which will serve the areas if the requested certificate is granted.

Water Supply Facilities and Requirements

The sources of water supply are two wells at the opposite ends of the system. The well at the southern end located on Lot 29 of Rubicon Palisades subdivision is a 12-inch cased well 420 feet in depth. A well driller's report dated February 15, 1963, indicates an approximate capacity of 500 gallons per minute. The staff engineer witness testified that a recent test on June 17 and 18, 1968, showed that this well could now only produce 85 gallons per minute. He stated that an earthquake may have altered the water bearing strata. The well at the northern end of the system is located on Lot 1 of the original subdivision of Tahoe Hills No. 1 subdivision. It is an 8-inch cased well 165 feet in depth. A well driller's report dated July 14, 1961, indicates an approximate capacity of 50 to 100 gallons per minute. Present usage indicates a capacity of not more than 500 gallons per hour or 8.3 gallons per minute without sanding up.

There are two reservoirs located in the proposed service area. A 150,000-gallon riveted steel tank set on a gravel base is located on a portion of Lot 98 of Rubicon Palisades at an elevation of approximately 6,700 feet. The other is a 25,000-gallon redwood tank set on a concrete base located on Lot 241 of Tahoe Hills No. 1 at an elevation of approximately 6,640 feet. The tanks are approximately 250 feet apart. Applicant's plan of operation is to pump water from the wells to the tank. Then the water will go through a portion of the distribution system by gravity flow from the tanks. The lower elevation would be sectioned off by means of pressure regulators. Some of the lots located near the 150,000-gallon tank will not have adequate pressure on a gravity flow basis. It will be necessary to install a hydroneumatic system to serve these premises with adequate pressure.

Only the well in Rubicon Palisades can be utilized to pump into the 150,000-gallon tank. Because of the terrain, the Tahoe Hills well can be utilized to pump only into the regulated zone. The staff engineer testified that due to differences in elevation extensive piping alterations would be required in order to make use of the 25,000-gallon tank in its present location and that this tank appears to be unnecessary for the system. The witness for applicant, however, testified that because the water supply is less than anticipated the 25,000-gallon tank should be retained to provide a total of 175,000 gallons of needed storage capacity.

Distribution System

The distribution system in each subdivision was installed about 1963. Most of the mains in Tahoe Hills No. 1 subdivision were improperly installed and were being replaced in the spring of 1968. The completed system is to consist of approximately 19,400 feet of

6- and 4-inch steel pipe laid primarily in streets. Service pipes generally will be one pipe branching to two services. The facility map shows 27 fire hydrants located within the two subdivisions. The system as designed and planned to be constructed appears to conform with the Commission's General Order No. 103 with the exception of facilities to serve the lots near the steel tank.

Rates and Estimated Operating Results

Applicant proposes a flat rate of \$96 per year for a service connection to a single-family residence and \$4.50 per month for each hydrant. This is considerably higher than the \$5 per month the present customers are paying to the mutual company. The proposed rates according to the staff engineer are also higher than rates currently being charged by other utilities in the general area.

In justification of the proposed rates the applicant has submitted the following estimates, which are adjusted to reflect the mathematical correction made by the staff engineer.

Estimated Annual Revenue:

150 out of 239 possible users @ \$96	\$14,400
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Estimated Annual Expense before Income Taxes:

Labor and maintenance	\$4,300	
Electricity	650	
Property taxes (3% of \$136,000)	4,080	
Reserve for replacement and depreciation (\$28,780 over 20 years - 5%)	<u>1,439</u>	
Total Annual Expense		<u>10,469</u>
Net Income before Income Taxes		3,931
Less reserve for income tax		<u>1,310</u>
Net Revenue after Income Tax		\$ 2,621
Rate of Return on \$40,000 Capital		6.6%

The staff engineer stated that in his opinion applicant's estimate of the need for a flat rate of \$96 per year is not supported.

He recommended that if the Commission grants the certificate (1) with certain recommended improvements a flat rate not higher than \$72 per year be authorized, and (2) a compatible schedule of meter rates be filed by applicant along with the flat rate schedule. The staff engineer pointed out that metered service is the most practicable and effective means of discouraging customers who waste water.

The staff engineer further recommended in Exhibit No. 6 that:

- (a) Applicant be required to equip and connect for operation the presently unused southernmost well, proposed as the major source of supply, with a pumping unit, complete with motor and automatic controls and having a capacity to pump 100 gpm to the 150,000-gallon steel tank.
- (b) Applicant be required to install a 6-inch pipe and appropriate valves to connect the 150,000-gallon steel tank with the distribution piping serving the Tahoe Hills Unit No. 1 and disconnect the 25,000-gallon redwood tank.
- (c) Applicant be required to contract in writing with a qualified person or firm who resides or maintains a business 12 months of the year in the vicinity of Lake Tahoe for the inspection, maintenance and operation of the water system with a minimum requirement of not less than two inspections per week. A copy of the contract should be furnished to the Commission.
- (d) Applicant should immediately initiate whatever procedure is necessary to have relocated the hazardous power service lead to the pumphouse presently situated on Lot 1 of Tahoe Hills Unit No. 1 subdivision.
- (e) The certificate be made effective after notification of the accomplishment of the four items above.
- (f) The certificated area exclude all lots in each subdivision if the center point of the front or roadside boundary of the lot is less than 60 feet in elevation below the outlet of the 150,000-gallon steel tank.
- (g) Applicant be placed on notice that the area excluded in (f) above may be included within the serving area by an appropriate tariff filing in accordance with General Order No. 96-A after a pressure system of adequate capacity has been installed to serve the excluded lots.

- (h) Applicant be required to make application with the appropriate health authorities for a water supply permit.
- (i) The ordering paragraphs contained in Attachment A and the rate schedules contained in Appendix A attached to the exhibit be included in the decision to be rendered in this matter.

The record shows that recommendation (d) above has been satisfied by the disconnection of the power line.

The staff engineer estimated that only twenty to twenty-five homes might be constructed in the proposed service area during the next ten years. Many of the lots are being held for speculation.

The witness for Tahoe Hills Properties, Inc., testified that 24 lots in the resubdivision of Tahoe Hills No. 1 have already been sold on the basis of the Final Subdivision Public Report of the Division of Real Estate, issued April 1, 1968, on the condition that authorization of the Public Utilities Commission be granted to Wells Water Service by September 28, 1968. He further testified that an architect wants to build ten houses for speculation when he can purchase the lots in fee. Tahoe Hills Properties, Inc., however, is not willing to share in any of the losses incurred by Wells Water System during its developmental stage.

The witness for Tal Land Corporation, Inc., which is the developer of the subdivision known as Rubicon Palisades testified that the State has purchased forty of the 101 lots in the subdivision. All but five of the remaining lots have been sold by the subdivider. Just one house has been built to date, but the witness testified that three more houses would be commenced this summer and that twelve to fifteen would be completed in the next year or two. He estimated that about thirty homes would be built in the subdivision in the next five years.

Utility Plant Accounts

Tabulation A taken from staff Exhibit No. 7 shows the estimated cost of the water system as set out in the application, the amounts of the special assessment bonds that were issued for the water facilities in the two tracts for which certification is requested, and the amount of stock for which authorization is requested by applicant.

Tabulation A from Exhibit No. 7

Estimated Cost of Water System Per Applicant's
Application No. 50038, Exhibit No. 15

	<u>Rubicon Palisades</u>	<u>Tahoe Hills Unit No. 1</u>	<u>General Expenditure</u>	<u>Total</u>
Well	\$17,780	\$ 10,000	\$	\$ 27,780
Pump Equipment				
Reservoirs & Tanks	11,000	5,000		16,000
Mains	40,660	27,970		68,630
Services	2,810	3,155		5,965
Hydrants	3,750	6,375		10,125
Sub Total	<u>76,000</u>	<u>52,500</u>		<u>128,500</u>
Well Site	2,239	4,900		7,139
Legal & Engr. Expenses			3,081	3,081
Cash Operating Fund			1,000	1,000
Total	<u>\$78,239</u>	<u>\$ 57,400</u>	<u>\$4,081</u>	<u>\$139,720</u>
Assessment Bond Proceeds	<u>\$49,761</u>	<u>\$102,005</u>		<u>\$151,766</u>
Stock Requested in Ap- plication No. 50038	<u>\$31,019</u>	<u>\$ 4,900</u>	<u>\$4,081</u>	<u>\$ 40,000</u>

At the hearing on June 20, the staff finance witness introduced Exhibit No. 21 and the witness for the applicant introduced Exhibit No. 23 relative to the basis for the authorization of the stock issue requested by applicant. The following tables are prepared from these exhibits.

Tabulation from Exhibit No. 21
Comparison of Amounts Claimed by Applicant as
Basis for Stock Issue with Balance Computed by Staff

	<u>Applicant</u>	<u>Assessment</u> <u>Financed</u>	<u>Staff</u> <u>Adjusted</u> <u>Cost</u>
<u>Per Application No. 50038</u>			
<u>Rubicon Palisades</u>			
Well	\$ 17,780	\$ 3,000	\$ 9,649
Pump		3,000	10,565
Water Tank	11,000	9,150	9,150
Water Tank Installation			6,250
Land (Well Site, Lot 29)	2,239		2,239
Land (Tract Site, Lot 98)			7,950
<u>Tahoe Hills Subdivision</u>			
Land (Tank Site, Lot 241)	4,900		4,000
Land (Easements)			900
Legal and Engineering Expense	3,081		3,081
Cash Operating Fund	1,000		1,000
Sub-Total	<u>40,000</u>		
<u>Plant Added at Hearing of June 7, 1968</u>			
Interconnecting Two Water Systems	2,500		2,500
Pressure Reducer (2)	2,210		2,210
Hydro-Pneumatic Pump	1,100		1,100
Land (Tank Site, Lot 98)	7,950		
Additional Labor for Installation of tank	4,400		
Additional Cost for Well and Pump	<u>2,434</u>		
Total Plant Not Financed by Special Assessment Bonds	<u>\$ 60,594</u>		
Total		<u>\$15,150</u>	\$60,594
Less:			
Amount Financed by Assessment Funds			15,150
Tank Site, Tahoe Hills Subdivision, Lot 241			4,000
Total			<u>\$41,444</u>

Tabulation from Exhibit No. 23

SCHEDULE OF STOCKISSUANCE ASSETS

<u>Item</u>	<u>Amount</u>	<u>Source</u>	
		<u>Tal Land (Rubicon)</u>	<u>Tahoe Hills</u>
1. Water Tank	\$15,000.00		
2. Well & Pump	<u>20,600.00</u>		
Sub Total	\$35,600.00		
Less Bond Money	<u>15,150.00</u>		
Net Cost	\$20,450.00	\$20,450.00	
3. Land from Tal Land	2,239.00	2,239.00	
4. Land from Tahoe Hills	4,900.00		\$4,900.00
5. Lot 98 (Tank Site)	7,950.00	7,950.00	
6. Engineering & Attorney's fees (app.)	3,081.00		
7. Operating fund (app.)	1,000.00		
8. 4 Pressure reducers @ \$550.00	2,200.00	1,100.00	1,100.00
9. 1 - Hydro pneumatic pump	1,100.00	1,100.00	
10. 700 pipe @ \$4.00	2,800.00	2,800.00	
11. Well test	<u>1,100.00</u>	<u>1,100.00</u>	<u> </u>
Sub Total	\$46,820.00	\$36,739.00	\$6,000.00

Exhibit No. 6 attached to the application is a copy of agreement between the County of El Dorado, Tahoe Hills Properties, Inc., and applicant dated August 21, 1967. This agreement in part provides:

1. The County shall complete the water system within the boundaries of Tahoe Hills Assessment District No. 2 pursuant to Resolution of Intention No. 220-67 adopted July 10, 1967, and upon completion title thereto shall vest in applicant.

2. The County will pay to applicant out of the proceeds of assessments levied and bonds issued in connection with the assessment district proceedings the sum of \$15,000 for the purchase of additional water system capacity to serve the properties within the boundaries of the assessment district.

3. Applicant will operate the system in accordance with its rules and regulations on file with the Commission.

4. If the provisions of the agreement have not been complied with on or before January 1, 1969, the agreement shall terminate and none of the parties shall have any further obligations.

Exhibit No. 8 is a copy of an agreement between Tal Land and the applicant dated August 31, 1967. This agreement in part provides:

1. Tal Land will complete the construction of the water system on the Rubicon Palisades subdivision to the extent it is not completed by the County of El Dorado and transfer the completed system to applicant in consideration of the issuance to Tal Land of \$29,754 of common stock at par by applicant.

2. Tal Land will then sell all of said stock, two-thirds to Monroe Wells for \$2.00 and one-third to Clarence Pease for \$1.00.

3. Tal Land will subsidize the operational losses of applicant by paying to applicant monthly the difference between the cost of operation and the receipts and will continue said subsidizations of operational losses until such time as applicant, in its operation of the Rubicon Palisades water system, experiences six consecutive months of earnings in excess of cash expenses.

Public Witnesses

One of the lot owners in Tahoe Hills Subdivision No. 1 testified that he is a water user of the Tahoe Hills Mutual Water Company but that he has never been issued a share of stock in the company. He stated he had no objection being served water by a public utility water system providing the rates are fair and he doesn't have to pay for the water facilities more than once. He pointed out that the ownership of the water system is in question. This witness is a director of the Tahoe Hills Mutual Water Company and the Tahoe Hills Improvement Association.

The President of the Tahoe Hills Mutual Water Company and of the Tahoe Hills Improvement Association testified that he purchased his lot in 1957 and built his home in 1961. The Division of Real Estate Second Amended Final Subdivision Public Report on Tahoe Hills Unit No. 1, issued October 14, 1958, Exhibit No. 18 in this proceeding, states:

"The subdivider advises that the Tahoe Hills Mutual Water Company will supply water to the lots listed above in this tract."

This witness testified that Tahoe Hills Mutual Water Company claims that Tahoe Hills Properties, Inc., has no right to sell the water system properties in Tahoe Hills Subdivision No. 1.

One of the members of the Board of Supervisors of El Dorado County testified that the County of El Dorado does not wish

to operate the water system in the two subdivisions which comprise the proposed service area in this proceeding.

At the conclusion of the hearing, the counsel for applicant and the representatives of the subdividers joined in urging that the Commission grant the application.

The representative of the Tahoe Hills Mutual Water Company expressed his concern over the adequacy of applicant's water supply.

The representative of Rubicon Water Company stated his company would be interested in combining the water system in the two subdivisions with that of his company.

The Commission staff representative pointed out that the estimates based on 150 customers are unduly optimistic, that the lots have to be paid for before homes can be built on them, and it is uncertain when there will be a substantial number of homes constructed in the subdivisions. He stated that loss reimbursement agreements of the subdividers are of dubious value, and that applicant does not have a dependable source of water supply. He also pointed out the likelihood of applicant being involved in litigation in connection with the acquisition of the water system properties from the subdividers and the County of El Dorado. He urged that the application be denied.

Based upon a consideration of the record in this proceeding the Commission finds as follows:

1. The service area for which applicant is seeking a certificate of public convenience and necessity to acquire and operate a water system as a public utility is two subdivisions, Tahoe Hills No. 1 and Rubicon Palisades, comprising approximately 129 acres in El Dorado County on the western shore of Lake Tahoe immediately south of the community of Meeks Bay.

2. It is anticipated that the two subdivisions together will contain two hundred lots on which will be constructed single-family residential units to be used primarily as resort, retirement and second home accommodations.

3. There are presently ten homes constructed or under construction in Tahoe Hills No. 1 and one home in Rubicon Palisades.

4. No water service has been available to the lots in Rubicon Palisades.

5. The previous sales and purchases of the lots in the original subdivision of Tahoe Hills Unit No. 1 were made on the basis of the representation that Tahoe Hills Mutual Water Company would furnish the water to the lots in that subdivision.

6. The water service to the residences in Tahoe Hills Unit No. 1 has been and is being furnished by Tahoe Hills Mutual Water Company, although no stock in the said mutual water company has been issued to the purchasers of the lots in the said subdivision and the water system has not been conveyed by the original subdivider or its successor to the said mutual water company.

7. Tahoe Hills Mutual Water Company is taking the position that Tahoe Hills Properties, Inc., has no right to sell the water system facilities situated in Tahoe Hills Unit No. 1.

8. Tahoe Hills Properties, Inc., the successor to the interests of the original subdivider in the water system facilities situated in Tahoe Hills Unit No. 1, asserts that any claims Tahoe Hills Mutual Water Company may have had to said water system facilities are now barred by the Statute of Limitations.

9. The service area of West Tahoe Water System, a certificated public utility water corporation, abuts the south boundary of applicant's proposed service area.

10. The service area of Rubicon Water Company, a certificated public utility water corporation, abuts the southerly boundary of West Tahoe Water System.

11. The water well at the southern end of the proposed service area has a capacity of 85 gallons per minute.

12. The water well at the northern end of the proposed service area has a capacity of not more than 8.3 gallons per minute.

13. Applicant's estimates of \$2,621 net revenue after income tax and a rate of return on \$40,000 of capital of 6.6 percent are based on 150 users being charged an annual rate of \$96.

14. Many of the lots in the proposed service area are being held for speculation.

15. Within the next five years it is estimated that not to exceed seventy-five residential users will be situated within the proposed service area.

16. Tal Land has agreed to subsidize certain of the operational losses of applicant which occur in its operation of the Rubicon Palisades water system.

17. Tahoe Hills Properties, Inc., has refused to agree to subsidize any of the operational losses of applicant.

Based upon the foregoing findings of fact the Commission concludes as follows:

1. The ownership of part of the water system facilities proposed to be acquired by applicant is disputed by Tahoe Hills Properties, Inc., and Tahoe Hills Mutual Water Company.

2. Applicant has failed to show that it has a sufficient water supply to operate the system.

3. Applicant's estimates of net revenue after income tax of \$2,621 and a rate of return of 6.6 percent on a capital of \$40,000 are not reasonable.

4. Applicant has not shown that the operation of the proposed water system is economically feasible.

5. Present or future public convenience and necessity do not or will not require the acquisition, construction and operation of the water system as proposed in the application.

6. To grant the application would be adverse to the public interest.

7. The application should be denied.

O R D E R

IT IS ORDERED that the application herein is denied.

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

Dated at San Francisco, California, this 17th day of SEPTEMBER, 1968.

William Synow, Jr.
President
W. L. Mitchell
William M. Bennett
August
R. P. Moussey
Commissioners