

Decision No. 82384

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
COARSEGOLD HIGHLANDS WATER SYSTEM,
and JOSEPH C. SMYTH and VIC KLEIWER,
for an order authorizing the sale
and transfer to JOSEPH C. SMYTH and
VIC KLEIWER of the water distribution
system and certificate of public con-
venience and necessity of the
COARSEGOLD HIGHLANDS WATER SYSTEM.

Application No. 54136
(Filed June 27, 1973;
amended September 19, 1973)

O P I N I O N

William Mosgrove, doing business as Coarsegold Highlands Water System (seller), requests authority to sell and transfer the public utility water system he operates in Coarsegold Highlands, Tract No. 160, near Coarsegold, Madera County, to Joseph C. Smyth and Victor D. Kliever, a joint venture partnership (purchasers).

Notice of the application was published in the Commission's Daily Calendar on June 29, 1973. No protests have been received.

Seller serves three flat rate customers and has 18 inactive service connections. Water is secured from one well. The distribution mains consist of approximately 3,500 feet of six-inch cement-asbestos mains. The system has a storage capacity of approximately 30,000 gallons. Seller was granted a certificate of public convenience and necessity by Decision No. 73017 dated September 6, 1967 in Application No. 49153. Seller was also a respondent, among others, in Case No. 9283, a Commission investigation into the operations and service, among other things, of Coarsegold Highlands Water System.

As of December 31, 1971 seller's undepreciated cost of water plant in service amounted to \$24,889.00 with a depreciation reserve of \$3,716.06 resulting in a net plant cost of \$21,172.94.

Seller has not filed an annual report for 1972, thus the above are the latest figures available. By Decision No. 80133 in Case No. 9283, seller and Maurice E. Smith, who was found to be the attorney for and principal management representative of William Mosgrove, doing business as Coarsegold Highlands Water System, were ordered to forthwith file the annual report for 1971 and to maintain the water system's accounting records on a calendar year basis in conformance with the Uniform System of Accounts for Class D Water Utilities prescribed by this Commission.

Seller is anxious to withdraw from the public utility water business and believes it would be to the advantage of seller's customers to have the system owned and operated by purchasers for the reasons set forth in Decision No. 80133.

Purchasers are a joint venture partnership who desire to obtain Coarsegold Highlands Water System as part of a plan to acquire several water systems in the eastern Madera County area and to improve service therein by combining them for efficiency in operation. Purchasers are familiar with the existing water rates and tariffs of the utility and will charge customers in accord therewith. Purchasers have been operating the water system subsequent to the issuance of Decision No. 80133.

Joseph C. Smyth is a registered engineer of the State of California, doing business as Joseph C. Smyth and Associates, with offices located in Oakhurst. Victor D. Kliewer is a businessman and resident land developer in eastern Madera County. Smyth's financial statement (Exhibit 3, amended application) shows that he has a net worth of \$209,218 as of July 31, 1973. Kliewer's financial statement (also Exhibit 3) shows that he has a net worth of \$342,327 as of August 31, 1973.

Seller and purchasers have entered into an Agreement of Sale (Exhibit 4, amended application), subject to the approval of this Commission. This Agreement was executed on June 26, 1973 by Joseph C. Smyth and William Mosgrove, for the sale, at a price of \$5,000 of all the properties, franchises, operative rights, and assets comprising seller's water system, excluding accounts receivable, choses in action, cash on hand and in bank, unbilled revenues, and refundable deposits made by customers. Seller is to retain and refund to seller's customers all refundable deposits, if any, made by customers to guarantee payment of bills. Purchasers are to pay seller 22 percent of the utility's gross revenues for a period of not to exceed 20 years or until \$5,000 has been paid, whichever shall be sooner, with the proviso that should purchasers divest themselves of any substantial interest in the utility, then and in such event the entire remaining balance shall be paid to seller prior to the conveyance of such interest. A full description of the real properties to be transferred is contained in Exhibit A attached to the agreement.

After consideration the Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment. The proposed transfer is not adverse to the public interest. The Agreement of Sale should be approved and considered as evidence of long term indebtedness in the amount of \$5,000 in accordance with Section 818 of the Public Utilities Code. The money, property, or labor to be procured or paid for by the issue of evidence of indebtedness herein authorized is reasonably required for the purposes specified herein. A public hearing is not necessary. We conclude that the application should be granted subject to the conditions of the following order. Both seller and purchasers will be required to give notice of completion of the transfer to the Commission.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

Joseph C. Smyth and Victor D. Kliwer are placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before March 1, 1974, William Mosgrove may sell and transfer the water system and other assets referred to in the application to Joseph C. Smyth and Victor D. Kliwer.
2. As a condition of this grant of authority, purchasers shall assume the public utility obligations of seller within the area served by the water system being transferred.
3. Within ten days after completion of the transfer, purchasers shall notify the Commission, in writing, of the date of the transfer and of the assumption of the obligations set forth in paragraph 2 of this order.
4. Purchasers shall either file a statement adopting the tariffs of sellers now on file with this Commission or refile under their own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.
5. On or before the date of actual transfer, seller shall refund all customers' deposits for the establishment of credit and advances for construction, if any, which are due and payable as of the date of transfer. All unrefunded deposits and advances, if any, shall be transferred to purchasers who shall be responsible for their refund when due.

6. On or before the date of actual transfer, seller shall deliver to purchasers, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

7. On or before the end of the third month after the date of actual transfer, purchasers shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

8. Within ten days after the completion of the transfer seller shall notify the Commission, in writing, of the date of transfer, of the refunding of the deposits, and of the date upon which purchasers shall have assumed operation of the water system. A true copy of the instruments of transfer shall be attached to the notification.

9. Upon compliance with all of the terms and conditions of this order, seller shall be relieved of his public utility obligations in connection with the water system transferred.

10. On or after the effective date of this order and on or before March 1, 1974, for the purposes specified in this proceeding, transferee may issue an evidence of indebtedness in the principal amount of not exceeding \$5,000.

11. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer has paid the fee

prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd day of JANUARY, 1974.

Vernon L. Sturgeon
President
William J. Harrison
Michael J. ...
...
Commissioners

